Shephali

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 719 OF 2020
WITH
INTERIM APPLICATION (L) NO. 9810 OF 2020
WITH
INTERIM APPLICATION (L) NO. 4250 OF 2022
WITH
INTERIM APPLICATION (L) NO. 10483 OF 2023
IN
WRIT PETITION NO. 719 OF 2020

Viraj Chetan Shah,
Age 31, Occupation: Financial Analyst,
An adult Indian Inhabitant having his residential address at 33/B, Rekha Building, 6th Floor, Walkeshwar, Mumbai 400 006. **...Petitioner**

~ versus ~

1. **Union of India Through the Ministry of Home Affairs,**
North Block, New Delhi 110 001.

2. **Union Bank of India**
A body corporate constituted under Banking companies (Acquisition and Trnasfer of Undertakings) Act 1970 having its registered office at Union **...Respondents**

Bank Bhavan 239, Vidhan Bhavan
Marg, Nariman Point,
Mumbai 400 021.

WITH

WRIT PETITION NO. 51 OF 2020

Dr Shrikant Bhasi,
Residing at 39, B2, Yashodham Hill,
Top Residents CHS Ltd., Gen A.K. Vaidya
Marg, Goregaon (East),
Mumbai 400 067. **...Petitioner**

~ versus ~

1. **Bureau Of Immigration,**
   Ministry Of Home Affairs,
   East Block-VIII, Level-V Sector-1,
   R.K. Puram, New Delhi 110 066.
2. **State Bank Of India,**
   A Public Sector Bank, Incorporated
   under the State Bank of India Act,
   Address: M.C.Road, Nariman Point,
   Mumbai 400 021.
3. **Union of India Through The**
   Government Pleader,
   2nd Floor, Income Tax Building,
   Marine Lines, Mumbai **...Respondents**

WITH

WRIT PETITION NO. 162 OF 2020

WITH

INTERIM APPLICATION (L) NO. 13242 OF 2022

IN

WRIT PETITION NO. 162 OF 2020

Jubin K Thakkar,
Aged 49 years,
Occupation: Business, Residing at
143/144/145, Vasukamal CHS,
Devidas Lane, Borivli (West),
Mumbai 400 103. **...Petitioner**

~ versus ~

1. **Union Of India,**
   Through the Ministry of Home,
   Government of India,
   North Block, New Delhi.

2. **Bank Of Baroda,**
   A body corporate, constituted under
   the Banking Companies (Acquisition &
   Transfer of Undertakings) Act V of
   1970, having its Head Office at Baroda
   House, PB No.506, Mandvi,
   Baroda 390 001
   And its Corporate Office at:
   Bank of Baroda Corporate Centre,
   C-26, G Block, Bandra-Kurla Complex,
   Mumbai 500 051
   and Branch Office, Bank of Baroda, Bur
   Dubai, United Arab Emirates.

3. **The Deputy Director (BO.II), Department Of Financial Services,**
   Ministry of Finance, 3rd Floor,
   Jeevan Beep Building,
   10, Sansad Marg, New Delhi 110 001. **...Respondents**

WITH

WRIT PETITION NO. 837 OF 2020

Gaurav Tayal,
Aged years,
Occupation: Business,
Residing at 19 Pankaj Mahal,
Opposite KC College, Churchgate,
Mumbai 400 020. **...Petitioner**

~ versus ~

1. **Bureau Of Immigration,**
Ministry Of Home Affairs,
East Block-VIII, Level-V, Sector 1,
R.K. Puram, New Delhi – 110 066.

2. **Allahabad Bank,**
A body corporate, constituted under
The Banking Companies (Acquisition
and transfer of undertaking) 1970,
Having its branch office at IFB Branch
2nd Floor, Allahabad Bank Building, 37,
Mumbai, Samachar Marg, Fort,
Mumbai 400 023.
And
Head Office at 2, Netaji Subhas Road,
BBD Bagh, Kolkata,
West Bengal 400 001

3. **Union Of India,**
Through the Government Pleader,
2nd floor, Income Tax Building,
Marine Line, Mumbai **...Respondents**

WITH

WRIT PETITION NO. 140 OF 2021

WITH

INTERIM APPLICATION (L) NO. 29664 OF 2022

1. **Attaluri Venkateswara Prasad,**
Male, Adult, Indian citizen,
Aged about 54 years,
Permanent resident of Hong Kong,
having his address at Flat D, 3/F, Tower 2, Harbour Green, 8 Sham Mong Road, Tai Kok Tsui, Kowloon, Hong Kong

2. **Attaluri Surekha,**
Female, Adult, Indian citizen,
Aged about 47 years, Permanent resident of Hong Kong, having her address at Flat D, 3/F, Tower 2, Harbour Green, 8 Sham Mong Road, Tai Kok Tsui, Kowloon, Hong Kong.

...Petitioners

~ versus ~

1. **The Bureau Of Immigration,**
Ministry Of Home Affairs,
East Block-VII, Level-V,
Sector I, R.K. Puram,
New Delhi 110 066.

2. **Bank Of India,**
A Public Sector Bank,
having its office at Kala Ghoda,
Fort, Mumbai 400 001.

3. **Union Of India,**
having its address at Aaykar Bhavan,
Maharishi Karve Road,
Churchgate, Mumbai 400 021. ...**Respondents**

WITH

WRIT PETITION NO. 195 OF 2021

Anil Bhanwarlal Mehta,
Indian citizen, aged about 63 years,
permanent resident of Hong Kong, having
his address at 25A, Ocean View Court,
Front Portion Chatham Road,
T-S-T Kowloon, Hong Kong. ...**Petitioner**

~ versus ~

1. **The Bureau Of Immigration,**
Ministry of Home Affairs, East Block-
VIII, Level-V, Sector I, R.K Puram,
New Delhi 110 066.

2. **Bank Of India,**
Having its office at Kala Ghoda, Fort,
Mumbai 400 001.

3. **Union Of India,**
Having its address at Aaykar Bhavan,
Maharishi Karve Road,
Churchgate, Mumbai 400 021. ...**Respondents**

WITH

WRIT PETITION NO. 1762 OF 2021

WITH

INTERIM APPLICATION NO. 532 OF 2021

IN

WRIT PETITION NO. 1762 OF 2021

Keshav Ashok Punj,
Aged 36 years,
Occupation: Businessman,
Residing at 19-20, Lotus Court,
J Tata Road, Churchgate,
Mumbai 400 020. **...Petitioner**

~ versus ~

1. **Bureau Of Immigration,**
Ministry of Home Affairs,
East Block-VIII, Level-V,
Sector-I, R.K. Puram,
New Delhi 110 066.

2. **Bank Of Baroda,**
A body corporate, Constituted under the Banking Companies (Acquisition and Transfer of Undertaking) 1970,
Having its branch office at 3,
Walchand Hirachand Marg,
Ballard Pier,
Mumbai 400 001.
And
Head Office at Suraj Plaza, 1,
Sayaji Ganj, Baroda-390 005.

3. **Union Of India,**
through the Secretary, Ministry of Home Affairs represented through the Officer of Central Government Pleaders, 2nd floor, Income Tax Building, Marine Lines,
Mumbai **...Respondents**

WITH

WRIT PETITION NO. 2681 OF 2021

WITH

INTERIM APPLICATION (L) NO. 19372 OF 2022

AND

INTERIM APPLICATION NO. 1978 OF 2022

WITH

INTERIM APPLICATION (L) NO. 34756 OF 2022

WITH

INTERIM APPLICATION (L) NO. 21646 OF 2023

IN

WRIT PETITION NO. 2681 OF 2021

1. **AA Estates Private Limited,**
a Company registered under the Companies Act, 1956, having its registered address at
RNA Corporate Park,
Next to Collector's Office,
Kalanagar, Bandra (East),
Mumbai, Maharashtra 400 051.

2. **Gokul Anilkumar Aggarwal (Director),**
601, Khatau Condominium,
JM Mehta Road,
Off – Nepean Sea Road,
Malbar Hill, Mumbai 400 051.

3. **Anubhav Anilkumar Aggarwal (Director),**
601, Khatau Condominium,
JM Mehta Road,

Off – Nepean Sea Road, Malbar Hill,
Mumbai 400 051.

4. **Saranga Anilkumar Aggarwal,**
601, Khatau Condominium,
JM Mehta Road,
Off – Nepean Sea Road, Malbar Hill,
Mumbai 400 051. **...Petitioners**

~ versus ~

1. **State Bank of India,**
Stressed Assets Resolution Group,
Commercial (III),
112-115, 1st Floor, Plot-212,
West Wing, Tulsiani Chambers,
Free Press Journal Marg,
Nariman Point, Mumbai 400 021.

2. **Bureau Of Immigration,**
Ministry of Home Affairs,
Government of India,
Having its office in Mumbai at Annex-II
Bldg., 3rd Floor Badruddin Tayyabji
Marg, Behind St Xavier College, CST,
Mumbai 400 001.

3. **Reserve Bank Of India,**
Mumbai Regional Office,
Shahid Bhagat Singh Road,
Kala Ghoda Fort,
Mumbai, Maharashtra 400 001, India. **...Respondents**

WITH

WRIT PETITION NO. 2843 OF 2021

WITH

INTERIM APPLICATION NO. 1029 OF 2020

WITH

INTERIM APPLICATION (L) NO. 6665 OF 2020

IN

WRIT PETITION NO. 2843 OF 2021

Punit Agarwal,
2, Shweta Building, Plot No. 42,
1st Gulmohar Road, Juhu,
Mumbai 49 ...**Petitioner**

~ versus ~

1. **Reserve Bank of India,**
having its office at New Central Office Building, Shahid Bhagat Singh Road, Fort, Mumbai 400 001

2. **State Bank of India,**
having its office at
State Bank Bhavan, Corporate Centre, Madame Cama Road, Nariman Point, Mumbai 400 021
And having its Stress Asset Management branch office at:
12th Floor, Jawahar Vypar Bhawan
STC Building, 1 Tolstoy Marg, Janpath, New Delhi 110 001

3. **Bureau of Immigration,**
Ministry of Home Affairs, Government of India, Rep. By it's Commissioner (Immigration), East Block VIII Level, V Sector 1, RK Puram, New Delhi 110066

4. **Foreigner Regional Registration Officer (F.R.R.O.),**
Bureau of Immigration, Ministry of Home Affairs, Government of India, 78/1, Badruddin Tayabji Marg, behind St. Zevier College, Dhobi Talao, Chhatrapati Shivaji Terminus Fort, Mumbai – 400 001

5. **Bureau of Immigration,**
Mumbai International Airport Ltd, Chhatrapati Shivaji Maharaj International Airport, 1st Floor, Terminal 2, Santacruz East, Mumbai 400099

...Respondents

WITH

WRIT PETITION NO. 2624 OF 2021

WITH

INTERIM APPLICATION (L) NO. 24248 OF 2022

IN

WRIT PETITION NO. 2624 OF 2021

Punit Agarwal,
Age 43 years, 2, Shweta Building, Plot No. 42, 1st Gulmohar Road, Juhu, Mumbai 49

...Petitioner

~ versus ~

1. **Bank of Baroda,**
Bank of Baroda Corporate Centre, Plot No. C-26, Block G, BKC, Bandra (East), Mumbai 400 051

2. **Bureau of Immigration,**
Ministry of Home Affairs,
government of India,
Rep. by its Commissioner
(Immigration), East Block VIII Level,
V Sector 1, RK Puram,
New Delhi 110 066

3. **Foreigner Regional Officer (F.R.R.O.),**
Bureau of Immigration, Ministry of
Home Affairs, Government of India,
78/1, Badruddin Tayabji Marg, behid
St. Zevier College, Dhobi Talao,
Chhatrapati Shivaji Terminus Fort,
Mumbai 400 001 ...Respondents

WITH

WRIT PETITION NO. 3338 OF 2021

WITH

INTERIM APPLICATION NO. 1871 OF 2023

WITH

INTERIM APPLICATION (L) NO. 10422 OF 2024

IN

WRIT PETITION NO. 3338 OF 2021

1. **Karan Baheti,**
Age-54 years, Occupation-Consulting,
Residing at flat 2901 Tower 97
Neo Tower, Amonara, Township,
Pune 411028

2. **Manisha Baheti,**
Adult, Indian Inhabitant,
Age-49 years, Occupation: Housewife,
Residing at Flat 2901 Tower 97
Neo Tower, Amonara, Township,
Pune 411028 ...**Petitioners**

~ versus ~

1. **Union of India,**
Through the Principal Secretary,
Ministry of Home Affairs,
Aaykar Bhavan, Marine Lines,
Mumbai

2. **Bureau of Immigration / Intelligence Bureau,**
Through its Deputy Director, having
its office at: East Blocik-VIII, Level-V,
Sector-1, R.K. Puram,
New Delhi 110 066

3. **Bank of Baroda, India,**
Baroda Corporate Centre, Plot No. C-6,
Block G, Bandra Kurla Complex,
Bandra East, Mumbai 400 051 ...**Respondents**

WITH

WRIT PETITION NO. 3775 OF 2021

WITH

INTERIM APPLICATION (L) NO. 23397 OF 2022

WITH

INTERIM APPLICATION NO. 1017 OF 2023

WITH

INTERIM APPLICATION NO. 3904 OF 2023

IN

WRIT PETITION NO. 3775 OF 2021

Dr Kannan Vishwanth,
Male, Indian Inhabitant,
Aged – 46 Years,
Residing at: 8/B, Postal Colony,
Chembur, Mumbai, Pin-400071 **...Petitioner**

~ versus ~

1. **Union of India,**
   Ministry of Home Affairs,
   Foreigners Division, Jaisalmer House,
   26 Mansingh Road, New Delhi
2. **Bureau of Immigration (BOI),**
   Through Dy. Director, East Block-VIII,
   RK Puram, New Delhi 66
3. **Bank of Baroda,**
   Having its registered office at: Baroda House, PB No. 506, Mandvi, Vadodara, Gujarat 390001
   &
   Having its branch office at:
   Meher Chambers, Ground Floor,
   Dr Sunderlal Behl Marg,
   Ballard Estate, Mumbai **...Respondents**

WITH

WRIT PETITION NO. 3952 OF 2021

WITH

INTERIM APPLICATION (L) NO. 1893 OF 2022

WITH

INTERIM APPLICATION (L) NO. 14840 OF 2023

WITH

INTERIM APPLICATION (L) NO. 3750 OF 2024

IN

WRIT PETITION NO. 3952 OF 2021

Deepak Shenoy,
Indian Inhabitant,
Aged 37 years, A/702,
Radhika Apartments,
Twin City CHS, Section 17,
Plot No. 31, Vashi,
Navi Mumbai 400 703 ...**Petitioner**

~ versus ~

1. **State Bank Of India,**
   A Statutory Body Corporate constituted under the State Bank of India Act, 1955, having its Head Office at State Bank Bhavan, Madame Cama Road, Mumbai 400 021.
2. **Bureau Of Immigration, Ministry Of Home Affairs,**
   4th Floor, Vidhesh Bhavan,
   Bandra Kurla Complex,
   Plot No. C-45, G Block,
   Bandra (East), Mumbai 400 051.

3. **Union Of India Through The Ministry Of Home Affairs (Foreigners Division),**
Major Dhyan Chand National Stadium,
India Gate, New Delhi 110 001. ...**Respondents**

WITH

WRIT PETITION (L) NO. 18651 OF 2021

WITH

INTERIM APPLICATION NO. 1654 OF 2023

IN

WRIT PETITION (L) NO. 18651 OF 2021

Dinanath Soni,
Age:60 Years, Occ: Service,
No.20, Waterwoods, Varthur Main Road,
Ramagondanahalli, Bangalore North,
Bangalore, Karnataka – 560 066. ...**Petitioner**

~ versus ~

1. **Union Of India**
2. **Deputy General Manager, Bank Of Baroda,**
Asset Recovery Management Branch,
Meher Chambers, Ground Floor,
Ballard Estate, Mumbai 400 001.
3. **Bureau Of Immigration,**
Chhatrapati Shivaji International
Airport, Navpada, Vile Parle,
Mumbai 400 099. ...**Respondents**

WITH

WRIT PETITION NO. 46 OF 2022

WITH

INTERIM APPLICATION (L) NO. 17419 OF 2022

WITH

INTERIM APPLICATION (L) NO. 1468 OF 2022

WITH

INTERIM APPLICATION (L) NO. 25254 OF 2022

IN

WRIT PETITION NO. 46 OF 2022

Rajendra Kaimal,
C-1201/1202, Orchid Enclave,
Nahar Amrit Shakti, Chandivali Farm Road,
Sakinaka, Mumbai 400 072. **...Petitioner**

~ versus ~

1. **Bank Of India,**
   An Indian nationalised banking and financial services company having its registered office at Baroda House, Mandvi, Baroda 390 001
   and one of its branch office at
   Zonal Stressed Asset Recovery Branch, Meher Chambers, Ground Floor, Dr Sunderlal Behl Marg, Ballard Estate, Mumbai 400 001.

2. **Bureau Of Immigration,**
   Ministry of Home Affairs, 4thFloor, Videsh Bhavan, Bandra Kurla Complex, Plot No. C-45, G Block, Bandra (East), Mumbai 400 051.

3. **Union Of India Through The Ministry of Home Affairs,**
(Foreigners Division),
Major Dhyam Chand National Stadium
India Gate,
New Delhi 110 001. ...**Respondents**

WITH

WRIT PETITION NO. 63 OF 2022

WITH

INTERIM APPLICATION (L) NO. 17429 OF 2022

WITH

INTERIM APPLICATION (L)NO. 1471 OF 2022

WITH

INTERIM APPLICATION (L) NO. 25253 OF 2022

WITH

INTERIM APPLICATION (L) NO. 27444 OF 2023

WITH

INTERIM APPLICATION (L) NO. 11313 OF 2023

IN

WRIT PETITION NO. 63 OF 2022

Ajit Kamath,
404, ILA Apartments, Plot 118, Sector-4,
Charkop, Kandivali West, Mumbai 400 067. ...**Petitioner**

~ versus ~

1. **Bank Of Baroda,**
An Indian Nationalised Banking
And financial services company,
Having its registered office at
Baroda House,
Mandvi, Baroda – 390 001
And one of its branch offices at:
Zonal Stressed Asset Recovery Branch,
Meher Chambers, Ground Floor,
Dr Sunderlal Behl Marg,
Ballard Estate, Mumbai 400 001.

2. **Bureau Of Immigration**
Ministry Of Home Affairs,
4th Floor, Videsh Bhavan, Bandra Kurla
Complex, Plot No. C-45, G Block,
Bandra (East), Mumbai 400 051.

3. **Union Of India Through The**
Ministry Of Home Affairs,
(Foreigners Division)
Major Dhyan Chand National Stadium
India Gate, New Delhi 110 001. **...Respondents**

WITH

WRIT PETITION NO. 621 OF 2022

WITH

INTERIM APPLICATION (L) NO. 11727 OF 2023

WITH

INTERIM APPLICATION (L) NO. 13609 OF 2023

IN

WRIT PETITION NO. 621 OF 2022

1. **Mamta Kishore Apparao,**
Flat No.210, 10th Floor,

Samudra Mahal, Dr Annie Besant Road, Worli, Mumbai 400 018.

2. **Shamik Apparao,**
Flat No.210, 10th Floor, Samudra Mahal, Dr Annie Besant Road, Worli, Mumbai 400 018.

...Petitioners

~ versus ~

1. **Bank Of Baroda,**
Having its Office at 10/12, Mumbai Samachar Marg, Horniman Circle, Mumbai 400 023.

2. **IDBI Bank Limited,**
IDBI Tower, WTC Complex, Cuffe Parade, Mumbai 400 005.

3. **Reserve Bank Of India,**
16th Floor, Central Office Building, Shahid Bhagat Singh Marg, Mumbai 400 001.

4. **Union Of India,**
Through the Secretary, Ministry of Home Affairs, having its office at North Block, New Delhi 110 001.

5. **Bureau Of Immigration,**
CSI Mumbai, through the Immigration Officer, Chhatrapati Shivaji Maharaj International Airport, Mumbai, Maharashtra and having its office at Chhatrapati Shivaji Maharaj International Airport, Navpada, Vile Parle East, Mumbai 400 099.

...Respondents

WITH

WRIT PETITION NO. 937 OF 2022

WITH

INTERIM APPLICATION (L) NO. 17564 OF 2022

IN

WRIT PETITION NO. 937 OF 2022

Pradeep Agarwal,
An adult Indian Inhabitant having his residential address at Plot No.4, Villa 'B', Pochkhanawala Road, Near Godrej Tower, Worli Sea Face, Mumbai 400 030. **...Petitioner**

~ versus ~

1. **Union of India,**
Ministry Of Home Affairs,
North Block, New Delhi – 110 001
And through its office at Mumbai
Department of Legal Affairs,
Ministry of Law & Justice, Branch Secretariat, Aayakar Bhavan,
MK Road, Mumbai 400 020.

2. **Bureau Of Immigration/Intelligence Bureau,**
Through its Deputy Director,
Having its office East Block – VIII,
Level – V, Sector -1, RK Puram,
New Delhi 110 066.

3. **Bank Of Baroda,**
A public sector banking company, having its corporate office at C-26, G Block, Bandra Kurla Complex, Bandra East, Mumbai 400 051. **...Respondents**

WITH

WRIT PETITION (L) NO. 17482 OF 2022

WITH

INTERIM APPLICATION NO. 2581 OF 2022

IN

WRIT PETITION (L) NO. 17482 OF 2022

Pradeep Agarwal,
An adult Indian Inhabitant having his residential address at Plot No. 4, Villa 'B', Pochkhanawala Road, Near Godrej Tower, Worli Sea Face, Mumbai 400 030 **...Petitioner**

~ versus ~

1. **Union of India,**
   Ministry o Home Affairs,
   North Block, New Delhi 110001,
   And through its office at Mumbai
   Department of Legal Affairs, Ministry of Law & Justice,
   Branch Secretariat,
   Aayakar Bhavan, MK Road, Mumbai 400 020

2. **Bureau of Immigration/**
   Intelligence Bureau,
   Through its Deputy Director Having its office East Block-VIII, Level-V, Sector-1, RK Puram, New Delhi 110066

3. **Punjab National Bank,**
A public sector banking company, having its Registered Office at Plot No. 4, Sector 10, Dwarka, New Delhi 110075 And having Mumbai Corporate Office address at 7th Floor, E Wing, Maker Tower, Cuffe Parade, Mumbai 400 005 ...Respondents

WITH

WRIT PETITION (L) NO. 17515 OF 2022

WITH

INTERIM APPLICATION NO. 2580 OF 2022

IN

WRIT PETITION (L) NO. 17515 OF 2022

Pradeep Agarwal,
An adult Indian Inhabitant having his residential address at Plot No. 4, Villa 'B', Pochkhanawala Road, Near Godrej Tower, Worli Sea Face, Mumbai 400 030 ...Petitioner

~ versus ~

1. **Union of India,**
Ministry o Home Affairs,
North Block, New Delhi 110001,
And through its office at Mumbai Department of Legal Affairs, Ministry of Law & Justice, Branch Secretariat, Aayakar Bhavan. MK Road, Mumbai 400 020

2. **Bureau of Immigration/ Intelligence Bureau,**
Through its Deputy Director Having its office East Block-VIII, Level-V, Sector-1, RK Puram, New Delhi 110066

3. **Union Bank of India,**
A public sector banking company, having 239, Vidhan Bhavan Marg, Nariman Point, Mumbai 400 021

...Respondents

WITH

WRIT PETITION NO. 1998 OF 2022

Zen Digital Media LLP,
A Limited Liability Partnership incorporated under the provisions of Limited Liability Partnership Act, 2008, having LLP Identity No. AAK8530 having its corporate office at 4th Floor, Eden Square, NS Road, No. 10, J.V.P.D. Mumbai400 049
through its partner
Payal Raval

...Petitioner

~ versus ~

1. **Maharashtra Maritime Board,**
A Statutory body established under the Government of Maharashtra under the provisions of Maharashtra Maritime Board Act, 1996, having office at 2nd Floor, Indian Mercantile Chambers, Ramjibhai Kamani Marg, Ballard Estate, Mumbai 400 001

2. **Regional Port Officer,**
An officer under the provisions of
Maharashtra Maritime Board Act 1996,
having office at Bandra Group of Port
Limits, Sai Baba Nagar Koliwada,
KharDanda, Mumbai 400 052

3. **The Port Inspector,**
An officer under the provisions of
Maharashra maritime Board, Act 1996,
having office at Bandra Group of Port
Limits, Sai Bab Nagar, Koliwada,
KharDanda, Mumbai 400 052 **...Respondents**

WRIT PETITION NO. 2053 OF 2022

WITH

INTERIM APPLICATION (L) NO. 27017 OF 2022

WITH

INTERIM APPLICATION (L) NO. 33306 OF 2022

IN

WRIT PETITION NO. 2053 OF 2022

Ariez Rustom Tata
Age:52 Years, an adult Indian Inhabitant
having his residential address at A-702,
Windswept, 9th Road,
JVPD Scheme, Juhu,
Mumbai 400 009. **...Petitioner**

~ versus ~

1. **Union Of India**
through the Ministry of Home Affairs,
North Block, New Delhi 110 001 and

through its office at Mumbai
Department of Legal Affairs, Ministry
of Law & Justice, Branch Secretariat,
Aayakar Bhavan, MK Road,
Mumbai 400 020.

2. **Bureau Of Immigration/Intelligence Bureau,**
Through its Deputy Director,
Having its office East Block-VIII,
Level-G, Sector-1, RK Puram,
New Delhi 110 066.

3. **State Bank Of India,**
A public sector banking company,
having its corporate office at State Bank
Bhavan, Vidhan Bhavan Marg, Nariman
Point, Mumbai 400 021. ...**Respondents**

WITH

WRIT PETITION NO. 2866 OF 2022

WITH

INTERIM APPLICATION NO. 1990 OF 2023

WITH

INTERIM APPLICATION (L) NO. 8720 OF 2024

IN

WRIT PETITION NO. 2866 OF 2022

Neha Haresh Dharmani
An Adult, Indian Inhabitant,
Having her address atBasant Park Coop
Housing Society Ltd, Flat No.6/A3, Survey

No. 405 & 406, RC Marg,
Opp Police Station, Chembur,
Mumbai 400 071.

...PETITIONER

~ VERSUS ~

1. UNION OF INDIA
through the Ministry of Home Affairs,
Having its address at
Ministry of Home Affairs,
North Block, New Delhi 110 001

2. CENTRAL BUREAU OF INVESTIGATION,
Having its address at
Banking Securities Fraud Zone,
Plot No.C-35-A, G-Block,
Bandra Kurla Complex,
Bandra (E), Mumbai 400 098.

3. MD & CEO OF BANK OF BARODA
Having his address at Bank of Baroda,
Baroda Corporate Centre,
C-26, G Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400 051.

4. STATE OF MAHARASHTRA
Through the office of Government
Pleader.

...RESPONDENTS

WRIT PETITION NO. 3056 OF 2022

WITH

INTERIM APPLICATION NO. 3404 OF 2022

WITH

INTERIM APPLICATION (L) NO. 24368 OF 2022

WITH

INTERIM APPLICATION (L) NO. 28767 OF 2022

WITH

INTERIM APPLICATION (L) NO. 31019 OF 2022

WITH

INTERIM APPLICATION NO. 2293 OF 2023

WITH

INTERIM APPLICATION (L) NO. 21655 OF 2023

WITH

INTERIM APPLICATION (L) NO. 10068 OF 2024

IN

WRIT PETITION NO. 3056 OF 2022

Shri Nihar N Parikh,
Of Mumbai an adult Indian Inhabitant,
having address at Varsha Building,
10th Floor, 69B, Nepeansea Road,
Mumbai 400 006. **...Petitioner**

~ versus ~

1. **Union Of India**
   through the Ministry of Home Affairs.
2. **The State Of Maharashtra,**
   Through the Government Pleader,
   Original Side, Bombay High Court,
   Mumbai 400 001.
3. **Bureau Of**

Immigration/Intelligence Bureau,
Having its head office at East Block-VIII, Level-V, Sector-1, Rama Krishna Puram, New Delhi
And having its regional office at Chhatrapati Shivaji International Airport, Navpada, Vile Parle East, Vile Parle, Mumbai, Maharashtra 400 099.

4. **Shrenuj And Company Limited**
A Company registered under the provisions of the Companies Act 2013 and having its office at 405, Dharam Palace, 100/10, NS Patkar Marg, Mumbai 400007 and its corporate office at Bharat Diamond Bourse, Bandra Kurla Complex,
Mumbai 400 051.

5. **Indian Bank**
Having its branch office at International Business Branch, Mittal Chambers Office No.4, Ground Floor,
Plot No. 228, Nariman Point,
Mumbai 400 021.

6. **Bank Of Baroda**
Having its branch office at Zaveri Bazar, Branch 122, Trishla Bldg., Sheikh Memon Street,
Mumbai 400 002.

7. **State Bank Of India**
A statutory corporation constituted under the State Bank of India Act, 1955, and having its central office at State Bank Bhavan, Madam Cama Road, Mumbai 400 021 and having its Local

Head Office at Plot No. C-6, G Block Bandra Kurla Complex, Bandra East, Mumbai 400 051.

8. **Canara Bank**
Having its branch office at International Business Branch at 10, Homji Street, Fort, Mumbai 400 001.

9. **Bank Of India**
A body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings Act 1970) and having its office at Bharat Diamond Bourse MCG, Ground Floor, Star House – II C-5, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai 400 051.

10. **Union Bank of India**
A body corporate Constituted under the Banking Companies (Acquisition and Transfer of Undertakings Act, 1970) and having its head office at 239, Union Bank of India, Vidhan Bhavan Marg, Mumbai 400 021.

11. **Punjab National Bank**
Having head office at 7, Bhikaji Cama Palace New Delhi 110 607 and its branches amongst other named as Offshore Banking, Unit Seepz, Andheri (E), Mumbai 400 096.

12. **Export-Import Bank Of India**
A body Corporate established under the Export Import Bank of India Act, 1981 and having its head office at Centre One, Floor 21, World Trade Centre

Complex, Cuffe Parade,
Mumbai 400 005.

13. **Standard Chartered Bank**
A body Corporate incorporated in England having its branch office in India at Crescenzo Plot No.C-38 & 39, G-Block, Bandra Kurla Complex, Mumbai 400 051.

14. **Karnataka Bank Limited**
A banking Company registered under the provisions of the Companies Act, 1956, having its registered office at Kankanady, Mangalore 575002 and having a branch office amongst other places at Overseas Branch at 104/106, Embassy Centre, Dr Jamnalal Bajaj Marg, Nariman Point,
Mumbai 400 021.

15. **IDBI Bank Limited**
Having its branch office at 5th floor, Plot No. C 7, G Block, BKC,
Opposite NSE Building,
Bandra (E), Mumbai 400 051.

16. **Central Bank Of India**
Having its branch office at B-2, Bharat Diamond Bourse,
Bandra Kurla Complex, Bandra (E),
Mumbai 400 051.

17. **JM Financial Assets Reconstruction Limited**
Having its office at 7th Floor, Cnergy, Appasaheb Marathe Marg,
Prabhadevi, Mumbai 400 025.

...Respondents

WITH

WRIT PETITION (L) NO. 5608 OF 2022

Pravin Mehta,
Aged – 42, Occupation: Business,
An adult Indian Inhabitant,
having his residential address at 202,
Shamiana, 67-F, Walkeshwar Road,
Walkeshwar, Mumbai 400 006. **...Petitioner**

~ versus ~

1. **Union of India,**
   through the Ministry of Home Affairs,
   North Block, New Delhi 110 001.
2. **Bank of Baroda,**
   A body corporate constituted uner
   Banking Companies (Acquisition and
   Transfer of Undertakings) Act 1970,
   havint its registered office at Baroda
   Corporate Center, 26, G-block,
   Bandra Kurla Complex,
   Mumbai 400 051. **...Respondents**

WITH

WRIT PETITION (L) NO. 5610 OF 2022

WITH

INTERIM APPLICATION (L) NO. 17801 OF 2023

WITH

INTERIM APPLICATION NO. 4672 OF 2022

WITH

INTERIM APPLICATION NO. 1801 OF 2023

WITH

INTERIM APPLICATION (L) NO. 10066 OF 2024

IN

WRIT PETITION (L) NO. 5610 OF 2022

Paras Mehta,
Age 42 Occupation : Business,
An adult Indian Inhabitant having his residential address at 202, Shamiana, 67-F, Walkeshwar Road, Walkeshwar, Mumbai – 400 006
and also at 30, Adarsh Society, Nanpura, Chorasi, Surat, Gujarat 395 001. **...Petitioner**

~ versus ~

1. **Union Of India,**
   Through The Ministry Of Home Affairs,
   North Block, New Delhi 110 001.

2. **Bank Of Baroda,**
   A body corporate constituted under Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having it's registered office at Baroda Corporate Center, C-26, G-Block, Bandra Kurla Complex,
   Mumbai 400 051. **...Respondents**

WITH

WRIT PETITION (L) NO. 8821 OF 2022

WITH

INTERIM APPLICATION NO. 3831 OF 2022

WITH

INTERIM APPLICATION NO. 2625 OF 2023

IN

WRIT PETITION NO. 8821 OF 2022

1. **Purushottam Chagganlal Mandhana,**
   Male, Adult, Indian Inhabitant,
   aged 67, Having his residence at:
   3005, Ashok Tower-B, Dr SS Rao Road,
   Near Gandhi Hospital, Parel,
   Mumbai 400 012.
2. **Biharilal Chagganlal Mandhana,**
   Male, Adult, Indian Inhabitant,
   aged 76, Having his residence at:
   3005, Ashok Tower-B, Dr SS Rao Road,
   Near Gandhi Hospital, Parel,
   Mumbai 400 012.
3. **Manish Biharilal Mandhana,**
   Male, Adult, Indian Inhabitant, aged 53,
   Having his residence at:
   3005, Ashok Tower-B,
   Dr SS Rao Road, Near Gandhi
   Hospital, Parel,
   Mumbai 400 012.

...Petitioners

~ versus ~

1. **Union Of India,**
   Ministry of Home Affairs,
   Foreigners Division, Jaisalmer House,
   26, Mansingh Road, New Delhi.

2. **Bureau Of Immigration (BOI),**
Through Dy Director,
East Block-VIII, RK Puram,
New Delhi 66.

3. **Bank Of Baroda,**
Having its Registered Office at:
Baroda House, PB No.506, Mandvi,
Vadodara, Gujrat 390 001
And
Having its branch office at:
Stressed Asset Management Branch,
17/B, First Floor, Homji Street,
Horniman Circle, Fort,
Mumbai 400 023.

...Respondents

WITH

WRIT PETITION (L) NO. 11128 OF 2022

Anju Rajesh Poddar,
An Indian Citizen, having her address at 52,
Gautam Apartment,
31, Juhu Road, Santacruz (West),
Mumbai 400 054.

...Petitioner

~ versus ~

1. **Union Of India,**
(Through the Ministry of Home Affairs), Foreigners Division

2. **State Of Maharashtra,**
Through Government Pleader,
High Court, Bombay.

3. **MD & CEO Of State Bank Of India,**
Having its office at:-
Stressed Assets Management
Branch-I, Mumbai, "The Arcade", 2nd Floor, Word Trade Centre, Cuff Parade, Colaba, Mumbai 400 005.

...Respondents

WITH

WRIT PETITION (L) NO. 11141 OF 2022

Rajesh Gaurishankar Poddar,
An Indian Citizen, having his address at 52, Gautam Apartment,
31, Juhu Road, Santacruz (West),
Mumbai 400 054.

...Petitioner

~ versus ~

1. **Union Of India,**
(Through the Ministry of Home Affairs), Foreigners Division
2. **State Of Maharashtra,**
Through Government Pleader,
High Court, Bombay.
3. **MD & CEO Of State Bank Of India,**
Having its office at:-
Stressed Assets Management
Branch-I, Mumbai, "The Arcade", 2nd Floor, Word Trade Centre, Cuff Parade, Colaba, Mumbai 400 005.

...Respondents

WITH

WRIT PETITION (L) NO. 12086 OF 2022

Salil Chaturvedi,
Adult, having his office address at
105/106, Dream Square,
Dalia Industrial Estate,
Off New Link Road, Andheri (W),
Mumbai 400 053 **...Petitioner**

~ versus ~

1. **Union Of India,**
   Through its Ministry of Home Affairs
2. **State Of Maharashtra**
3. **MD & CEO Of Union Bank of India,**
   Having its office at:-
   Union Bank Bhawan, Ground Floor,
   239, Vidhan Bhavan Marg,
   Nariman Point, Mumbai 400 021. **...Respondents**

WITH

WRIT PETITION (L) NO. 12614 OF 2022

WITH

INTERIM APPLICATION NO. 3567 OF 2023

IN

WRIT PETITION (L) NO. 12614 OF 2022

Manappadom Ganapathy Subramaniam,
Aged 62 years, Occ: Service,
Flat No.501, Rajeswari Road No.17,
Chembur, Mumbai 400 071. **...Petitioner**

~ VERSUS ~

1. **Bureau Of Immigration,**
Ministry of Home Affairs,
East Block-VII, Level-V,
Section 1, RK Puram,
New Delhi 110 066.

2. **State Bank of India,**
A Public Sector Bank, Incorporated under the State Bank of India Act, MC Road, Nariman Point,
Mumbai 400 021
Also at
State Bank of India,
Stressed Assets Management Branch,
Paramsiddhi Complex, 2nd Floor,
Opp VS Hospital, Ellisbridge,
Ahmedabad 380 006.

3. **Bank Of Baroda,**
Zonal Stressed Asset Recovery Branch,
Mehar Chambers, Ground Floor,
Dr Sunderlal Bhel Marg,
Opp Petrol Pump, Ballard Estate,
Mumbai 400 001.

4. **Bank Of Maharashtra,**
Wilful Default Cell,
Lokmangal, 1501, Shivajinagar,
Pune 411 005.

5. **Union Bank of India,**
Asset Recovery Branch,
66/80, 5th Floor, Mumbai Samachar Marg, Mumbai 400 023.

6. **Punjab National Bank,**
Mid Corporate Branch,

Brady House, VN Road,
Fort, Mumbai 400 023.

7. **Central Bank of India,**
Stressed Asset Management,
Chander Mukhi, Ground Floor,
Nariman Point, Mumbai 400 021.

8. **Union of India,**
Through the Government Pleader,
2nd Floor, Income Tax Building,
Marine Line, Mumbai.

9. **Sudar Industries Limited,**
Plot No.27 & 29, Village Paud Mazgaon
Road, Khalapur Taluka,
Raigad 410 222. **...Respondents**

WITH

WRIT PETITION (L) NO. 7310 OF 2022

WITH

INTERIM APPLICATION (L) NO. 18195 OF 2022

WITH

INTERIM APPLICATION NO. 1600 OF 2022

WITH

INTERIM APPLICATION (L) NO. 36519 OF 2022

WITH

INTERIM APPLICATION NO. 107 OF 2024

WITH

INTERIM APPLICATION NO. 964 OF 2024

IN

WRIT PETITION (L) NO. 7310 OF 2022

Anil Dhanpat Agarwal,
An Indian Citizen, having his address at Banglow No. 8A & B, Eden Banglows Co-Op Hsg Soc Ltd., Hiranandani Gardens, Forest Street, Off Adl Shankaracharya Marg, Near Hiranandani High School, Powai,
Mumbai 400 076. **...Petitioner**

~ versus ~

1. **Union Of India,**
   (Through the Ministry of Home Affairs), Foreigners Division.
2. **State Of Maharashtra,**
   Through Government Pleader,
   High Court, Bombay.
3. **MD & CEO Of Union Bank Of India,**
   Branch at: Mid Corporate Branch, Mumbai South Region, Mumbai Zone, (Erstwhile Overseas Branch), Having its office at:-
   Union Bank Bhawan, Ground Floor, 239, Vidhan Bhavan Marg,
   Nariman Point, Mumbai 400 021. **...Respondents**

WITH

WRIT PETITION NO. 2357 OF 2023

WITH

INTERIM APPLICATION NO. 2348 OF 2023

IN

WRIT PETITION NO. 2357 OF 2023

Smitesh Shah,
adult, residing at Eden III B-403,
Hiranandani Garden, Powai,
Mumbai 400 076. **...Petitioner**

~ versus ~

1. **Union Of India,**
   Through the Ministry of Home Affairs,
   Bureau of Immigration,
   New Delhi.
2. **Idbi Bank Ltd**
3. **State Bank of India**
4. **State Bank of Mysore**
5. **State Bank of Patiala**
6. **Oriental Bank of Commerce**
7. **Punjab National Bank**
8. **Standard Chartered Bank**
9. **State Bank of Mauritius**
10. **Bank of Bahrain And Kuwait**
11. **Canara Bank**
12. **Allahabad Bank**
13. **Kotak Mahindra Bank**
14. **Bank of India**
15. **Export Import Bank of India**
16. **State Bank of Hyderabad**
17. **Indian bank**

18. **SBI CAP Trustee Company Ltd** ...Respondents

WITH

WRIT PETITION NO. 2789 OF 2023

WITH

INTERIM APPLICATION (L) NO. 19182 OF 2022

WITH

INTERIM APPLICATION (L) NO. 17823 OF 2022

WITH

INTERIM APPLICATION (L) NO. 12161 OF 2023

IN

WRIT PETITION NO. 2789 OF 2023

1. **Harbhajan Singh,**
Aged 77 years, Occ:Business, Flat No. 1201, Building No. 2, Seawoods Estate NRI Complex Nerul Navi Mumbai, THANE 400 706

2. **Rajkumari Singh,**
Aged 78 years, Occ:Business, Flat No. 1201, Building No. 2, Seawoods Estate NRI Complex Nerul Navi Mumbai, THANE 400 706 ...Petitioners

~ versus ~

1. **Bureau of Immigration, Ministry of Home Affairs,**
East Block – VII, Level- V, Section 1, RK Puram, New Delhi 110 066
And also,
78/1, Badruddin Tayabji Marg,

Dhobi Talao, Chhatrapati Shivaji
Terminus Area, Fort, Mumbai,
Maharashtra 400 001

2. **Bank of Baroda,**
Zonal Stress Asset Recovery Branch,
Mehar Chambers, Ground Floor,
Dr Sunderlal Bhel Marg,
Opp. Petrol Pump, Ballard Estate,
Mumbai 400 001

3. **Union of India,**
Through the Government Pleader,
2nd Floor, Income Tax Building,
Marine Line, Mumbai

...Respondents

WITH

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2200 OF 2021

WITH

INTERIM APPLICATION NO. 342 OF 2022

IN

WRIT PETITION NO. 2200 OF 2021

Anil M Howale,
Flat No.202, Shree Gajananprasad
Housing Society, Income Tax Lane,
Prabhat Road, Erandwane,
Pune 411 004.

...Petitioner

~ versus ~

1. **Union of India,**
Through its Ministry of Home Affairs,

(Foreigners Division),
Major Dhyan Chand National Stadium,
Near Pragati Maidan,
New Delhi 110 001.

2. **Bureau of Immigration,**
Government of India,
Through its Commissioner
(Immigration), having office at East
Block-VIII, Level-V, Sector-1, RK
Puram, New Delhi 110 066.

3. **FRRO, Bureau of Immigration,**
Annex-II Bldg, 3rd Floor, Badruddin
Tayyabji Marg, Behind St Xavier
College, CSMT, Mumbai 400 001.

4. **Bank of Baroda,**
Having Head Office at Baroda Bhavan,
7th Floor, RC Dutt Road,
Vadodara – 390 007 (Gujarat)
And having Corporate Office at
Baroda Corporate Centre,
Plot No. C-26, Block G,
Bandra Kurla Complex,
Bandra (East), Mumbai 400 051.

5. **The Chief Manager, Bank of Baroda,**
Zonal Stressed Asset Recovery Branch,
Omkar Jyoti Niwas, 2nd Floor,
Market Yard Road, Gultekadi,
Pune 411 037.

...Respondents

WITH

WRIT PETITION NO. 4356 OF 2021

Rihen Harshad Mehta,
adult, Indian Inhabitant, having his address
at 15th Floor, Mittal Towers,
"C" Wing, Nariman Point,
Mumbai 400 021. **...Petitioner**

~ versus ~

1. **Union of India,**
   (Through the Ministry of Home Affairs)
2. **The Additional Commissioner of Police,**
   Special Branch-II, CID, Mumbai.
3. **The State of Maharashtra**
4. **MD & CEO, Bank of Baroda,**
   Bandra Kurla Complex,
   Mumbai. **...Respondents**

WITH

WRIT PETITION NO. 5450 OF 2021

Samir Pravin Shah,
Aged 42 years, Indian inhabitant,
Occu.: Business, Resident of Flat No.18A,
Landends CHS, 29D, Dungarshi Road,
Walkeshwar,
Mumbai 400 006. **...Petitioner**

~ versus ~

1. **The Bureau Of Immigration,**
   Ministry of Home Affairs,
   Government of India,

Represented by its Commissioner (Immigration) East Block, VIII, Level 5, Sector 1, RK Puram, New Delhi 110 006.

2. **Bank of Baroda,**
(A banking company established under the Banking Companies (Acquisition and Transfer of Undertakings Act, 1970)
having its Corporate office at Baroda Corporate Centre, Plot No. C-26, Block G, Bandra Kurla Complex, Bandra (East), Mumbai 400 051. **...Respondents**

WITH

WRIT PETITION (ST) NO. 6654 OF 2022

WITH

INTERIM APPLICATION NO. 3220 OF 2022

WITH

INTERIM APPLICATION NO. 13457 OF 2023

WITH

INTERIM APPLICATION NO. 13458 OF 2023

WITH

INTERIM APPLICATION NO. 17522 OF 2023

WITH

INTERIM APPLICATION (ST) NO. 17368 OF 2023

IN

WRIT PETITION (ST) NO. 6654 OF 2022

1. **Chetan Ramniklal Shah,**
C/o Flat No.5, 5th Floor, Urmi Building, 65, Abdul Gaffar Khan Road, Worli Sea Face Road, Mumbai 400 025.

2. **Hema Chetan Shah,**
C/o Flat No. 5, 5th Floor, Urmi Building, 65, Abdul Gaffar Khan Road, Worli Sea Face Road, Mumbai 400 025.

...Petitioners

~ versus ~

1. **Union of India,**
Through Foreign Division, Ministry of Home Affairs, New Delhi and also at Aaykar Bhavan, MK Road, Churchgate.

2. **State of Maharashtra,**
Through Public Prosecutor, High Court, Bombay.

3. **Bank of Baroda (Dena Bank),**
Stressed Assets Management Branch, 1st Floor, 17/B, Mumbai Samachar Marg, Horniman Circle, Fort, Mumbai 400 023.

...Respondents

Appearances

for the petitioners/ applicants **Dr Birendra Saraf, Senior Advocate**, *with Sanchit Bhogale, Anirudh Purushothaman, i/b Parth Shah.*

FOR THE PETITIONERS IN SOME MATTERS	**Ms Gulnar Mistry**, *with Submit Chakrabarti, Shantam Mandhyan, Apurva Pawar & Abhay Jariwala, i/b Vidhii Partners.*
	Mr Dharam Jumani, *with Suraj Iyer, Gauri Joshi, Mihir Nerurkar, i/b Ganesh & Co*
FOR RESPONDENT UoI	**Mr Anil Singh**, **ASG**,*with Rui Rodrigues, YR Mishra, YS Bhate, DA Dube, Sandesh Patil, Aditya Thakkar, DP Singh, Ashish Mehta, Ajinkya Jaibhave, Savita Ganoo, Deepak Shukla, Smita Thakur, Pravav Thakur, Chaitanya Chavan, Dhanesh Shah & Mohamedali M Chunawala.*
FOR SOME OF THE RESPONDENT BANKS	**Mrs Rathina Maravarman** **Ms Manjiri Parasnis.**

CORAM : G.S.Patel & Madhav J Jamdar, JJ

RESERVED ON : 18th July 2022

PRONOUNCED ON : 23rd April 2024

JUDGMENT (*Per GS Patel J*):-

CONTENTS

(*Sections bookmarked in soft copy/PDF version*)

A. BACKGROUND & OVERVIEW

1. This common judgment will dispose of this very large group of matters, including all Writ Petitions and all Interim Applications. Of necessity, the judgment is in two volumes. Volume 1 has only the cause title of all cases, with appearances. The judgment itself in in Volume 2. After the hearing concluded, further matters were purportedly 'added' to the original group of 38 cases by mentioning and getting these 'tagged'. We do not see how that can be done. Our judgment will cover only those cases that were part of the original group. If any further cases are covered by this judgment, parties are left to take appropriate orders.

2. Annexed to this judgment in Volume 3 is a tabulation we have prepared of the 38 cases in the group with essential details in brief in each case.

3. The challenge before this Court is to the constitutionality of what are called Look Out Circulars ("**LOCs**") issued by the Ministry of Home Affairs ("**MHA**") at the instance of one or the other of various public sector banks. These LOCs are issued under a set of 'Office Memoranda" ("**OMs**"). The OMs have been amended periodically.

4. Not all Petitions proceed in the same way. Some challenge individual LOCs. Others have a wider challenge to the source, viz., the OMs. Self-evidently, if the challenge to the OMs succeeds, the LOCs must go; conversely, if the validity of the OMs is upheld,

individual challenges to the LOCs will have to be considered separately one by one in each case.

5. The annexed tabulation of the 38 cases in the group before us shows the challenges in each.

6. To clarify: the OMs are not challenged in their entirety. **Only that portion of the OMs is assailed which, by amendment, allows public sector banks to request the issuance of a LOC against individuals said to be in default — what are called 'defaulting borrowers'**. These individuals may not be borrowers personally, but may in some cases be guarantors for the repayment of debts by others or even principal officers (directors in particular) of corporate debtors.

7. Once issued, an LOC of this kind (triggered by a request from a public sector bank) is typically deployed to prevent the individual in question from travelling overseas. An almost invariable feature is that the individual has no prior notice of the issuance of the LOC, and is not even given a copy of the LOC. She or he is merely told that there is such an LOC issued by a particular bank and the person cannot, therefore, be allowed to board the flight.

8. Various courts across the country, including our own, have passed interim or final orders staying the LOCs and allowing travel. As far as we know, there is no decision yet on the constitutional validity of the OMs that permit public sector banks ("**PSBs**") to request the issuance of such LOCs.

9. In one voice, the Petitioners say that the amendments to the OMs that allow PSBs to trigger or request such LOCs are all ultra vires Article 21 of the Constitution of India. These are, they say, without the authority of 'law' as understood under Article 13 of the Constitution of India. Mere executive instructions cannot trammel fundamental rights. Besides, the entire field of regulating travel is fully occupied by a statute, namely the Passports Act, 1967 ("**the Passports Act**").

10. The principal contest comes from the PSBs. They argue that the Petitioners are, one and all, defaulters; and the defaults are not trivial amounts. These are 'public funds'. Many of these persons have deliberately avoided their obligations to repay. They present a flight risk. If allowed to travel freely, it will be impossible to get them back into local jurisdiction for pursuing or enforcing the banks' claims to recover huge debts. Thus, allowing such defaulters to freely travel overseas is detrimental to the economic interests of India. The banks may have other modes of recovery, civil and criminal, which they are pursuing, but the continued presence of these individuals within local territorial limits is essential to safeguard against vast financial and economic loss to the PSBs and the nation as a whole. There is no fundamental right to defraud and default, it is argued, and one who is a defaulter cannot be entitled to invoke such fundamental freedoms.

11. The challenge raises questions of significant consequence to our civic life and constitutional protections. Broader questions will not detain us. We are only concerned with a narrowed focus, the authority in law for a PSB to initiate the request for a LOC against a defaulter — even an admitted defaulter. Is the financial interest of a

PSB equivalent to the 'economic interest of India'? Can mere executive fiat, absent a controlling statute, curtail a fundamental right? When and in what circumstances, if at all, is this permissible? Can this right be curtailed without some form of procedural and substantive due process? Can a PSB, with no guidelines at all, use a measure that curtails an Article 21 fundamental right as a means to recover dues?

12. The stand of the Union of India is, as we shall presently see, most interesting. It has taken a detached and, in our view, appropriately neutral stand. Overall, its approach is that the Union of India and the MHA are merely executive agencies. They do not trigger the LOC requests themselves. They do not address the legitimacy or otherwise of the claims beneath the originating LOC request from a PSB. The Union of India is not concerned with those aspects. It merely issues the LOCs if found to be in conformity with the OMs as amended, and then implements at various ports of departure.

13. Dr Birendra Saraf led the arguments on behalf of the Petitioners, supplemented inter alia by Ms Gulnar Mistry and Mr Dharam Jumani. Of necessity, we required counsel not to replicate arguments already made. We appreciate the cooperation. Mr Singh, learned ASG, addressed on behalf of the Union of India (including the MHA and the Bureau of Immigration or "**BoI**"). Ms Rathina Maravarman, and Ms Manjiri Parasnis and Mr Prakash Shinde represented various respondent banks defending the OMs and the LOCs. The title of this judgment only notes the appearances of the principal counsel. The appearances in the other matters in the group

will be shown in a separate order. We will not entertain any applications for speaking to the minutes of the principal judgment to correct appearances.

B. THE ORIGINS AND EVOLUTION OF LOOK OUT CIRCULARS AND THE OFFICE MEMORANDA; EARLY CASES

14. The OMs are notoriously difficult to trace. There is no complete compendium available in print or online. Early in the hearing, we were surprised by an initial resistance from Mr Singh, learned ASG, to make available a complete set of the OMs. He stopped short of invoking privilege or the Official Secrets Act and quite correctly did not pursue the objection much further, correctly taking the stand that the Union Government could not withhold the OMs from a court. That is as it should be. If the OMs are the underlying instructions or framework for the issuance of LOCs, then certainly a Court confronted with a challenge to the constitutional validity of even part of the OMs is entitled to see them. We go further. If those OMs result in LOCs that even in the slightest affect a fundamental right, then the OMs must be made publicly known. Yet, there is no readily available resource.

15. We were able to gather a compilation during the hearings. The copies given to us were in poor condition. We have had these transcribed. A full set as given to us (with the possible exception of an OM amendment of 10th August 2021, which is not readily to hand) is annexed to this judgment in Volume 3 for ease of reference.

16. The first OM in time is of 5th September 1979. It is still not available in the public domain. There is an amendment of 27th December 2000, also unavailable.

17. Our first tangible reference point is an OM of 27th October 2010. This explains that LOCs are issued to keep a watch on the arrival and departure of foreigners and Indians. It notes, apart from the MHA, the authorities empowered to issue LOCs. These include: the Ministry of External Affairs, Directorate of Revenue, CBI, Interpol, Regional Passport Officers, Customs and Income Tax Departments and police authorities from various states. The 2010 OM tells us that LOCs lapse after a year.

18. The 2010 OM also says that the 2000 OM specified the steps to be taken for opening a LOC against an Indian citizen. The request for a LOC (to be issued to all Immigration Check Posts in India) must include the accused's complete particulars in a prescribed format. The issuance of a LOC requires approval by an officer not below the rank of Deputy Secretary to the Government of India/Joint Secretary in the State Government or a Superintendent of Police at the district level. While the validity of a LOC continues to be one year, the 2000 OM provides for an extension before the year-end lapsing. If there is no request for an extension, the LOC automatically closes.

19. The OMs until then did not even reference a governing statutory framework. They could not be said to in exercise of any rule-making power under a statute.

20. In 2010, before the 27th October 2010 OM was issued, came the first challenge before the Delhi High Court in *Vikram Sharma v Union of India*.[1] The Court was asked to decide if statutory bodies like the National Commission of Women (NCW) could request the issue of LOCs. The Delhi High Court held that statutory bodies like the NCW did not fall under the ambit of "authorities concerned"; the request for the issuance of a LOC had to come from either the Central or the State Government. The Court held that instead, statutory bodies like the NCW and NHRC could only notify law enforcement, which could then request the issuance of a LOC.

21. In a related case, *Sumer Singh Salkan v Asst. Director & Ors*,[2] the Delhi High Court answered four questions raised by a lower court on LOCs. Its answers were meant to serve as general guidelines for the agencies issuing LOCs:

(a) Recourse to LOCs could be taken by an investigative agency only in cognizable offences under the Indian Penal Code, 1860 or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite non-bailable warrants and other measures to compel attendance, and where there was a likelihood of the accused leaving the country to evade trial or arrest.

(b) The Investigating Officer had to make a written request for a LOC to the officer notified by the circular of Ministry of Home Affairs, setting out details and

1 (2010) 171 DLT 671.

2 ILR (2010) VI Delhi 706.

reasons for seeking a LOC. The competent officer alone could give directions for opening an LOC by passing an order in this regard.

(c) The person against whom LOC was issued was required to cooperate with the investigation by appearing before Investigating Officers, or had to surrender before the court concerned, or satisfy the court that the LOC was wrongly issued against him. Such a person could also approach the officer who ordered the issuance of the LOC to explain that LOC was wrongly issued against him. The LOC could be withdrawn by the authority that issued it, and it can also be rescinded by the trial court where the case was pending or by a court with jurisdiction over the police station in question on an application by the person concerned.

(d) The LOC was held to be a 'coercive measure' to make a person surrender to the investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or cancelling LOC was thus commensurate with the jurisdiction to cancel or confirm (and insist on execution of) a non-bailable warrant.

22. Following the decisions in *Vikram Sharma* and *Sumer Singh Salkan,* the MHA released the OM dated 27th October 2010 ("**2010 OM**"). It seems to have been more comprehensive than its predecessors, but we do not have the benefit of the earlier OMs. Clause 8 of the 2010 OM set out guidelines governing the issue and operation of LOCs. The request for a LOC had to emanate from an

originating agency to the Bureau of Immigration. Clause 8(b) specified the minimum rank of an officer empowered to approve the LOC issuance request: some 13 officers were listed by designation. Clause 8(i) dealt with LOC 'renewals'.

23. But then there was Clause 8(j), which said that—

> in exceptional cases, **LOCs can be issued without complete parameters and /or case details** against CI suspects, terrorists, anti-national elements, etc in **larger national interest**.
>
> (*Emphasis added*)

24. On 5th December 2017, this 2010 OM was amended. For our purposes, the amendment to clause 8(j) is relevant. It now said that 'in exceptional cases', the departure of a person from India could be denied—

> if the concerned authorities received inputs that **the departure of a person from India is detrimental to** the sovereignty or security or integrity or that the same is detrimental to the bilateral relations with any country or to the strategic and/or **economic interests of India** …
>
> (*Emphasis added*)

25. Thus, this 2017 amendment introduced the 'economic interests of India' in the 'exceptional case' category.

26. In 2018, the MHA released several OMs making significant amendments to the 2010 OM. The 19th September 2018 OM ("**2018**

OM-I") empowered officers in the Serious Fraud Investigation Office (SFIO) to approve the opening of LOCs under Clause 8(j).

27. A communication dated 4th October 2018 issued by the Ministry of Finance requested the MHA to include the following in the category of authorities who could trigger a LOC request in clause 8(b), by adding entry (xlv):

> "(xv) Chairman (State Bank of India) /Managing Directors and Chief Executive Officers (MD & CEOs) of all other Public Sector Banks."

28. On 12th October 2018, the MHA accepted the request and made the addition ("**2018 OM-II**") noted above. This is the amendment that is being used against the Petitioners.

29. On 22nd November 2018, the Ministry of Finance communicated the amendment to all PSBs and instructed them to 'strictly comply with the OM against wilful defaulters'.

30. Then there was an OM of 10th May 2019 ("**2019 OM**"). Along with the 2018 OM-II, this is central to the case and needs to be quoted:

> The undersigned is directed to refer to the O.M. no. 6/3/2018-BO.II dated 18th April, 2019 from the Ministry of Finance, Department of Financial Services on the above mentioned subject and to say that the matter has been examined in this Ministry.
>
> 2. In this context, **it may be stated that this Ministry vide O.M. of even number dated 12th October, 2018 has already included Chairman/ Managing Director/ Chief**

Executive of all Public Sector Banks in the list of officers who can make a request for opening of Look Out Circulars (LOCs). Further, as per this Ministry's O.M. no. 25016/31/2010-Imm dated 27.10.2010 (copy enclosed), an officer not below the rank of deputy Secretary to the Government of India (which includes an officer not below the rank of Deputy Secretary in the Department of Financial Services) is also authorized to make a request for opening of LOC.

3. **It may also be pointed out that as per this Ministry's O.M. of even number dated 05.12.2017 (copy enclosed), in exceptional cases, LOCs can be issued even in such cases, as would not be covered by the guidelines contained in this Ministry's O.M. dated 27.10.2010, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in the O.M., if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/ or that such departure ought not be permitted in the larger public interest at any given point of time**.

4. In view of the position stated in paras 2 & 3 above, **it is evident that officers not below the rank of Chairman/Managing Director/ Chief Executive of all Public Sector Banks are competent to request for opening LOC at any point of time if departure of a particular person from India is perceived to be detrimental to the 'economic interests of India' or if the departure of such person from India 'ought not be permitted in the larger public interest'**. Therefore, Department of Financial

> Services may suitably advise all Public Sector Banks to the effect that the competent authorities of Public Sector Banks may make a request for opening LOC against a person at any point of time without waiting for the investigation agencies to take action for opening LOC.
>
> **5. At the same time, wherever the investigation agencies have already registered cases, they (investigation agencies) should not refer the case back to the Bank. The investigation agencies should themselves take pro-active steps to open an LOC wherever so required. The investigation agencies are also being suitably advised separately**.
>
> **6. Further, the officers of financial institutions and the officers of investigating agencies are expected to act in tandem and ensure that wherever required LOCs are opened in time to prevent the departure of persons from India against the economic interest of the country or against the larger public interest. Precious time should not be lost in referring the issue back and forth**.
>
> (*Emphasis added*)

31. The most recent amendment is dated 22nd February 2021 ("**2021 OM**"). Clause 6(j) now stipulated that LOCs will be *automatically renewed*, unless the originating agency makes a deletion request, a complete reversal of the earlier one-year lifespan provision. This is found in clause 6(J) of the 'revised guidelines' issued by the MHA. We reproduce the whole of Clause 6 of the 2021 OM.

> **6. The existing guidelines with regard to issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners have been reviewed by this Ministry.** After due deliberations in consultation with various stakeholders and in suppression of all the existing guidelines issued vide

this Ministry's letters/ O.M. referred to in para 1 above, it has been decided with the approval of the competent authority **that the following consolidated guidelines shall be followed henceforth by all concerned for the purpose of issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners:-**

(A) The request for opening an LOC would be made by the Originating Agency (OA) to the Deputy Director, Bureau of Immigration (BoI), East Block- VIII, R.K. Puram, New Delhi – 110666 (Telefax: 011-26192883, email: boihq@nic.in) in the enclosed Proforma.

(B) The request for opening of LOC must invariably be issued with the approval of an Originating agency that shall be an officer not below the rank of—

i. Deputy Secretary to the Government of India; or

ii. Joint Secretary in the State Government; or

iii. District Magistrate of the District concerned; or

iv. Superintendent of Police (SP) of the District concerned; or

v. SP in CBI or an officer of equivalent level working in CBI; or

vi. Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level [including Assitant Director (Ops.) in Headquarters of NCB]; or

vii. Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Indirect Taxes and Customs; or

viii. Assistant Director of Intelligence Bureau/Bureau of Immigration (BoI); or

ix. Deputy Secretary of Research and Analysis Wing (R&AW); or

x. An officer not below the level of Superintendent of Police in National Investigation Agency; or

xi. Assistant Director of Enforcement Directorate; or

xii. Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary to the Government of India; or

xiii. Designated officer of Interpol; or

xiv. An officer of Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India); or

xv. **Chairman/ Managing Directors/ Chief Executive of all Public Sector Banks.**

(C) LOCs can also be issued as per directions of any Criminal Court in India. In all such cases, request for opening of LOC shall be initiated by the local police or by any other Law Enforcement Agencies concerned so that all parameters for opening LOCs are available.

(D) The name and designation of the officer signing the Proforma for requesting issuance of an LOC must invariably be mentioned without which the request for issuance of LOC would not be entertained.

(E) The contact details of the Originator must be provided in column VI of the enclosed Proforma. The

contact telephone/ mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow up action. Originator shall also provide the following additional information in column VI of the enclosed Proforma to ensure proper communication for effective follow up action:-

i. Two Gov/NIC email IDs

ii. Landline number of two officials

iii. Mobile numbers of at least two officials, one of whom shall be the originator

(F) Care must be taken by the Originating Agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above. It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters viz. Name & percentage, passport number or Date of Birth are available. **However, LOC can also be issued if name and passport particulars of the person concerned are available.** It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to minimize harassment to genuine passengers. Details of Government identity cards like PAN Card, Driving License, Aadhar Card, Voter Card etc. may also be included in the request for opening LOC.

(G) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.

(H) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without

which the subject of an LOC will not be arrested/detained.

(I) In cases where there is no cognizable offence under IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The Originating Agency can only request that they be informed about the arrival/departure of the subject in such cases.

(J) The LOC opened shall remain in force until and unless a deletion request is received by BoI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC if any, immediately after such a review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BoI immediately so that liberty of the individual is not jeopardized.

(K) On many occasions, persons against whom LOCs are issued, obtain Orders regarding LOC deletion/ quashing/ suspension from Courts and approach ICPs for LOC deletion and seek their departure. Since ICPs have no means of verifying genuineness of the Court Order, in all such cases, orders for deletion/quashing/ suspension etc. of LOC, must be communicated to the BoI through the same Originator who requested for opening of LOC. Hon'ble Courts may be requested by the Law Enforcement Agency concerned to endorse/convey orders regarding LOC suspension/ deletion/ quashing etc. to the same law enforcement agency through which LOC was opened.

(L) In exceptional cases, LOCs can be issued even in such cases, as may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B) above, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time.

(M) The following procedure will be adopted in case statutory bodies like the NCW, the NHRC and the National Commission for Protection of Children's Rights request for preventing any Indian/ foreigner from leaving India. Such requests along with full necessary facts shall be brought to the notice of law enforcement agencies like the police. The Superintendent of Police (S.P.) concerned will then make the request for issuance of an LOC upon an assessment of the situation, and strictly in terms of the procedure outlined for the purpose. The immigration/emigration authorities will strictly go by the communication received from the offences authorized to open LOCs as detailed in clause (B) above.

(N) For effective and better interception of LOC subjects, following guidelines shall be followed by the Originator:-

i. Specific action to be taken by the Immigration authorities on detection must be indicated in the filled LOC proforma.

ii. In case of any change in parameters/ actions/ investigating officer/ Originator contact details or if any court order is passed in the case, the

same should be brought to the notice of the BoI immediately by the originating agency concerned for making necessary changes in the LOC.

iii. For LOCs originated on court orders, the concerned PS/IO should send the identifying parameters of the subject to the BoI as court orders contain only name and parentage of the subject.

iv. In case an LOC is challenged and stayed by the concerned court or a court issues any directive with regard to the LOC, the originator must inform the BoI urgently and accordingly seek amendment/deletion of the LOC.

v. Whenever the subject of LOC is arrested or the purpose of the LOC is over, a deletion request shall be sent by the Originator immediately to the BoI.

vi. The Originator must respond promptly whenever the subject/ likely match is deleted at the ICP. The confirmation regarding the identity of the subject and action to be taken must be informed immediately to the ICP.

vii. The BoI would form a team to coordinate matters regarding the LOC. This team would contact the LOC issuing agencies to get the status of LOC updated.

viii. Each LOC Originating Agency referred in para 6 (B) above will appoint a Nodal officer as indicated in Annexure-I for coordination/updation of LOC status with BoI. The said team of BoI [as mentioned in

> para 6(N) (vii)] would remain in constant touch with this Nodal Officer.
>
> (*Emphasis added*)

32. We will return to a closer analysis of these consolidated guidelines a little later in this judgment.

C. ILLUSTRATIVE USE OF A LOOK OUT CIRCULAR AT THE INSTANCE OF A PUBLIC SECTOR BANK

33. We will use the facts in the lead matter, Writ Petition No 719 of 2020 (*Viraj Chetan Shah v Union of India & Anr*) as typical, and for illustration only. The other cases are all variations on a similar theme as the consolidated tabulation we have prepared shows. Since we are addressing the validity of the OMs in question, differences in facts will not presently be material.

34. The 1st Respondent to Shah's Petition is the Union of India through the MHA. The 2nd Respondent is the Union Bank of India, a PSB.

35. Shah makes the following prayers:

> A. that this Hon'ble Court be pleased to declare the impugned amendment dated October 18, 2018 issued by the Respondent No 1, the Ministry of Home Affairs, Government of India, being Exhibit "J-2" to the Petition is ultra vires, unconstitutional and void ab initio;

(a1) this Hon'ble Court be pleased to declare, quash and set aside the Office Memorandum No. 2501/31/2010-Imm. dated 27th October 2010 issued by Government of India, Ministry of Home Affairs (Foreigners Division) read with the amendments to the 2010 Memorandum being (i) Office Memorandum dated 5th December 2017 issued by the Government of India, Ministry of Home Affairs, (ii) Office Memorandum F. No. 25016/10/2017- Imm. dated 12th October 2018 issued by the Government of India, Ministry of Home Affairs Foreigners Division; (Immigration Section), (iii) Office Memorandum F. No. 6/3/2018-BO. II dated 22nd November 2018 issued by the Government of India, Ministry of Finance, Department of Financial Service inter alia empowering the heads of Public Sector Banks including the Chairman (State Bank, of India) / Managing Directors and Chief Executive Officer (MD & CEOs) of all other Public Sector Banks to issue requests for opening Look Our Circulars hereto as ultra vires the Constitution of India.

B. that this Hon'ble Court be pleased to issue a Writ of mandamus or a Writ in the nature of Mandamus or any other appropriate Writ order and/or direction commanding Respondents Nos. 1 and 2 or any one or more of them as this Hon'ble Court deems fit and proper to forthwith refrain from implementing the provisions of the Impugned Amendment dated October 18, 2018 issued by the Respondent No 1, the Ministry of Home Affairs, Government of India, being Exhibit "J-2" to the Petition against the Petitioner in any manner whatsoever;

C. that this Hon'ble Court be pleased to quash and/or set aside the Impugned Lookout Circular

D. that this Hon'ble Court be pleased to declare that the Impugned Lookout Circular has been issued in violation of the Guidelines and this Hon'ble Court be pleased to quash and / or set aside the Impugned Lookout Circular;

> E. that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order and/or direction commanding Respondent Nos. 1 and 2 or any one or more of them as this Hon'ble Court deems fit and proper to forthwith refrain from acting upon and/or in pursuant of the Impugned Lookout Circular and/or the impugned actions in any manner whatsoever;

36. The sequencing of the OMs is confusing, apart from the sheer difficulty in accessing them. For that reason, we will overlook the exact wording of prayer (a1), for the amendment — as noted above — was not "Chairman (State Bank, of India) / Managing Directors and Chief Executive Officer (MD & CEOs) of all other Public Sector Banks" but "Chairman/ Managing Directors/ Chief Executive of all Public Sector Banks".

37. Shah's version of the facts runs like this:

(a) With a bachelor's degree in commerce from Mumbai University in 2008, Shah was appointed to the Board of Directors of P&S Jewellery Ltd on 2nd January 2012. This entity was controlled by Shah's uncle, Paresh. Viraj Shah himself was not a shareholder. He says he attended no shareholder or board meetings. He received some ad hoc payments of about Rs 3 lakhs in April 2013. The entire enterprise was controlled and run by Paresh.

(b) The company had borrowings from a consortium of banks. The Union Bank of India ("**UBI**") was one of

them. There were others, including the State Bank of India ("**SBI**"). The company's borrowing was around Rs 300 crores.

(c) But the loan or loans were secured inter alia by a personal guarantee of the Petitioner Viraj Shah. He says his net worth was Rs 6 lakhs. There was additional security in the form of mortgages over properties with which Shah was not connected and which did not belong to him.

(d) On 5th July 2014, Shah resigned from the Board of Directors of the company.

(e) The company became a non-performing asset or NPA on 31st March 2015. Shah says he did not know about this until much later, when the LOC was used against him.

(f) UBI initiated action under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on 19th May 2015, against the company and its directors. Shah was not served with a notice.

(g) In August 2015, Shah moved to Dubai with his spouse. He took a job as a Business Development Manager with Doring Consultancy Services.

(h) On 10th August 2015, UBI issued a notice under Section 13(4) of the SARFAESI Act regarding possession of various mortgaged properties.

(i) Now the story takes an interesting turn. Shah hints at this — that when it comes to doing business in large volumes and handling massive debt, fealty to family ties takes a backseat. For he says his uncle Paresh threw him under the bus by 'forging' Shah's signature on a Power of Attorney dated 30th September 2015 to support a Securitization Application before the DRT on behalf of the company and the guarantors challenging the Section 13(4) notice. Shah says he could never have signed the Power of Attorney in Mumbai: on the date of that document he was in Dubai.

(j) On 3rd March 2017, the DRT granted UBI an ex parte injunction restraining the defendants to the UBI action (including Shah) from leaving the country without DRT's prior permission. Shah says he learnt of this from the UBI Affidavit in Reply to his Writ Petition.

(k) On 7th April 2017, the DRT granted Paresh and his son Sahil permission to travel abroad after submitting their itinerary and disclosing assets.

(l) Meanwhile, Shah travelled in and out of India without restraint. At page 15 of the Writ Petition he lists 12 dates

of entry and exit between 27th December 2015 and 10th May 2019.

(m) On 29th May 2017, the NCLT admitted the company's petition for an order of liquidation under Section 10 of the Insolvency & Bankruptcy Code, 2016. The NCLT passed an order of liquidation on 30th July 2018.

(n) On 20th May 2019, UBI declared Shah a 'wilful defaulter' ostensibly invoking some guidelines or circulars of the Reserve Bank of India. Shah says he was not served with a notice.

(o) On 2nd June 2019, Shah took up a new job with Ellington Capital Ltd as a financial analyst.

(p) On 9th July 2019, the State Bank of India asked UBI to issue a LOC against the company's directors. UBI did so.

(q) On 9th August 2019, Shah returned to Mumbai. He was to leave on 13th August 2019 to return to Dubai. On that day, he was stopped at the Mumbai airport. It is only after this, Shah says, that he learnt of the company's defaults and other intervening events. Shah wrote to UBI on 5th September 2019 asking for the LOC to be withdrawn. He then filed this Writ Petition on 9th September 2019. It is only after the Writ Petition was

filed that Shah got the relevant papers and discovered the 'forgery'. He filed a police complaint on 2nd December 2019. He sought DRT permission to travel abroad. On 10th December 2019, the Central Bureau of Investigation ("CBI") registered a First Information Report against Paresh, his son Sahil and Shah under various sections of the IPC and the Prevention of Corruption Act. Shah said in argument that no charge sheet had till then been filed.

(r) On 12th December 2019, the DRT granted Shah permission to travel to Dubai subject to some conditions.

(s) On 18th December 2019, the CBI sent a summons to Shah asking for some documents. Shah complied on 27th December 2019.

(t) Shah maintains that there has been no notice or summons since.

38. The UBI's reply says that Shah's ignorance about the affairs of the company is a feigned subterfuge. Leaving aside the very many assertions that are merely prejudicial and add nothing of substance, the only salient point is that Shah was a personal guarantor and that guarantee was never discharged. His liability was co-extensive with that of the principal debtor, the company; and that liability now stands in excess of Rs 1000 crores. Shah did nothing at all in regard

to his guarantee (paragraphs 6 to 8 of the Affidavit in Reply). UBI goes on to say that the SARFAESI notices were delivered to Shah's residential address, the last address known to it. UBI points out that Shah's father had mortgaged a residential flat at Walkeshwar to secure the company's debt and it was therefore not credible that Shah 'knew nothing'. While Shah attempts to distance himself from his paternal uncle, his father's brother, he does not do so in regard to his own father. Both families live in adjacent apartments in the same building. Both families were intertwined. The securitization application against the Section 13(4) notice was moved in the names of Shah, his father and his paternal grandfather.

39. Then UBI says it commissioned a forensic audit report and found from this in August 2015 — at about the time Shah moved to the UAE — that Shah's family was routinely undertaking transactions with trade associates and corporates in a discernible pattern, routing funds through banks outside the consortium; and many of these transactions were with family-founded enterprises in UAE/Dubai sharing common shareholding and management structures.

40. In the legal proceedings before the DRT, it was not just Paresh and Shah who were defendants. So too were Shah's father, grandfather and paternal cousins. Those proceedings were served on all defendants, and there is, UBI says, an affidavit of service to this effect. Interestingly, the defendants except Shah filed an interim application before the DRT to vacate its ex parte order of 3rd March 2017. That IA was never moved; it is or at the time of the Affidavit in Reply was still pending. Instead, the defendants applied to the DRT

for leave to travel abroad and obtained permissions periodically. UBI essentially says Shah knew all this, or cannot have been unaware of it, but he chose to 'stay under the radar in the hope that out of sight would be out of mind': he went in and out of the country unhindered in defiance of the DRT order and never himself applied for leave. UBI's fraud screening committee informed the RBI of the fraud it says it detected. Two other banks declared Shah a wilful defaulter in 2017 and 2019. Meanwhile, UBI started criminal proceedings. It is in these circumstances, UBI says, that it accepted SBI's request to issue a letter requesting a LOC.

41. There is then an Affidavit in Rejoinder and even an Affidavit in Sur-Rejoinder. Shah denies he lived at the address where notices were said to have been served. He lived elsewhere, but Paresh accepted service on Shah's behalf 'without valid authorisation'. He maintains that he was unaware of any of these events and proceedings. The Power of Attorney in question is of 17th August 2015, but Shah left India on 8th August 2015 and returned only on 27th December 2015. He also says his father has a minimal education and is not conversant with English.

42. This back-and-forth goes on. In the Affidavit in Sur-Rejoinder, UBI points out that Shah's father applied to the DRT for leave to travel to attend Shah's convocation; and it is therefore inconceivable that Shah's father knew nothing about these proceedings, or that he kept them from Shah. Even the police complaint against Paresh, UBI says, is nothing but smoke and mirrors, for Paresh and Shah's father even after Shah's accusations of forgery and a police complaint in that behalf engaged the same lawyer to represent them both in the DRT.

43. The grounds of challenge in Viraj Shah's Petition start at page 21. We summarize these below (leaving out those that are fact-dependent):

(a) That the LOC is in breach of the guidelines. A mere 'default in payment' is not in the interests of national security;

(b) The LOC is a colourable exercise of power and arbitrary executive action;

(c) The impugned amendment is per se Wednesbury unreasonable and ultra vires Articles 14 and 21 of the Constitution of India. They are also manifestly arbitrary.

(d) The conferment of such power on the Chairmen, Managing Directors and CEOs of PSBs is an excessive delegation of power; specifically, that these PSB employees have become arbiters of defaulting borrowers' criminality without prosecution or sentence; and the conferment of such power is wholly uncanalised.

(e) The conferment on such power only on PSBs to the exclusion of other banks is invidious discrimination. It creates a class within a class and there is no nexus with the object sought to be achieved, viz., speedy recovery of dues. PSBs cannot be given special treatment.

(f) Fundamental rights cannot be curtailed by executive action.

44. Our purpose in setting out these facts in some detail is not to adjudicate them. Rather, it is to provide a more or less *general* context,

for every case is, with some variations, in much the same vein. Nothing is to be gained by delving into individual facts; that would only distract from the issues at hand. To be sure, these facts raise questions of law (whether a continuing and unconditional personal guarantee can ever be side-stepped in this fashion by a resignation from the Board of Directors of the borrower company), and matters of equity.

45. We also repel the endeavour (at least in pleadings) to elicit some sort of sympathy and to decide these matters on that basis. Justice is certainly to be tempered with compassion, but that compassion is for those deserving of it. Idle and faux sympathy can have no role to play in our assessment. Lest we be misunderstood we each make abundantly plain that no part of our judgment is based on the slightest sympathy. We emphatically hold that defaulting borrowers and those who guarantee the debt are not to be easily allowed to evade their liabilities. The full brunt of the law must be brought to bear until every bit of the debt is paid or recovered or otherwise settled in a manner known to law.

46. Indeed, we cannot help but pause here to note the inherent inequity and injustice of what is being portrayed before us on facts. The Viraj Chetan Shah lead case is an excellent example. What are we being told? Simply this: that Shah joined the Board at a young age, executed without understanding a personal guarantee, never attended a single meeting of the company or its board, resigned, went overseas — and therefore, presumably, his liability is to be wiped out. That is not the law. That is not justice. That is not equity. It is especially not so when there are thousands and millions of *smaller*

borrowers — middle and lower income earners, those who take loans to buy residential flats, salaried employees of the government; why, of this court itself — who do *not* default but make loan repayments a part of their routine, regular lives. They make no such excuses. Large portions of their salaries get paid out in loan repayment monthly. It is these high-volume borrowers alone who strain every nerve and explore every available legal avenue to avoid their financial obligations. That this comes at a cost to the lender banks and perhaps even to the entire banking sector can hardly be denied.

47. But, and this is the rub, that is not the issue before us at all. The question raised is altogether different and it has far wider implications than are immediately apparent from the closeted narrative of individual narratives piling assertions and counter-assertions one on top of the other.

48. We proceed now to more closely identify the issues that fall for determination.

D. THE QUESTIONS THAT ARISE

49. We begin this section by setting out what is *not* in issue. We believe this to be important because the submissions before us on behalf of the Petitioners ranged widely. Yet the context is narrowly defined. We cannot, therefore, address any questions or issues other than those presented to us for our considerations.

50. Specifically: no matter what the wording of the prayers, we have not been asked to consider a broader challenge to the OMs issued by authorities other than the high-ranking officers of PSBs, nor the question of issuance of LOCs in any other context. The entirety of the discussion has been in relation to LOCs issued by PSBs under the amended OMs against defaulters — or alleged defaulters — of borrowings from PSBs.

51. It is important to note this because the *breadth* of the arguments and submissions by the Petitioners is conceivably wider. There is a risk of expanding these arguments to an overall challenge to the OMs, for many submissions, especially those regarding unconstitutional abridgment of the fundamental right to life guaranteed under Article 21 of the Constitution of India, could well be applied to such a broader challenge. Before us, however, all have confined themselves to the amended OMs that allowed the senior officers of PSBs to request the issuance of LOCs. Had it been otherwise, the responses especially from the Union of India would no doubt have been very differently placed.

52. The challenges before us must also be understood in context. There is simply no factual material, and therefore neither cause of action regarding the issuance of LOCs per se. Every single one of the Petitions in the group is focussed only on a PSB-triggered LOC and the amendments to the OMs that permit these.

53. From the reliefs sought, the grounds and the last OM of 22nd February 2021 with the consolidated guidelines, we identify the following questions placed for our decision:

(I) Can the right to travel abroad, part of the fundamental right to life under Article 21 of the Constitution of India, be curtailed by an executive action absent any governing statute or controlling statutory provision?

(II) Is the entire field of controlling entry and exit from India's borders already fully occupied by a statute, viz., the Passports Act 1967 and, if so, can the OMs authorise the issuance of such LOCs de hors the Passports Act?

(III) Are the OMs per se arbitrary and unconstitutional as ultra vires Articles 14 and 21 of the Constitution of India?

(IV) Is the inclusion of Chairman/Managing Directors/CEOS of all public sector banks in Clause 6(B)(xv) of the 22nd February 2021 OM, effected by the previous amendment, bad in law and liable to be struck down on the ground of (a) arbitrariness; (b) unreasonableness; (c) improper and invalid classification; or (d) conferment/delegation of uncanalised and excessive power?

(V) Is Clause 6(L) of the 22nd February 2021 OM to the extent it is applied to PSBs ultra vires Articles 14 and 21 of the Constitution of India, as also arbitrary, unreasonable and disproportionate inter alia because the financial interests of a particular bank or even a group of

banks or all public sector banks together cannot reasonably, rationally or logically be equated with or be placed on the same level as the 'economic interests of India'?

(VI) Is Clause 6(J) of the 22nd February 2021 OM liable to be quashed in its entirety as being ultra vires Articles 14 and 21 of the Constitution of India, as also per se and manifestly arbitrary, unreasonable and disproportionate because it allows LOCs to continue until cancelled instead of providing a fixed term for them??

(VII) Are the impugned LOCs—

(i) ultra vires the OMs;

(ii) ultra vires Articles 14 and 21 of the Constitution of India (including for infringing a fundamental right except according to a procedure established by law; and a failure to abide by mandated minimum procedural norms; unreasonableness; arbitrariness; want of proportionality), and

(iii) Arbitrary, unreasonable and disproportionate in equating the financial interest of a public sector bank with the "the economic interests of India".

54. For quick reference, we reproduce the three clauses in question immediately:

> 6. The existing guidelines with regard to issuance of Look Out Circulars (LOC) in respect of Indian citizens and

foreigners have been reviewed by this Ministry. After due deliberations in consultation with various stakeholders and in suppression of all the existing guidelines issued vide this Ministry's letters/ O.M. referred to in para 1 above, it has been decided with the approval of the competent authority that the following consolidated guidelines shall be followed henceforth by all concerned for the purpose of issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners:-

> (B) The request for opening of LOC must invariably be issued with the approval of an Originating agency that shall be an officer **not below the rank of—**
>
> ……
>
> xv. Chairman/ Managing Directors/ Chief Executive of all Public Sector Banks.
>
> (J) The LOC opened shall remain in force until and unless a deletion request is received by BoI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC if any, immediately after such a review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BoI immediately so that liberty of the individual is not jeopardized.
>
> (L) In exceptional cases, LOCs can be issued even in such cases, as may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities

> mentioned in clause (B) above, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time.

55. To answer these questions, we must address the following issues:

(I) The precise nature of the Office Memoranda;

(II) Article 21 of the Constitution of India and the right to travel abroad;

(III) The powers of the executive inter alia under Articles 53, 73 and 77 of the Constitution of India;

(IV) The Passports Act and the doctrine of occupied field;

(V) The manner of issuance of the LOCs.

56. In the analysis that follows, we have followed this sequencing rather than set out the submissions on each side in a linear manner. While discussing these, we have considered the rival submissions.

E. THE NATURE OF THE OFFICE MEMORANDA

57. For a clearer understanding of the nature of the OMs, we turn to the submissions by Mr Singh based on a quite superb and systematic note prepared under his guidance by Mr Aditya Thakker. We do so because, after all, the OMs are issued by the Union Government and none is better placed to explain the origin and need for the OMs.

58. Mr Singh took us to the Union of India's Affidavit in Reply dated 24th January 2022 (filed in Writ Petition No 3338 of 2021, *Karen Baheti & Anr v Union of India & Ors*). In paragraph 2, the Union of India explains that the national security, safety and sovereignty concerns demanded the establishment of an agency to monitor the entry and exit of persons through international check-posts by air, sea and land. This was not restricted to Indian citizens. In 1971, the MHA set up the Bureau of Immigration as a border control agency. It checks and monitors the entry and exit of all travellers across all international check posts in India. Anyone — Indian or foreign — who crosses the country's national frontiers must pass through a mandatory immigration check. The check posts are manned by BoI officers. The process includes passport, citizenship status and visa checking. These check posts are the first entry point into the country and last exit point. Without this, the Affidavit says, it would be impossible to stop unauthorised movement across national borders; and this would pose a threat to the country's safety and security. Every single country in the world has a similar system.

59. There is an additional purpose this system serves. The system is not an idle exercise nor a routine rubber-stamping. There are persons, both foreigners and Indian citizen, who may be wanted or may be a 'persons of interest' to some law enforcement agency (such as the police, Interpol, etc.), or who might be evading arrest, or whose international movement needs to be watched, monitored, and where necessary, prevented. At the border posts, such a person can be stopped and brought before the law. Terrorists, child molesters, racketeers, hawala dealers, smugglers and others of that ilk have routinely been so stopped, apprehended and subjected to the law.

60. The BoI maintains a comprehensive database of such watch requests issued by various enforcement and intelligence agencies. These are the LOCs in question. The BoI maintains the LOC database with complete details. This database is centrally maintained at the BoI headquarters in New Delhi.

61. But, and this is crucial, the BoI does not trigger or originate any LOC. It does not issue the LOC. It is, the Affidavit says, only the 'custodian' of the LOCs and the entity responsible for maintaining the database of LOCs requested by the respective originating agency. This arrangement is administratively essential.

62. Without such an arrangements i.e. maintaining database in the Immigration system, it is not possible to act upon the letter of request from the Requesting/Originating agency.

63. Until 1979, there used to be a 'visa-desk system'. This is today known as the Look Out system. The visa-desk system was entirely analogue or manual. The Look Out system is digitized; it had to be because the physical visa-desk system soon became too unwieldy. In 1979, a formal LOC system came to be introduced in the BoI. This is an integral part of the BoI.

64. In paragraph 6, the Affidavit says:

> The LOC action can be anything that lawfully requested by the originating agency and not merely "Prevent departure of a citizen out of India" or "To arrest a wanted person".

65. The OMs themselves are, therefore, nothing but a framework for the issuance of LOCs at the instance of an originating agency. In other words, the OMs are not substantive law at all. They are internal instructions and provide the necessary guidelines and framework, inter alia as required by the two Delhi High Court decisions in *Vikram Sharma* and *Sumer Salkan*. Mr Singh emphasizes clauses 8(e) and 8(f) of the OMs (from the consolidated OM of 27th October 2010 corresponding to clauses 6(F) and 6(G) of 22nd February 2021 OM):

> e) **Care must be taken by the originating agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above.** It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters, as given in the enclosed Proforma, apart from sex and nationality, are available. However, LOC can also be issued if name and passport particulars of the person concerned are available. **It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional**

parameters to minimize harassment to genuine passengers.

f) **The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency**.

(*Emphasis added*)

66. Further, clauses 8(g) and 8(h) of the 27th October 2020 OM (corresponding to clauses 6(H) and 6(I) of the 22nd February 2021 OM) say:

g) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.

h) **In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating agency can only request that they be informed about the arrival/ departure of the subject in such cases**.

(*Emphasis added*)

67. Mr Singh therefore stresses paragraph 16 of the note:

16. The above paragraphs more particularly sub-paragraph (h) specifically clarifies that in cases **where there is no cognizable offence the LOC subject cannot be detained/arrested or prevented from leaving the country and the originating agency can only request that they be informed about the arrival / departure of the subject in such cases**.

(*Emphasis added*)

68. Mr Singh then crystallizes the stands of the Union of India from certain portions of its Affidavit in Reply. These are reproduced in paragraph 25 of the note. We set them out below.

> 8. **I say that, the action part of Look-Out instructions is prerogative of issuing agency and only after having satisfied and justified themselves for the need to issue a look-out, it can approach the Bureau of Immigration Headquarter, New Delhi with a formal request (in a specified format giving all essential parameters) to enter a record into Look-Out database**. **It is the responsibility of the Originating agency to satisfy itself with need for Look- Out and specify Desired Action expected** from the Immigration authorities. In the Look Out request proforma, the originator of the LOC has to invariably provide "The action required to be initiated by the Immigration Officials" in case of interception of the person during immigration check whose details are mentioned in the LOC. **Without such specific LOC action request by originating agency, no look-out will be maintained by the Bureau of Immigration.** The Immigration officials execute their role of giving immigration clearance to the international passengers subject to any LOC action against him/her, which is maintained in the system, as requested by the LOC originating agency.
>
> 12. **I say that as per the O.M dated 27.10.2010, the legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency and not Bureau of Immigration**….
>
> 15. **I say that the Bureau of Immigration, being the Border Control Agency is only the Custodian of LOCs, who maintains LOCs and takes action against LOC**

subjects at Immigration Check Posts at the behest of the Originating Agency. Further, the legal liability of the action taken by immigration authorities in pursuance of LOC rests with the originating agency.

19. **I say that, practically, LOC is a process started by the Bureau of Immigration on a communication received from an authorised Government Agency with reference to a person who is wanted by that agency for, inter-alia, fulfilment of a legal requirement, to secure arrest of person evading arrest, to nab proclaimed offenders or to facilitate court proceedings by securing presence of under trials who are on bail. It is further submitted that LOC is opened on the instance of a Competent Authority authorized to do so and it is the said Competent Authority to send such requests to the Bureau of Immigration only after examining the fact that the person concerned is either a wanted or a suspect and the request is as per due process of law**.

35. **I say that the Office Memoranda issued by the Competent Authority of the Central government serves the purpose of a handbook as it provides the guidelines in maintaining Look-Out Circulars and is circulated among all the government agencies within India and the Indian missions abroad for their information and use.** The Office Memoranda authorizes certain agencies to make requests to the Bureau of Immigration so as to initiate specific action by Immigration Officials during immigration check at immigration check posts, like inform arrival/departure of persons, to inform destination details of person, to arrest a person, to detain a person, to stop departure of a person out of the country, to stop entry of a foreigner into India or so. However, the office memoranda do not directs or suggests any specific category or specific actions to be requested by LOC originators. **It is the discretion of the LOC requesting agency to decide "what action is required to be taken by**

> **the immigration officials" and not the Bureau of Immigration or the Ministry of Home Affairs to decide it. The Office Memoranda so issued by the Competent Authority of the Central Government is the guidelines issued for the use of LOC originators**.
>
> 36. **I say that the LOC originators are to follow the guidelines while raising LOC requests on standard LOC request format specifying unambiguously the expected action by immigration officials to perform at border control in pursuance of the LOC. The expected "LOC action" has to be decided by the LOC originators, in accordance with the circumstances and the requirements as per law. The Bureau of Immigration's role is to maintain the Look-Out as per the request of originating agency so signed and issued for putting into action. The Bureau of Immigration has no role in selecting the LOC action or amending any LOC action as requested by the LOC originator.**
>
> 45. **I say that the sole purpose of these O.Ms are to serve as guidelines for maintenance of LOC, which is an unavoidable procedure to be followed in border control activities of the Bureau of Immigration**.
>
> (*Emphasis added*)

69. The stand of the Union of India is abundantly clear. There is no ambiguity about it. Based on these averments, Mr Singh submits that the OMs do not per se restrict the right to travel abroad or any fundamental right at all. The OMs are merely guidelines and a framework to establish a consistent protocol for originating agencies to seek the assistance of the border control agency. Only the originating agency is responsible and liable for these action and the

need for them. An originating agency may request different types of action:

(a) Detain and Hand over to Local police (in cognizable offence);

(b) Detain and Inform (wait for next instructions);

(c) Prevent Entry into India (Only in case of foreigners);

(d) Prevent Departure from India (for both Indian and foreigners);

(e) Inform only arrival/departure (Discreet watch);

(f) Customs LOC (Inform Customs authority on Entry/Exit for their follow up)

(g) Allow Departure only if permitted by Court, else Exit not allowed (Usually being ordered by the Courts in India);

70. Mr Singh maintains that it is the domain of an Originating Agency to determine the form of action sought.

71. Finally, he points out that there is no statute that deals with the issuance of LOCs; but maintains that this is sufficient reason to uphold the exercise of executive power in framing the OMs for issuance of LOCs.

72. The Union of India's position therefore is:

(a) The OMs are only guidelines or a framework for the issuance of LOCs;

(b) The BoI itself does not trigger or originate LOCs; it simply maintains a database and enforces them as requested;

(c) The OMs do not in themselves create any substantive rights, for the liability to ensure compliance with law remains with the originating agency requesting the LOC;

(d) On their own, the OMs do not trammel any fundamental rights.

(e) The maintenance of the LOC database is an essential part of border control.

73. At least on the question of the *nature* of the OMs, there can now be little controversy. Far more contentious, however, is the effect of these OMs, even if seen only as guidelines, a protocol or a framework, in the context of the present PSB-originating LOCs.

74. This takes us to the heart of the dispute, the fundamental right to travel abroad.

F. ARTICLE 21 AND THE FUNDAMENTAL RIGHT TO TRAVEL OVERSEAS

I. The Guarantee of Personal Liberty

75. Article 21 reads:

> **21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty** *except according to procedure established by law.*
>
> (*Emphasis added*)

76. Very early in our Constitutional jurisprudence, and no matter what other disagreements may later have followed, two cardinal principles emerged: *first*, that "procedure established by law" as enshrined in Article 21 is procedure established by statute;[3] and *second*, Article 21 includes the right of locomotion and to travel abroad. In *Satwant Singh Sawhney v Asst Passport Officer*,[4] the Supreme Court said Article 21 includes the right to travel abroad and to curtail or restrict this right, there must be procedure enacted by statute. Some of the observations in *Satwant Singh* seem oddly

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3 Acknowledged as so in *AK Gopalan v State of Madras*, AIR 1950 SC 27; a proposition distinct from the power to curtail fundamental rights. The dissent by Fazl Ali J in *Gopalan* and the minority view in *Kharak Singh v State of UP*, AIR 1963 SC 1295 were upheld in *RC Cooper v Union of India*, (1970) 1 SCC 248. Article 19 on the one hand and Articles 21 and 22 are not segregated 'watertight' compartments; they must be read together. This began the expansion of the concept of personal liberty under Article 21.

4 AIR 1967 SC 1836 : 1967 SCC OnLine SC 21 : (1967) 3 SCR 525.

prescient today — for these are the very arguments on behalf of the public sector banks before us.

> **K. Subba Rao, C.J.**— Satwant Singh Sawhney, the petitioner, is a citizen of India. He carries on the business of Importer, Exporter and Manufacturer of automobile parts and engineering goods in the name and style of Indi-European Trading Corporation. He also carries on another business in engineering goods in the name of "Sawhney Industries**". For the purpose of his business it is necessary for the petitioner to travel abroad. From the year 1958 he was taking passports for visiting foreign countries in connection with his business. On December 8, 1966 he obtained a regular passport from the Government of India which is valid upto March 22, 1969. So too, on October 27, 1965 he obtained another passport which was valid upto March 22, 1967. On August 31, 1966 the Assistant Passport Officer, Government of India, Ministry of External Affairs, New Delhi, the 1st respondent herein, wrote to the petitioner calling upon him to return the said two passports, as the 3rd respondent, the Union of India, had decided to withdraw the passport facilities extended to the petitioner. So too, the 2nd respondent, the Regional Passport Officer, Bombay, wrote to the petitioner a letter dated September 24, 1966, calling upon him to surrender the said two passports immediately to the Government and intimating him that in default action would be taken against him.** Though the petitioner wrote letters to the respondents requesting them to reconsider their decision, he did not receive any reply from them. The petitioner, alleging that the said action of the respondents infringed his fundamental rights under Articles 21 and 14 of the Constitution, filed the writ petition in this Court for the issuance of a writ of mandamus or other appropriate writ or writs directing the

respondents to withdraw and cancel the said decision contained in the said two letters, to forbear from taking any steps or proceedings in the enforcement of the said decision and to forbear from depriving the petitioner of the said two passports and his passport facilities.

2. **The respondents contested the petition mainly on the ground that the petitioner's fundamental right had not been infringed, that the petitioner contravened the conditions of import licence obtained by him, that investigations were going on against him in relation to offences under the Export and Import Control Act and that the passport authorities were satisfied that if the petitioner was allowed to continue to have the passports he was likely to leave India and not return to face a trial before a court of law and that, therefore his passports were impounded.** Further it was alleged that the passport was a document which was issued to a person at the pleasure of the President in exercise of his political function and was a political document, and the refusal to grant a passport could not be a subject of review in a court of law. For the same reason it was alleged that the petitioner had no right to have the passports issued to him.

4. **The arguments of Mr Sorabji, learned counsel for the petitioner, may be summarized thus: The right to leave India and travel outside India and return to India is part of personal liberty guaranteed under Article 21 of the Constitution. (2) Refusal to give a passport or withdrawal of one given amounts to deprivation of personal liberty inasmuch as, (a) it is not practically possible for a citizen to leave India or travel abroad or to return to India without a passport, (b) instructions are issued to shipping and travel companies not to take passengers on board without passport, (c) under the Indian Passport Act re-entering India without passport is penalized. (3) The deprivation of personal liberty is not in accordance**

with the procedure established by law within the meaning of Article 21, as admittedly there is no law placing any restrictions on the citizens of the country to travel abroad. (4) The unfettered discretion given to the respondents to issue on not to issue a passport to a person offends Article 14 of the Constitution inasmuch as (a) it enables the State to discriminate between persons similarly situated and also because it offends the doctrine of rule of law, (b) the rule of law requires that an executive action which prejudicially affects the rights of a citizen must be pursuant to law. And (5) the said orders offend the principles of fairplay.

7. As a result of international convention and usage among nations it is not possible for a person residing in India to visit foreign countries, with a few exceptions, without the possession of a passport. The Government of India has issued instruction to shipping and airline companies not to take on board passengers leaving India unless they possess valid passports. Under Section 3 of the Indian Passport Act, 1920, the Central Government may make rules requiring that persons entering into India shall be in possession of passports. In exercise of the power conferred under Section 3 of the said Act rules were made by the Central Government. Under Rule 3 thereof, no persons proceeding from any place outside India shall enter or attempt to enter India by water, land or air unless he is in possession of a valid passport conforming to the conditions prescribed in Rule 4 thereof. Under Section 4 of the said Act any such person may be arrested by an officer of police not below the prescribed rank; and under Rule 6 of the Rules any person who contravenes the said rules shall be punishable with imprisonment for a term which may extend to 3 months or with a fine or with both. Under Section 5 of the Act the Central Government is authorised by general or special order to direct the removal of any such person from India. The

combined effect of the provisions of the Act and the rules made thereunder is that the executive instructions given by the Central Government to shipping and airlines companies and the insistence of foreign countries on the possession of a passport before an Indian is permitted to enter those countries make it abundantly clear that possession of passport, whatever may be its meaning or legal effect, is a necessary requisite for leaving India for travelling abroad. The argument that the Act does not impose the taking of a passport as a condition of exit from India, therefore it does not interfere with the right of a person to leave India, if we may say so, is rather hyper technical and ignores the realities of the situation. Apart from the fact that possession of passport is a necessary condition of travel in the international community, the prohibition against entry implied indirectly prevents the person from leaving India. The State in fact tells a person living in India "you can leave India at your pleasure without a passport, but you would not be allowed by foreign countries to enter them without it and you cannot also come back to India without it". No person in India can possibly travel on those conditions. Indeed it is impossible for him to do so. That apart, even that theoretical possibility of exit is expressly restricted by executive instructions and by refusal of foreign-exchange. **We have, therefore, no hesitation to hold that an Indian passport is factually a necessary condition for travel abroad and without it no person residing in India can travel outside India.**

12. The want of a passport in effect prevents a person leaving India. Whether we look at it as a facility given to a person to travel abroad or as a request to a foreign country to give the holder diplomatic protection, it cannot be denied that the Indian Government, by refusing a permit to a person residing in India, completely prevents him from travelling abroad. If a person living in India, whether he is a citizen or not, has a right to travel abroad, the Government by

withholding the passport can deprive him of his right. **Therefore, the real question in these writ petitions is: Whether a person living in India has a fundamental right to travel abroad?**

13. The relevant article of the Constitution is Article 21. It reads:

"21. No person shall be deprived of his life or personal liberty except according to procedure established by law."

If the right to travel is a part of the personal liberty of person he cannot be deprived of his right except according to the procedure established by law. This court in *Gopalan* case [1950 SCC 228: AIR 1950 SC 27: 1950 SCR 88] has held that **law in that article means enacted law and it is conceded that the State has not made any law depriving or regulating the right of a person to travel abroad**.

27. In *Kharak Singh v. State of U.P.* [(1964) 1 SCR 332, 345, 347] the question was whether the State by placing the petitioner under surveillance infringed his fundamental right under Article 21 of the Constitution. **This Court, adverting to the expression "personal liberty", accepted the meaning put upon the expression 'liberty' in the 5th and 14th Amendments to the U.S. Constitution by Field, J., in *Munn v. Illinois* [(1877) 94 US 113] but pointed out that the ingredients of the said expression were placed in two articles viz. Articles 21 and 19, of the Indian Constitution. This Court expressed thus:**

> "It is true that in Article 21 as contrasted with the 4th and 14th Amendments in the U.S., the word 'Liberty' is qualified by the word 'personal' and therefore its content is narrower. But the qualifying adjective has been employed in order to avoid overlapping between those element or incidents of

> "liberty" like freedom of speech or freedom of movement etc., already dealt within Article 19(1) and the "liberty" guaranteed by Article 21."

The same idea is elaborated thus:

> "We… consider that "personal liberty" is used in the Article as a compendious term to include within itself all the varieties of rights which go to make up the "personal liberties" of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with particular species on attributes of that freedom, "personal liberty" in Article 21 takes in and comprises the residue."

This decision is a clear authority for the position that "liberty" in our Constitution bears the same comprehensive meaning as is given to the expression "liberty" by the 5th and 14th Amendments to the U.S. Constitution and the expression "personal liberty" in Article 21 only excludes the ingredients of "liberty" enshrined in Article 19 of the Constitution. In other words, the expression "personal liberty" in Article 21 takes in the right of locomotion and to travel abroad, but the right to move throughout the territories of India is not covered by it inasmuch as it is specially provided in Article 19. There are conflicting decisions of High Courts on this question. …….

31. For the reasons mentioned above we would accept the view of Kerala, Bombay and Mysore High Courts in preference to that expressed by the Delhi High Court. **It follows that under Article 21 of the Constitution no person can be deprived of his right to travel except according to procedure established by law. It is not**

> **disputed that no law was made by the State regulating or depriving persons of such a right**.
>
> (*Emphasis added*)

77. This led to the enactment of the Passports Act, 1967 (replacing the earlier act of 1920). It was to govern and control the right to travel abroad, and became the only statutory mechanism for this. But what the precise import of the expression 'procedure established by law'? As Dr Saraf points out, 'law' under Article 21 means a statute, a statutory rule or a statutory regulation. Mere executive action does not reach the level of 'law'.

78. In *Maneka Gandhi v Union of India*,[5] the Supreme Court had another passport-related Article 21 challenge. The question was not only about whether Article 21 and the right to personal liberty includes the right to travel overseas — it did — but what the *procedure for deprivation of that right* entailed. The relevant portions are important for our discussion today:

> **P.N. Bhagwati, J. (for himself, Untwalia and Fazal Ali, JJ.)**— The petitioner is the holder of the passport issued to her on June 1, 1976 under the Passports Act, 1967. On July 4, 1977 the petitioner received a letter dated July 2, 1977 from the Regional Passport Officer, Delhi **intimating to her that it has been decided by the Government of India to impound her passport under Section 10(3)(c) of the Act in public interest and requiring her to surrender the passport within seven days from the date of receipt of the letter.** The petitioner immediately addressed a letter to the Regional Passport Officer requesting him to furnish a copy of

5 (1978) 1 SCC 248.

the statement of reasons for making the order as provided in Section 10(5) to which a reply was sent by the Government of India, Ministry of External Affairs on July 6, 1977 stating inter alia that the **Government has decided "in the interest of the general public" not to furnish her a copy of the statement of reasons for the making of the order. The petitioner thereupon filed the present petition challenging the action of the Government in impounding her passport and declining to give reasons for doing so.** The action of the Government was impugned inter alia on the ground that it was mala fide, but this challenge was not pressed before us at the time of the hearing of the arguments and hence it is not necessary to state any facts bearing on that question. **The principal challenge set out in the petition against the legality of the action of the Government was based mainly on the ground that Section 10(3)(c), insofar as it empowers the Passport Authority to impound a passport "in the interests of the general public" is violative of the equality clause contained in Article 14 of the Constitution, since the condition denoted by the words "in the interests of the general public" limiting the exercise of the power is vague and undefined and the power conferred by this provision is, therefore, excessive and suffers from the vice of "over-breadth"**. The petition also contained a challenge that an order under Section 10(3)(c) impounding a passport could not be made by the Passport Authority without giving an opportunity to the holder of the passport to be heard in defence and since in the present case, the passport was impounded by the Government without affording an opportunity of hearing to the petitioner, the order was null and void, and, in the alternative, if Section 10(3)(c) were read in such a manner as to exclude the right of hearing, the section would be infected with the vice of arbitrariness and it would be void as offending Article 14. These were the only grounds taken in

the petition as originally filed and on July 20, 1977 the petition was admitted and rule issued by this Court and an interim order was made directing that the passport of the petitioner should continue to remain deposited with the Registrar of this Court pending the hearing and final disposal of the petition.

3. Before we examine the rival arguments urged on behalf of the parties in regard to the various questions arising in this petition, it would be convenient to set out the relevant provisions of the Passports Act, 1967. This Act was enacted on June 24, 1967 in view of the decision of this Court in *Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi.* [AIR 1967 SC 1836: (1967) 3 SCR 525: (1968) 1 SCJ 178] The position which obtained prior to the coming into force of this Act was that there was no law regulating the issue of passports for leaving the shores of India and going abroad. The issue of passports was entirely within the discretion of the executive and this discretion was unguided and unchannelled. **This Court, by a majority, held that the expression "personal liberty" in Article 21 takes in the right of locomotion and travel abroad and under Article 21 no person can be deprived of his right to go abroad except according to the procedure established by law and since no law had been made by the State regulating or prohibiting the exercise of such right, the refusal of passport was in violation of Article 21 and moreover the discretion with the executive in the matter of issuing or refusing passport being unchannelled and arbitrary, it was plainly violative of Article 14 and hence the order refusing passport to the petitioner was also invalid under that article. This decision was accepted by Parliament and the infirmity pointed out by it was set right by the enactment of the Passports Act 1967.** This Act, as its Preamble shows, was enacted to provide for the

issue of passports and travel documents to regulate the departure from India of citizens of India and other persons and for incidental and ancillary matters. Section 3 provides that no person shall depart from or attempt to depart from India unless he holds in this behalf a valid passport or travel document. What are the different classes of passports and travel documents which can be issued under the Act is laid down in Section 4. Section 5, sub-section (1) provides for making of an application for issue of a passport or travel document or for endorsement on such passport or travel document for visiting foreign country or countries and sub-section (2) says that on receipt of such application, the passport authority, after making such inquiry, if any, as it may consider necessary, shall, by order in writing, issue or refuse to issue the passport or travel document or make or refuse to make on the passport or travel document endorsement in respect of one or more of the foreign countries specified in the application. Sub-section (3) requires the passport authority, where it refuses to issue the passport or travel document or to make any endorsement on the passport or travel document, to record in writing a brief statement of its reasons for making such order. Section 6, sub-section (1) lays down the grounds on which the passport authority shall refuse to make an endorsement for visiting any foreign country and provides that on no other ground the endorsement shall be refused. There are four grounds set out in this sub-section and of them, the last is that, in the opinion of the Central Government, the presence of the applicant in such foreign country is not in the public interest. Similarly sub-section (2) of Section 6 specifies the grounds on which alone — and on no other grounds — the passport authority shall refuse to issue passport or travel document for visiting any foreign country and amongst various grounds set out there, the last is that, in the opinion of the Central Government the issue of passport or travel document to the

applicant will not be in the public interest. Then we come to Section 10 which is the material section which falls for consideration. Sub-section (1) of that section empowers the passport authority to vary or cancel the endorsement of a passport or travel document or to vary or cancel the conditions subject to which a passport or travel document has been issued, having regard inter alia, to the provisions of sub-section (1) of Section 6 or any notification under Section 19. Sub-section (2) confers powers on the passport authority to vary or cancel the conditions of the passport or travel document on the application of the holder of the passport or travel document and with the previous approval of the Central Government. Sub-section (3) provides that the passport authority may impound or cause to be impounded or revoke a passport or travel document on the grounds set out in clauses (a) to (h). The order impounding the passport in the present case was made by the Central Government under clause (c) which reads as follows:

> "(c) if the passport authority deems it necessary so to do in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;"

The particular ground relied upon for making the order was that set out in the last part of clause (c), namely, that the Central Government deems it necessary to impound the passport "in the interests of the general public". Then follows sub-section (5) which requires the passport authority impounding or revoking a passport or travel document or varying or cancelling an endorsement made upon it to "record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless, in any case, the passport authority is of the opinion that it will not be in

the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy". It was in virtue of the provision contained in the latter part of this sub-section that the Central Government declined to furnish a copy of the statement of reasons for impounding the passport of the petitioner on the ground that it was not in the interests of the general public to furnish such copy to the petitioner. It is indeed a matter of regret that the Central Government should have taken up this attitude in reply to the request of the petitioner to be supplied a copy of the statement of reasons, because ultimately, when the petition came to be filed, the Central Government did disclose the reasons in the affidavit in reply to the petition which shows that it was not really contrary to public interest and if we look at the reasons given in the affidavit in reply, it will be clear that no reasonable person could possibly have taken the view that the interests of the general public would be prejudiced by the disclosure of the reasons. This is an instance showing how power conferred on a statutory authority to act in the interests of the general public can sometimes be improperly exercised. If the petitioner had not filed the petition, she would perhaps never have been able to find out what were the reasons for which her passport was impounded and she was deprived of her right to go abroad. **The necessity of giving reasons has obviously been introduced in sub-section (5) so that it may act as a healthy check against abuse or misuse of power. If the reasons given are not relevant and there is no nexus between the reasons and the ground on which the passport has been impounded, it would be open to the holder of the passport to challenge the order impounding it in a court of law and if the court is satisfied that the reasons are extraneous or irrelevant, the court would strike down the order. This liability to be exposed to**

judicial scrutiny would by itself act as a safeguard against improper or mala fide exercise of power. The court would, therefore, be very slow to accept, without close scrutiny, the claim of the passport authority that it would not be in the interests of the general public to disclose the reasons. The passport authority would have to satisfy the court by placing proper material that the giving of reasons would be clearly and indubitably against the interests of the general public and if the court is not so satisfied, the court may require the passport authority to disclose the reasons, subject to any valid and lawful claim for privilege which may be set up on behalf of the Government. Here in the present case, as we have already pointed out, the Central Government did initially claim that it would be against the interests of the general public to disclose the reasons for impounding the passport, but when it came to filing the affidavit in reply, the Central Government very properly abandoned this unsustainable claim and disclosed the reasons. **The question whether these reasons have any nexus with the interests of the general public or they are extraneous and irrelevant is a matter which we shall examine when we deal with the arguments of the parties.** Meanwhile, proceeding further with the resume of the relevant provisions, reference may be made to Section 11 which provides for an appeal inter alia against the order impounding or revoking a passport or travel document under sub-section (3) of Section 10. But there is a proviso to this section which says that if the order impounding or revoking a passport or travel document is passed by the Central Government, there shall be no right of appeal. These are the relevant provisions of the Act in the light of which we have to consider the constitutionality of sub-section (3)(c) of Section 10 and the validity of the order impounding the passport of the petitioner.

Meaning and content of personal liberty in Article 21

5. It is obvious that Article 21, though couched in negative language, confers the fundamental right to life and personal liberty. So far as the right to personal liberty is concerned, it is ensured by providing that no one shall be deprived of personal liberty except according to procedure prescribed by law. The first question that arises for consideration on the language of Article 21 is: what is the meaning and content of the words "personal liberty" as used in this article? This question incidentally came up for discussion in some of the judgments in *A.K. Gopalan v. State of Madras* [1950 SCC 228: AIR 1950 SC 27: 1950 SCR 88: 51 Cri LJ 1383] and the observations made by Patanjali Sastri, J., Mukherjea, J., and S.R. Das, J., seemed to place a narrow interpretation on the words "personal liberty" so as to confine the protection of Article 21 to freedom of the person against unlawful detention. But there was no definite pronouncement made on this point since the question before the Court was not so much the interpretation of the words "personal liberty" as the inter-relation between Articles 19 and 21. It was in *Kharak Singh v. State of U.P.* [AIR 1963 SC 1295: (1964) 1 SCR 332: (1963) 2 Cri LJ 329] that the question as to the proper scope and meaning of the expression "personal liberty" came up pointedly for consideration for the first time before this Court. **The majority of the Judges took the view "that "personal liberty" is used in the article as a compendious term to include within itself all the varieties of rights which go to make up the "personal liberties" of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with particular species or attributes of that freedom, 'personal liberty' in Article 21 takes in and comprises the residue.** The minority Judges, however, disagreed with this view taken by the majority and explained their position in the following words:

> "No doubt the expression 'personal liberty' is a comprehensive one and the right to move freely is an attribute of personal liberty. It is said that the freedom to move freely is carved out of personal liberty and, therefore, the expression 'personal liberty' in Article 21 excludes that attribute. In our view, this is not a correct approach. Both are independent fundamental rights, though there is overlapping. There is no question of one being carved out of another. The fundamental right of life and personal liberty has many attributes and some of them are found in Article 19. If a person's fundamental right under Article 21 is infringed, the State can rely upon a law to sustain the action, but that cannot be a complete answer unless the said law satisfies the test laid down in Article 19(2) so far as the attributes covered by Article 19(1) are concerned."

There can be no doubt that in view of the decision of this Court in *R.C. Cooper v. Union of India* [(1970) 2 SCC 298: (1971) 1 SCR 512] **the minority view must be regarded as correct and the majority view must be held to have been overruled.** We shall have occasion to analyse and discuss the decision in *R.C. Cooper case* [(1970) 2 SCC 298: (1971) 1 SCR 512] a little later when we deal with the arguments based on infraction of Articles 19(1)(a) and 19(1)(g), but it is sufficient to state for the present that according to this decision, which was a decision given by the Full Court, **the fundamental rights conferred by Part III are not distinct and mutually exclusive rights. Each freedom has different dimensions and merely because the limits of interference with one freedom are satisfied, the law is not freed from the necessity to meet the challenge of another guaranteed**

freedom. The decision in *A.K. Gopalan* case [1950 SCC 228: AIR 1950 SC 27: 1950 SCR 88: 51 Cri LJ 1383] **gave rise to the theory that the freedoms under Articles 19, 21, 22 and 31 are exclusive — each article enacting a code relating to the protection of distinct rights, but this theory was overturned in R.C. Cooper case** [(1970) 2 SCC 298: (1971) 1 SCR 512] where Shah, J., speaking on behalf of the majority pointed out that "Part III of the Constitution weaves a pattern of guarantees on the texture of basic human rights. The guarantees delimit the protection of those rights in their allotted fields they do not attempt to enunciate distinct rights." The conclusion was summarised in these terms:

> "In our judgment, the assumption in *A.K. Gopalan* case [1950 SCC 228: AIR 1950 SC 27: 1950 SCR 88: 51 Cri LJ 1383] that certain articles in the Constitution exclusively deal with specific matters — cannot be accepted as correct".

It was held in *R.C. Cooper* case [(1970) 2 SCC 298: (1971) 1 SCR 512] — and that is clear from the judgment of Shah, J., because Shah, J., in so many terms disapproved of the contrary statement of law contained in the opinions of Kania, C.J., Patanjali Sastri, J., Mahajan, J., Mukherjea, J., and S.R. Das, J., in *A.K. Gopalan* case — that even where a person is. detained in accordance with the procedure prescribed by law, as mandated be Article 21, the protection conferred by the various clauses of Article 19(1) does not cease to be available to him and the law authorising such detention has to satisfy the test of the applicable freedoms under Article 19, clause (1). This would clearly show that Articles 19(1) and 21 are not mutually exclusive, for, if they were, there would be no question of a law depriving a person of personal liberty within the meaning of Article 21 having to meet the challenge of a fundamental right under Article 19(1). Indeed, in that event, a law of preventive detention which deprives a person

of "personal liberty" in the narrowest sense, namely, freedom from detention and thus falls indisputably within Article 22 would not require to be tested on the touchstone of clause (d) of Article 19(1) and yet it was held by a Bench of seven Judges of this Court in *Shambhu Nath Sarkar v. State of West Bengal* [(1973) 1 SCC 856: 1973 SCC (Cri) 618: AIR 1973 SC 1425] that such a law would have to satisfy the requirement inter alia of Article 19(1), clause (d) and in *Haradhan Saha v. State of West Bengal* [(1975) 3 SCC 198: 1974 SCC (Cri) 816: (1975) 1 SCR 778] which was a decision given by a Bench of five Judges, this Court considered the challenge of clause (d) of Article 19(1) to the constitutional validity of the Maintenance of Internal Security Act, 1971 and held that that Act did not violate the constitutional guarantee embodied in that article. **It is indeed difficult to see on what principle we can refuse to give its plain natural meaning to the expression "personal liberty" as used in Article 21 and read it in a narrow and restricted sense** so as to exclude those attributes of personal liberty which are specifically dealt with in Article 19. We do not think that this would be a correct way of interpreting the provisions of the Constitution conferring fundamental rights. **The attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction. The wavelength for comprehending the scope and ambit of the fundamental rights has been set by this Court in *R.C. Cooper* case [(1970) 2 SCC 298: (1971) 1 SCR 512] and our approach in the interpretation of the fundamental rights must now be in tune with this wavelength.** We may point out even at the cost of repetition that this Court has said in so many terms in *R.C. Cooper* case [(1970) 2 SCC 298: (1971) 1 SCR 512] that each freedom has different dimensions and there may be overlapping between different fundamental rights

and therefore it is not a valid argument to say that the expression "personal liberty" in Article 21 must be so interpreted as to avoid overlapping between that article and Article 19(1). **The expression "personal liberty" in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19.** Now, it has been held by this Court in *Satwant Singh* case [AIR 1967 SC 1836: (1967) 3 SCR 525: (1968) 1 SCJ 178] **that "personal liberty" within the meaning of Article 21 includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law.** Prior to the enactment of the Passports Act, 1967, there was no law regulating the right of a person to go abroad and that was the reason why the order of the Passport Officer refusing to issue passport to the petitioner in *Satwant Singh* case [AIR 1967 SC 1836: (1967) 3 SCR 525: (1968) 1 SCJ 178] was struck down as invalid. **It will be seen at once from the language of Article 21 that the protection it secures is a limited one. It safeguards the right to go abroad against executive interference which is not supported by law; and law here means "enacted law" or "state law"** (vide *A.K. Gopalan* case [1950 SCC 228: AIR 1950 SC 27: 1950 SCR 88: 51 Cri LJ 1383]). **Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad.** It is clear from the provisions of the Passports Act, 1967 that it lays down the circumstances under which a passport may be issued or

refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? **Obviously, the procedure cannot be arbitrary, unfair or unreasonable.** This indeed was conceded by the learned Attorney-General who with his usual candour frankly stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law. There was some discussion in *A.K. Gopalan case* [1950 SCC 228: AIR 1950 SC 27: 1950 SCR 88: 51 Cri LJ 1383] in regard to the nature of the procedure required to be prescribed under Article 21 **and at least three of the learned Judges out of five expressed themselves strongly in favour of the view that the procedure cannot be any arbitrary, fantastic or oppressive procedure.** Fazl Ali, J., who was in a minority, went to the farthest limit in saying that the procedure must include the four essentials set out in Prof. Willis' book on Constitutional Law, namely, notice, opportunity to be heard, impartial tribunal and ordinary course of procedure. Patanjali Sastri, J., did not go as far as that but he did say that "certain basic principles emerged as the constant factors known to all those procedures and they formed the core of the procedure established by law". Mahajan, J., also observed that Article 21 requires that "there should be some form of proceeding before a person can be condemned either in respect of his life or his liberty" and "it negatives the idea of fantastic, arbitrary and oppressive forms of proceedings". But apart altogether from these observations in *A.K. Gopalan* case [1950 SCC 228: AIR 1950 SC 27: 1950 SCR 88: 51 Cri LJ 1383] which have great weight, we find that even on principle the concept of reasonableness must be projected in the procedure contemplated by Article 21, having regard to the impact of Article 14 on Article 21.

The inter-relationship between Articles 14, 19 and 21

13. Now, here, the power conferred on the Passport Authority is to impound a passport and the consequence of impounding a passport would be to impair the constitutional right of the holder of the passport to go abroad during the time that the passport is impounded. Moreover, a passport can be impounded by the Passport Authority only on certain specified grounds set out in sub-section (3) of Section 10 and the Passport Authority would have to apply its mind to the facts and circumstances of a given case and decide whether any of the specified grounds exists which would justify impounding of the passport. The Passport Authority is also required by sub-section (5) of Section 10 to record in writing a brief statement of the reasons for making an order impounding a passport and, save in certain exceptional situations, the Passport Authority is obliged to furnish a copy of the statement of reasons to the holder of the passport. Where the Passport Authority which has impounded a passport is other than the Central Government, a right of appeal against the order impounding the passport is given by Section 11, and in the appeal, the validity of the reasons given by the Passport Authority for impounding the passport can be canvassed before the Appellate Authority. **It is clear on a consideration of these circumstances that the test laid down in the decisions of this Court for distinguishing between a quasi-judicial power and an administrative power is satisfied and the power conferred on the Passport Authority to impound a passport is quasi-judicial power.** The rules of natural justice would, in the circumstances, be applicable in the exercise of the power of impounding a passport even on the orthodox view which prevailed prior to *A.K. Kraipak* case [(1969) 2 SCC 262: (1970) 1 SCR 457]. The same result must follow in view of the decision in *A.K. Kraipak* case [(1969) 2 SCC 262: (1970) 1 SCR 457] even if the power to impound a

passport were regarded as administrative in character, because it seriously interferes with the constitutional right of the holder of the passport to go abroad and entails adverse civil consequences.

35. But that does not mean that an order made under Section 10(3)(c) may not violate Article 19(1)(a) or (g). **While discussing the constitutional validity of the impugned order impounding the passport of the petitioner, we shall have occasion to point out that even where a statutory provision empowering an authority to take action is constitutionally valid, action taken under it may offend a fundamental right and in that event, though the statutory provision is valid, the action may be void.** Therefore, even though Section 10(3)(c) is valid, the **question would always remain whether an order made under it is invalid as contravening a fundamental right.** The direct and inevitable effect of an order impounding a passport may, in a given case, be to abridge or take away freedom of speech and expression or the right to carry on a profession and where such is the case, the order would be invalid, unless saved by Article 19(2) or Article 19(6). Take for example, a pilot with international flying licence. International flying is his profession and if his passport is impounded, it would directly interfere with his right to carry on his profession and unless the order can be justified on the ground of public interest under Article 19(6), it would be void as offending Article 19(1)(9). Another example may be taken of an evangelist who has made it a mission of his life to preach his faith to people all over the world and for that purpose, sets up institutions in different countries. If an order is made impounding his passport, it would directly affect his freedom of speech and expression and the challenge to the validity of the order under Article 19(1)(a) would be unanswerable unless it is saved by Article 19(2). We have taken these two examples only by way of illustration.

There may be many such cases where the restriction imposed is apparently only on the right to go abroad but the direct and inevitable consequence is to interfere with the freedom of speech and expression or the right to carry on a profession. A musician may want to go abroad to sing, a dancer to dance, a rising professor to teach and a scholar to participate in a conference or seminar. If in such a case his passport is denied or impounded, it would directly interfere with his freedom of speech and expression. If a correspondent of a newspaper is given a foreign assignment and he is refused passport or his passport is impounded, it would be direct interference with his freedom to carry on his profession. Examples can be multiplied, but the point of the matter is that though the right to go abroad is not a fundamental right, the denial of the right to go abroad may, in truth and in effect, restrict freedom of speech and expression or freedom to carry on a profession so as to contravene Article 19(1)(a) or 19(1)(g). In such a case, refusal or impounding of passport would be invalid unless it is justified under Article 19(2) or Article 19(6), as the case may be. Now, passport can be impounded under Section 10(3)(c) if the Passport Authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public. The first three categories are the same as those in Article 19(2) and each of them, though separately mentioned, is a species within the broad genus of "interests of the general public". **The expression "interests of the general public" is a wide expression which covers within its broad sweep all kinds of interests of the general public including interests of the sovereignty and integrity of India, security of India and friendly relations of India with foreign States. Therefore, when an order is made under Section 10(3)(c), which is in conformity with the terms of that provision, it would**

be in the interests of the general public and even if it restricts freedom to carry on a profession, it would be protected by Article 19(6). But if an order made under Section 10(3)(c) restricts freedom of speech and expression, it would not be enough that it is made in the interests of the general public. It must fall within the terms of Article 19(2) in order to earn the protection of that article. If it is made in the interests of the sovereignty and integrity of India or in the interests of the security of India or in the interests of friendly relations of India with any foreign country, it would satisfy the requirement of Article 19(2). But if it is made for any other interests of the general public save the interests of "public order, decency or morality", it would not enjoy the protection of Article 19(2). There can be no doubt that the interests of public order, decency or morality are "interests of the general, public" and they would be covered by Section 10(3)(c), but the expression "interests of the general public" is, as already pointed out, a much wider expression and, therefore, in order that an order made under Section 10(3)(c) restricting freedom of speech and expression, may not fall foul of Article 19(1)(a), it is necessary that in relation to such order, the expression "interests of the general public" in Section 10(3)(c) must be read down so as to be limited to interests of public order, decency or morality. If an order made under Section 10(3)(c) restricts freedom of speech and expression, it must be made not in the interests of the general public in a wider sense, but in the interests of public order, decency or morality, apart from the other three categories, namely, interests of the sovereignty and integrity of India, the security of India and friendly relations of India with any foreign country. If the order cannot be shown to have been made in the interests of public order, decency or morality, it would not only contravene Article 19(1)(a), but would also be outside the authority conferred by Section 10(3)(c).

Constitutional validity of the impugned Order:

45. We do not, therefore, see any reason to interfere with the impugned Order made by the Central Government. We, however, wish to utter a word of caution to the Passport Authority while exercising the power of refusing or impounding or cancelling a passport. **The Passport Authority would do well to remember that it is a basic human right recognised in Article 13 of the Universal Declaration of Human Rights with which the Passport Authority is interfering when it refuses or impounds or cancels a passport. It is a highly valuable right which is a part of personal liberty, an aspect of the spiritual dimension of man, and it should not be lightly interfered with. Cases are not unknown where people have not been allowed to go abroad because of the views held, opinions expressed or political beliefs or economic ideologies entertained by them.** It is hoped that such cases will not recur under a Government constitutionally committed to uphold freedom and liberty but it is well to remember, at all times, that eternal vigilance is the price of liberty, for history shows that it is always subtle and insidious encroachments made ostensibly for a good cause that imperceptibly but surely corrode the foundations of liberty.

Y.V. Chandrachud, J. (concurring).— The petitioner's passport dated June 1, 1976 having been impounded "in public interest" by an Order dated July 2, 1977 and the Government of India having declined "in the interest of general public" to furnish to her the reasons for its decision, she has filed this writ petition under Article 32 of the Constitution to challenge that order. The challenge is founded on the following grounds: …

At first, the passport authority exercising its power under Section 10(5) of the Act refused to furnish to the petitioner the reasons for which it was considered necessary in the

interests of general public to impound her passport. But those reasons were disclosed later in the counter-affidavit filed on behalf of the Government of India in answer to the writ petition. The disclosure made under the stress of the writ petition that the petitioner's passport was impounded because, her presence was likely to be required in connection with the proceedings before a Commission of Inquiry, could easily have been made when the petitioner called upon the Government to let her know the reasons why her passport was impounded. **The power to refuse to disclose the reasons for impounding a passport is of an exceptional nature and it ought to be exercised fairly, sparingly and only when fully justified by the exigencies of an uncommon situation. The reasons, if disclosed, being open to judicial scrutiny for ascertaining their nexus with the order impounding the passport, the refusal to disclose the reasons would equally be open to the scrutiny of the Court; or else, the wholesome power of a dispassionate judicial examination of executive orders could with impunity be set at naught by an obdurate determination to suppress the reasons. Law cannot permit the exercise of a power to keep the reasons undisclosed if the sole reason for doing so is to keep the reasons away from judicial scrutiny.**

78. To conclude this chapter of the discussion on the concept of personal liberty, as a sweeping supplement to the specific treatment by brother Bhagwati, J., the Jurists' Conference in Bangalore, concluded in 1969, made a sound statement of the Indian Law subject, of course, to savings and exceptions carved out of the generality of that conclusion:

> "**Freedom of movement of the individual within or in leaving his own country, in travelling to other countries and in entering his own country is a vital human liberty,**

> **whether such movement is for the purpose of recreation, education, trade or employment, or to escape from an environment in which his other liberties are suppressed or threatened. Moreover, in an inter-dependent world requiring for its future peace and progress an ever-growing measure of international understanding, it is desirable to facilitate individual contacts between peoples and to remove all unjustifiable restraints on their movement which may hamper such contacts.**"

79. So much for personal liberty and its travel facet. Now to "procedure established by law", the manacle clause in Article 21, first generally, and next, with reference to *A.K. Gopalan* and after. Again, I observe relative brevity because I go the whole hog with brother Bhagwati, J.

80. **If Article 21 includes the freedom of foreign travel, can its exercise be fettered or forbidden by procedure established by law? Yes, indeed. So, what is "procedure"? What do we mean by "established". And what is law? Anything, formal, legislatively proceeded, albeit absurd or arbitrary? Reverence for life and liberty must overpower this reductio ad absurdum; legal interpretation, in the last analysis, is value judgment. The high seriousness of the subject-matter—life and liberty—desiderated the need for law, not fiat. Law is law when it is legitimated by the conscience and consent of the community generally. Not any capricious command but reasonable mode ordinarily regarded by the cream of society as dharma or law, approximating broadly to other standard measures regulating criminal or like procedure in the country. Often, it is a legislative act, but it must be functional, not fatuous.**

81. **This line of logic alone will make the two clauses of Article 21 concordant, the procedural machinery not destroying the substantive fundamentally.** The compulsion of constitutional humanism and the assumption of full faith in life and liberty cannot be so futile or fragmentary that any transient legislative majority in tantrums against any minority, by three quick readings of a bill with the requisite quorum, can prescribe any unreasonable modality and thereby sterilise the grandiloquent mandate. **"Procedure established by law", with its lethal potentiality, will reduce life and liberty to a precarious plaything if we do not ex necessitate import into those weighty words an adjectival rule of law, civilised in its soul, fair in its heart and fixing those imperatives of procedural protection absent which the processual tail will wag the substantive head.** Can the sacred essence of the human right to secure which the struggle for liberation, with "do or die" patriotism, was launched be sapped by formalistic and pharisaic prescriptions, regardless of essential standards? An enacted apparition is a constitutional illusion. **Processual justice is writ patently on Article 21. It is too grave to be circumvented by a black letter ritual processed through the legislature.**

82. **So I am convinced that to frustrate Article 21 by relying on any formal adjectival statute, however, flimsy or fantastic its provisions be, is to rob what the constitution treasures. Procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself. Thus understood, "procedure" must rule out anything arbitrary, freakish or bizarre. A valuable constitutional right can be canalised only by civilised processes. You cannot claim**

that it is a legal procedure if the passport is granted or refused by taking lots, ordeal of fire or by other strange or mystical methods. Nor is it tenable if life is taken by a crude or summary process of enquiry. What is fundamental is life and liberty. What is procedural is the manner of its exercise. This quality of fairness in the process is emphasised by the strong word "established" which means "settled firmly" not wantonly or whimsically. If it is rooted in the legal consciousness of the community it becomes "established" procedure. And "law" leaves little doubt that it is normae regarded as just since law is the means and justice is the end.

85. **To sum up, "procedure" in Article 21 means fair, not formal procedure.** "Law" is reasonable law, not any enacted piece. As Article 22 specifically spells out the procedural safeguards for preventive and punitive detention, a law providing for such detentions should conform to Article 22. It has been rightly pointed out that for other rights forming part of personal liberty, the procedural safeguards enshrined in Article 21 are available. Otherwise, as the procedural safeguards contained in Article 22 will be available only in cases of preventive and punitive detention, the right to life, more fundamental than any other forming part of personal liberty and paramount to the happiness, dignity and worth of the individual, will not be entitled to any procedural safeguard save such as a legislature's mood chooses. In *Kochuni* [*Kavalappara Kottarathil Kochuni v. States of Madras and Kerala*, AIR 1960 SC 1080, 1093: (1960) 3 SCR 887: (1961) 2 SCJ 443.] the Court, doubting the correctness of the Gopalan decision on this aspect, said:

> "Had the question been res integra, some of us would have been inclined to agree with the dissenting view expressed by Fazal Ali, J.

86. *Gopalan* does contain some luscent thought on "procedure established by law". Patanjali Sastri J. approximated it to the prevalent norms of criminal procedure regarded for a long time by Indo-Anglian criminal law as conscionable. The learned Judge observed (SCR pp. 201-205):

> "On the other hand, the interpretation suggested by the Attorney-General on behalf of the intervener that the expression means nothing more than procedure prescribed by any law made by a competent legislature is hardly more acceptable. 'Established', according to him, means prescribed, and if Parliament or the Legislature of a State enacted a procedure, however novel and ineffective for affording the accused person a fair opportunity of defending himself, it would be sufficient for depriving a person of his life or personal liberty."
>
> *The main difficulty I feel in accepting the construction suggested by the Attorney General is that it completely stultifies Article 13(2) and, indeed, the very conception of a fundamental right … Could it then have been the intention of the framers of the Constitution that the most important fundamental rights to life and personal liberty should be at the mercy of legislative majorities as, in effect, they would if 'established' were to mean merely 'prescribed'?* **In other words, as an American Judge said in a similar context, does the constitutional prohibition in Article 13(3) amount to no more than 'you shall not take away life or personal freedom unless you choose to take it away', which is mere verbiage**. … It is said

> that Article 21 affords no protection against competent legislative action in the field of substantive criminal law, for there is no provision for judicial review, on the ground of reasonableness or otherwise, of such laws, as in the case of the rights enumerated in Article 19. Even assuming it to be so the construction of the learned Attorney General would have the effect of rendering wholly ineffective and illusory even the procedural protection which the article was undoubtedly designed to afford.
>
> (emphasis, added)
>
> After giving the matter my most careful and anxious consideration, I have come to the conclusion that there are only two possible solutions of the problem. In the first place, a satisfactory via media between the two extreme positions contended for on either side may be found by stressing the word 'established' which implies some degree of firmness, permanence and general acceptance, while it does not exclude origination by statute. 'Procedure established by' may well be taken to mean what the Privy Council referred to in *King-Emperor v. Benoari Lal Sharma* as 'the ordinary and well established criminal procedure', that is to say, those settled usages and normal modes of proceeding sanctioned by the Criminal Procedure Code which is the general law of criminal procedure in the country."

Fazal Ali, J. frowned on emasculating the procedural substantiality of Article 21 and read into it those essentials of

natural justice which made processual law humane. The learned Judge argued:

> "It seems to me that there is nothing revolutionary in the doctrine that the words 'procedure established by law' must include the four principles set out in Professor Willis' book, which, as I have already stated, are different aspects of the same principles and which have no vagueness or uncertainty about them. These principles, as the learned author points out and as the authorities show, are not absolutely rigid principles but are adaptable to the circumstances of each case within certain limits. I have only to add, that it has not been seriously controverted that *'law' means certain definite rules of proceeding and not something which is a mere pretence for procedure.*"
>
> *(emphasis, added)*

In short, fair adjectival law is the very life of the life-liberty fundamental right (Article 21), not "autocratic supremacy of the legislature". Mahajan, J. struck a concordant note:

> "Article 21 in my opinion, lays down substantive law as giving protection to life and liberty inasmuch as it says that they cannot be deprived except according to the procedure established by law; in other words, it means that before a person can be deprived of his life or liberty as a condition precedent there, should exist some substantive law conferring authority for doing so and the law should further provide for a mode of procedure for such deprivation. This article gives complete immunity against the exercise of despotic power by the executive. It further gives

> immunity against invalid laws which contravene the Constitution. It gives also further guarantee that in its true concept there should be some form of proceeding before a person can be condemned either in respect of his life or his liberty. It negatives the idea of a fantastic, arbitrary and oppressive form of proceedings."
>
> *(emphasis, added)*
>
> (*Emphasis added*)

79. We have quoted at length because these are the first two and most crucial propositions advanced by Dr Saraf. These may be summarized thus:

(i) The right to travel abroad is included in 'personal liberty' guaranteed under Article 21 of the Constitution of India;

(ii) The right cannot be denied except according to '*procedure* established by *law*'.

(iii) 'Law' does not mean some executive action. It means, and means only, a statute or legislation framed by Parliament, a statutory rule, or a statutory regulation.

(iv) Therefore there are two factors at play simultaneously: (a) the deprivation or denial must be one permitted in statute; and (b) the procedure under that statute must be reasonable, not arbitrary, capricious, whimsical, fanciful, or oppressive.

80. It is therefore his submission that even if Mr Singh's formulation of the OMs as being a mere framework, a set of guidelines or a protocol is accepted, it is admittedly not 'law' as understood from and explained by pivotal judgments of the Supreme Court. Therefore — and as Mr Singh rightly points out — there can be no deprivation or denial of the Article 21 right under the OMs per se. But Dr Saraf points out that this formulation has a logical failure. For, if we accept the argument from the Union of India that the ultimate and sole liability and responsibility is that of the originating agency — in this case the public sector banks — then the *procedure* followed by those banks must be shown to be not unreasonable, arbitrary, fanciful, oppressive or whimsical.

II. "Procedure established by law"

81. On the question of the *procedure* in Article 21, Dr Saraf submits and we believe correctly that the law has advanced from the earlier doubts about 'substantive due process' as originally understood. He invites attention to the Supreme Court decision in *KS Puttaswamy v Union of India* ('Privacy').[6] But we would do well do step back a bit in the judgment by Dr DY Chandrachud J (as he then was), because from paragraph 273 onwards, that judgment dealt precisely with 'substantive' and 'procedural due process'.[7] So too did the concurring opinion of RF Nariman J.[8] These precepts are crucial to Dr Saraf's proposition and to a proper appreciation of the issue

6 (2017) 10 SCC 1.

7 Section Q, from paragraph 273 of the SCC report.

8 From paragraph 429 of the SCC report.

involved. We will not make so bold as to attempt a summation. We quote the relevant paragraphs.

> ***Q. Substantive due process***
>
> 273. **During the course of the hearing, Mr Rakesh Dwivedi, learned Senior Counsel appearing on behalf of the State of Gujarat submitted that the requirement of a valid law with reference to Article 21 is not conditioned by the notion of substantive due process. Substantive due process, it was urged is a concept which has been evolved in relation to the US Constitution but is inapposite in relation to the Indian Constitution**.
>
> 274. The history surrounding the drafting of Article 21 indicates a conscious decision by the Constituent Assembly not to introduce the expression "due process of law" which is incorporated in the Fifth and Fourteenth Amendments to the US Constitution. The draft Constitution which was prepared by the Drafting Committee chaired by Dr B.R. Ambedkar contained a "due process" clause to the effect that "nor any State shall deprive any person of life, liberty and property without due process of law". The clause as originally drafted was subjected to three important changes in the Constituent Assembly. Firstly, the reference to property was deleted from the above clause of the draft Constitution. The members of the Constituent Assembly perceived that retaining the right to property as part of the due process clause would pose a serious impediment to legislative reform particularly with the redistribution of property. The second important change arose from a meeting which Shri B.N. Rau had with Justice Felix Frankfurter in the US. In the US particularly in the years around the Great Depression, American courts had utilised the due process clause to invalidate social welfare legislation. In the *Lochner* [*Lochner v. New York*, 1905 SCC OnLine US SC 100: 49 L Ed 937: 198 US 45 (1905)] era, the US Supreme

Court invalidated legislation such as statutes prohibiting employers from making their employees work for more than ten hours a day or sixty hours a week on the supposition that this infringed the liberty of contract. Between 1899 and 1937 (excluding the civil rights cases), 159 the US Supreme Court decisions held State statutes unconstitutional under the due process and equal protection clauses. Moreover, 25 other statutes were struck down under the due process clause together with other provisions of the American Constitution. [William B. Lockhart, et al, Constitutional Law: Cases — Comments Questions (West Publishing Co., 1986) 6th Ed, at p. 394.] Under the due process clause, the US Supreme Court struck down labour legislation prohibiting employers from discriminating on the grounds of union activity; regulation of wages; regulation of prices for commodities and services; and legislation denying entry into business. [*Adair v. United States*, 1908 SCC OnLine US SC 24: 52 L Ed 436: 28 S Ct 277: 208 US 161 (1908) (Fifth Amendment); *Adkins v. Children's Hospital*, 1923 SCC OnLine US SC 105: 67 L Ed 785: 43 S Ct 22: 261 US 525 (1923) (Fifth Amendment); *Tyson & Bro. v. Banton*, 1927 SCC OnLine US SC 63: 71 L Ed 718: 47 S Ct 426: 273 US 418 (1927) and *New State Ice Co. v. Liebmann*, 1932 SCC OnLine US SC 63: 76 L Ed 747: 52 S Ct 371: 285 US 262 (1932)] These decisions were eventually distinguished or overruled in 1937 and thereafter. [*National Labor Relations Board v. Jones & Laughlin Steel Corpn.*, 1937 SCC OnLine US SC 79: 81 L Ed 893: 301 US 1 (1937); *West Coast Hotel Co. v. Parrish*, 1937 SCC OnLine US SC 58: 81 L Ed 703: 57 S Ct 578: 300 US 379 (1937)]

279. In *Gopalan* [*A.K. Gopalan v. State of Madras*, 1950 SCC 228: AIR 1950 SC 27: 1950 SCR 88], the Preventive Detention Act, 1950 was challenged on the ground that it denied significant procedural safeguards against arbitrary detention. The majority rejected the argument that the expression "procedure established by law" meant

procedural due process. Kania, C.J. noted that Article 21 of our Constitution had consciously been drawn up by the draftsmen so as to not use the word "due process" which was used in the American Constitution. Hence it was impermissible to read the expression "procedure established by law" to mean "procedural due process" or as requiring compliance with natural justice. Patanjali Sastri, J. held that reading the expression "due process of law" into the Constitution was impermissible since it would lead to those "subtle and elusive criteria" implied in the phrase which it was the deliberate purpose of the Framers of our Constitution to avoid. Similarly, Das, J. also observed that our Constitution makers had deliberately declined to adopt "the uncertain and shifting American doctrine of due process of law" which could not, therefore, be read into Article 21. Hence, the view of the majority was that once the procedure was established by a validly enacted law, Article 21 would not be violated.

280. In his celebrated dissent, Fazl Ali, J. pointed out that the phrase "procedure established by law" was borrowed from the Japanese Constitution (which was drafted under the American influence at the end of the Second World War) and hence the expression means "procedural due process". In Fazl Ali, J.'s view the deprivation of life and personal liberty under Article 21, had to be preceded by (i) a notice; (ii) an opportunity of being heard; (iii) adjudication by an impartial tribunal; and (iv) an orderly course of procedure. Formulating these four principles, Fazl Ali, J. held thus: (*Gopalan* case [*A.K. Gopalan v. State of Madras*, 1950 SCC 228: AIR 1950 SC 27: 1950 SCR 88], AIR pp. 60-61, para 77)

> "77. … Article 21 purports to protect life and personal liberty, and it would be a precarious protection and a protection not worth having, if the elementary principle of law under

discussion which, according to Halsbury is on a par with fundamental rights, is to be ignored and excluded. In the course of his arguments, the learned counsel for the petitioner repeatedly asked whether the Constitution would permit a law being enacted, abolishing the mode of trial permitted by the existing law and establishing the procedure of trial by battle or trial by ordeal which was in vogue in olden times in England. The question envisages something which is not likely to happen, but it does raise a legal problem which can perhaps be met only in this way that if the expression "procedure established by law" simply means any procedure established or enacted by statute it will be difficult to give a negative answer to the question, but if the word "law" includes what I have endeavoured to show it does, such an answer may be justified**. It seems to me that there is nothing revolutionary in the doctrine that the words "procedure established by law" must include the four principles set out in Professor Willis' book, which, as I have already stated, are different aspects of the same principle and which have no vagueness or uncertainty about them.** These principles, as the learned author points out and as the authorities show, are not absolutely rigid principles but are adaptable to the circumstances of each case within certain limits. I have only to add that it has not been seriously controverted that "law" in this article means valid law and "procedure" means certain definite rules of proceeding and

> not something which is a mere pretence for procedure."

281. In *Maneka* [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248], where the passport of the petitioner was impounded without furnishing reasons, **a majority of the Judges found that the expression "procedure established by law" did not mean any procedure howsoever arbitrary or fanciful. The procedure had to be fair, just and reasonable.** The views of Chandrachud, Bhagwati and Krishna Iyer, JJ. emerge from the following brief extracts: (SCC p. 323, para 48)

Chandrachud, J.:

> **"48. … But the mere prescription of some kind of procedure cannot ever meet the mandate of Article 21. The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary."**

Bhagwati, J.:

> **"7. … The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied." (SCC p. 284, para 7)**

Krishna Iyer, J.:

> "82. … So I am convinced that to frustrate Article 21 by relying on any formal adjectival statute, however, flimsy or fantastic its provisions be, is to rob what the constitution treasures.
>
> 85. … To sum up, "procedure" in Article 21 means fair, not formal procedure. "Law" is reasonable law, not any enacted piece." (SCC p. 338, paras 82 & 85)

282. Soon after the decision in *Maneka* [*Maneka Gandhi v. Union of India, (1978) 1 SCC 248*], the Supreme Court considered a challenge to the provisions for solitary confinement under Section 30(2) of the Prisons Act, 1894 which stipulated that a prisoner "under sentence of death" is to be kept in a cell apart from other prisoners. In *Sunil Batra v. Delhi Admn.* [*Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494: 1979 SCC (Cri) 155], the Court pointed out that Sections 73 and 74 of the Penal Code which contain a substantive punishment by way of solitary confinement was not under challenge. Section 30(2) of the Prisons Act was read down by holding that the expression "under sentence of death" would apply only after the entire process of remedies had been exhausted by the convict and the clemency petition had been denied. D.A. Desai, J. speaking for the majority, held that: (*Sunil Batra* case [*Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494: 1979 SCC (Cri) 155], SCC pp. 574-75, para 228)

> "228. … The word "law" in the expression "procedure established by law" in Article 21 has been interpreted to mean in *Maneka Gandhi* case [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248] that the **law must be right, just and fair and not arbitrary, fanciful or oppressive**."

Krishna Iyer, J. took note of the fact that our Constitution does not contain a due process clause and opined that after the decision in *Maneka* [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248], the absence of such a clause would make no difference: (SCC p. 518, para 52)

> "52. True, our Constitution has no "due process" clause or the VIIIth Amendment; but, in this branch of law, after *Cooper* [*Rustom Cavasjee Cooper v. Union of India*, (1970) 1 SCC 248] and *Maneka Gandhi* [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248] the consequence is the same."

291. **Having noticed this, the evolution of Article 21, since the decision in *Cooper* [*Rustom Cavasjee Cooper v. Union of India*, (1970) 1 SCC 248] indicates two major areas of change. First, the fundamental rights are no longer regarded as isolated silos or watertight compartments. In consequence, Article 14 has been held to animate the content of Article 21. Second, the expression "procedure established by law" in Article 21 does not connote a formalistic requirement of a mere presence of procedure in enacted law. That expression has been held to signify the content of the procedure and its quality which must be fair, just and reasonable.** The mere fact that the law provides for the deprivation of life or personal liberty is not sufficient to conclude its validity and **the procedure to be constitutionally valid must be fair, just and reasonable. The quality of reasonableness does not attach only to the content of the procedure which the law prescribes with reference to Article 21 but to the content of the law itself. In other words, the requirement of Article 21 is not fulfilled only by the enactment of fair and reasonable procedure under the law and a law which does so may yet be susceptible to challenge on the ground that its content does not accord with the requirements of**

a valid law. The law is open to substantive challenge on the ground that it violates the fundamental right.

292. In dealing with a substantive challenge to a law on the ground that it violates a fundamental right, there are settled principles of constitutional interpretation which hold the field. The first is the presumption of constitutionality [*Charanjit Lal Chowdhury v. Union of India*, 1950 SCC 833: AIR 1951 SC 41; *Ram Krishna Dalmia v. S.R. Tendolkar*, AIR 1958 SC 538; *Burrakur Coal Co. Ltd. v. Union of India*, AIR 1961 SC 954; *Pathumma v. State of Kerala*, (1978) 2 SCC 1; *R.K. Garg v. Union of India*, (1981) 4 SCC 675: 1982 SCC (Tax) 30: 1982 SCC (Tax) 30; *State of Bihar v. Bihar Distillery Ltd.*, (1997) 2 SCC 453: AIR 1997 SC 1511; *State of A.P. v. K. Purushotham Reddy*, (2003) 9 SCC 564; *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311; *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534; *Bhanumati v. State of U.P.*, (2010) 12 SCC 1; *K.T. Plantation (P) Ltd. v. State of Karnataka*, (2011) 9 SCC 1: (2011) 4 SCC (Civ) 414; *State of M.P. v. Rakesh Kohli*, (2012) 6 SCC 312: (2012) 3 SCC (Civ) 481 and *Namit Sharma v. Union of India*, (2013) 1 SCC 745: (2013) 1 SCC (Civ) 786: (2013) 1 SCC (Cri) 737: (2013) 1 SCC (L&S) 244] which is based on the foundational principle that the legislature which is entrusted with the duty of law-making best understands the needs of society and would not readily be assumed to have transgressed a constitutional limitation. The burden lies on the individual who asserts a constitutional transgression to establish it. Secondly, the courts tread warily in matters of social and economic policy where they singularly lack expertise to make evaluations. Policy-making is entrusted to the State. [*R.K. Garg v. Union of India*, (1981) 4 SCC 675: 1982 SCC (Tax) 30; *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*, (1984) 4 SCC 27: AIR 1984 SC 1543; *State of A.P. v. McDowell & Co.*, (1996) 3 SCC 709; *Union of India v. Azadi*

Bachao Andolan, (2004) 10 SCC 1; *State of U.P. v. Jeet S. Bisht*, (2007) 6 SCC 586; *K.T. Plantation (P) Ltd. v. State of Karnataka*, (2011) 9 SCC 1: (2011) 4 SCC (Civ) 414 and *Bangalore Development Authority v. Aircraft Employees' Coop. Society Ltd.*, (2012) 3 SCC 442]

293. The doctrine of separation of powers requires the Court to allow deference to the legislature whose duty it is to frame and enact law and to the executive whose duty it is to enforce law. The Court would not, in the exercise of judicial review, substitute its own opinion for the wisdom of the law-enacting or law-enforcing bodies. In the context of Article 19, the test of reasonableness was explained in the erudite words of Patanjali Sastri, C.J. in *State of Madras v. V.G. Row* [*State of Madras v. V.G. Row*, (1952) 1 SCC 410: 1952 SCR 597: AIR 1952 SC 196: 1952 Cri LJ 966], where the learned Chief Justice held thus: (AIR p. 200, para 15: SCR p. 607)

> "15. It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. *The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.* In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit of their interference with legislative

> judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."
>
> (*emphasis supplied*)

294. The Court, in the exercise of its power of judicial review, is unquestionably vested with the constitutional power to adjudicate upon the validity of a law. **When the validity of a law is questioned on the ground that it violates a guarantee contained in Article 21, the scope of the challenge is not confined only to whether the procedure for the deprivation of life or personal liberty is fair, just and reasonable. Substantive challenges to the validity of laws encroaching upon the right to life or personal liberty has been considered and dealt with in varying contexts**, such as the death penalty (*Bachan Singh* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684: 1980 SCC (Cri) 580]) and mandatory death sentence (*Mithu* [*Mithu v. State of Punjab*, (1983) 2 SCC 277: 1983 SCC (Cri) 405]), among other cases. **A person cannot be deprived of life or personal liberty except in accordance with the procedure established by law. Article 14, as a guarantee against arbitrariness, infuses the entirety of Article 21. The interrelationship between the guarantee against arbitrariness and the protection of life and personal liberty operates in a multi-faceted plane. First, it ensures that the procedure for deprivation must be fair, just and reasonable. Second, Article 14 impacts both the procedure and the expression "law". A law within the meaning of Article 21 must be consistent with the norms**

of fairness which originate in Article 14. As a matter of principle, once Article 14 has a connect with Article 21, norms of fairness and reasonableness would apply not only to the procedure but to the law as well.

295. Above all, it must be recognised that judicial review is a powerful guarantee against legislative encroachments on life and personal liberty. To cede this right would dilute the importance of the protection granted to life and personal liberty by the Constitution. Hence, while judicial review in constitutional challenges to the validity of legislation is exercised with a conscious regard for the presumption of constitutionality and for the separation of powers between the legislative, executive and judicial institutions, the constitutional power which is vested in the Court must be retained as a vibrant means of protecting the lives and freedoms of individuals.

296. The danger of construing this as an exercise of "substantive due process" is that it results in the incorporation of a concept from the American Constitution which was consciously not accepted when the Constitution was framed. Moreover, even in the country of its origin, substantive due process has led to vagaries of judicial interpretation. **Particularly having regard to the constitutional history surrounding the deletion of that phrase in our Constitution, it would be inappropriate to equate the jurisdiction of a constitutional court in India to entertain a substantive challenge to the validity of a law with the exercise of substantive due process under the US Constitution. Reference to substantive due process in some of the judgments is essentially a reference to a substantive challenge to the validity of a law on the ground that its substantive (as distinct from procedural) provisions violate the Constitution**.

R.F. Nariman, J. (concurring)—

449. Whichever way one looks at it, the foresight of Fazl Ali, J. in *A.K. Gopalan v. State of Madras* [*A.K. Gopalan v. State of Madras*, 1950 SCC 228: AIR 1950 SC 27: 1950 SCR 88] simply takes our breath away. The subject-matter of challenge in the said case was the validity of certain provisions of the Preventive Detention Act of 1950. In a judgment which anticipated the changes made in our constitutional law twenty years later, this great Judge said: (AIR pp. 52-53, para 58: SCR p. 148)

> "58. To my mind, the scheme of the Chapter dealing with the fundamental rights does not contemplate what is attributed to it, namely, that each article is a code by itself and is independent of the others. In my opinion, it cannot be said that Articles 19, 20, 21 and 22 do not to some extent overlap each other. The case of a person who is convicted of an offence will come under Articles 20 and 21 and also under Article 22 so far as his arrest and detention in custody before trial are concerned. Preventive detention, which is dealt with in Article 22, also amounts to deprivation of personal liberty which is referred to in Article 21, and is a violation of the right of freedom of movement dealt with in Article 19(1)(d). That there are other instances of overlapping of articles in the Constitution may be illustrated by reference to Article 19(1)(f) and Article 31 both of which deal with the right to property and to some extent overlap each other."

He went on thereafter to hold that the fact that "due process" was not actually used in Article 21 would be of no moment. He said: (AIR pp. 57-58, paras 69-71: SCR pp. 159-61)

"69. It will not be out of place to state here in a few words how the Japanese Constitution came into existence. It appears that on 11-10-1945, General MacArthur directed the Japanese Cabinet to initiate measures for the preparation of the Japanese Constitution, but, as no progress was made, it was decided in February 1946, that the problem of constitutional reform should be taken over by the government section of the Supreme Commander's Headquarters. Subsequently the Chief of this section and the staff drafted the Constitution with the help of American constitutional lawyers who were called to assist the government section in the task. This Constitution, as a learned writer has remarked, bore on almost every page evidences of its essentially Western origin, and this characteristic was especially evident in the Preamble "particularly reminiscent of the American Declaration of Independence, a Preamble which, it has been observed, no Japanese could possibly have conceived or written and which few could even understand". (See Ogg and Zink's Modern Foreign Governments.) One of the characteristics of the Constitution which undoubtedly bespeaks of direct American influence is to be found in a lengthy chapter, consisting of 31 articles, entitled "Rights and Duties of the People", which provided for the first time an effective "Bill of Rights" for the Japanese people. The usual safeguards have been provided there against apprehension without a warrant and against arrest or

detention without being informed of the charges or without adequate cause (Articles 33 and 34).

70. Now there are two matters which deserve to be noticed: (1) that the Japanese Constitution was framed wholly under American influence; and (2) that at the time it was framed the trend of judicial opinion in America was in favour of confining the meaning of the expression "due process of law" to what is expressed by certain American writers by the somewhat quaint but useful expression "procedural due process". That there was such a trend would be clear from the following passage which I quote from Carl Brent Swisher's The Growth of Constitutional Power in the United States (p. 107):

> 'The American history of its interpretation falls into three periods. During the first period, covering roughly the first century of the Government under the Constitution, due process was interpreted principally as a restriction upon procedure—and largely the judicial procedure—by which the Government exercised its powers. During the second period, which, again roughly speaking, extended through 1936, due process was expanded to serve as a restriction not merely upon procedure but upon the substance of the activities in

> which the Government might engage. During the third period, extending from 1936 to date, the use of due process as a substantive restriction has been largely suspended or abandoned, leaving it principally in its original status as a restriction upon procedure.'

In the circumstances mentioned, it seems permissible to surmise that the expression "procedure established by law" as used in the Japanese Constitution represented the current trend of American judicial opinion with regard to "due process of law", and, if that is so, the expression as used in our Constitution means all that the American writers have read into the words "procedural due process". But I do not wish to base any conclusions upon mere surmise and will try to examine the whole question on its merits.

71. The word "law" may be used in an abstract or concrete sense. Sometimes it is preceded by an article such as "a" or "the" or by such words as "any", "all", etc. and sometimes it is used without any such prefix. But, generally, the word "law" has a wider meaning when used in the abstract sense without being preceded by an article. The question to be decided is whether the word "law" means nothing more than statute law.

Now whatever may be the meaning of the expression "due process of law" the word "law" is common to that expression as well as

> "procedure established by law" and though we are not bound to adopt the construction put on "law" or "due process of law" in America, yet since a number of eminent American Judges have devoted much thought to the subject, I am not prepared to hold that we can derive no help from their opinions and we should completely ignore them."

He also went on to state that "law" in Article 21 means "valid law".

450. On all counts, his words were a cry in the wilderness. Insofar as his vision that fundamental rights are not in distinct watertight compartments but do overlap, it took twenty years for this Court to realise how correct he was, and in *R.C. Cooper* [*Rustom Cavasjee Cooper v. Union of India*, (1970) 1 SCC 248], an eleven-Judge Bench of this Court, agreeing with Fazl Ali, J., finally held: (SCC p. 289, paras 52-53)

> "52. In dealing with the argument that Article 31(2) is a complete code relating to infringement of the right to property by compulsory acquisition, and the validity of the law is not liable to be tested in the light of the reasonableness of the restrictions imposed thereby, it is necessary to bear in mind the enunciation of the guarantee of fundamental rights which has taken different forms. In some cases it is an express declaration of a guaranteed right: Articles 29(1), 30(1), 26, 25 and 32; in others to ensure protection of individual rights they take specific forms of restrictions on State action—legislative or executive—Articles 14, 15, 16, 20, 21, 22(1), 27 and 28; in some others, it takes the form of a

positive declaration and simultaneously enunciates the restriction thereon: Articles 19(1) and 19(2) to (6); in some cases, it arises as an implication from the delimitation of the authority of the State, e.g., Articles 31(1) and 31(2); in still others, it takes the form of a general prohibition against the State as well as others: Articles 17, 23 and 24. The enunciation of rights either express or by implication does not follow a uniform pattern. But one thread runs through them: they seek to protect the rights of the individual or groups of individuals against infringement of those rights within specific limits. Part III of the Constitution weaves a pattern of guarantees on the texture of basic human rights. The guarantees delimit the protection of those rights in their allotted fields: they do not attempt to enunciate distinct rights.

53. We are therefore unable to hold that the challenge to the validity of the provision for acquisition is liable to be tested only on the ground of non-compliance with Article 31(2). Article 31(2) requires that property must be acquired for a public purpose and that it must be acquired under a law with characteristics set out in that Article. Formal compliance with the conditions under Article 31(2) is not sufficient to negative the protection of the guarantee of the right to property. Acquisition must be under the authority of a law and the expression "law" means a law which is within the competence of the legislature, and does not impair the guarantee of the rights in Part III.

> We are unable, therefore, to agree that Articles 19(1)(f) and 31(2) are mutually exclusive."
>
> [*fn text: Shri Gopal Sankaranarayanan has argued that the statement contained in R.C. Cooper, (1970) 1 SCC 248 that 5 out of 6 learned Judges had held in Gopalan, 1950 SCC 228: AIR 1950 SC 27 that Article 22 was a complete code and was to be read as such, is incorrect. He referred to various extracts from the judgments in Gopalan, 1950 SCC 228: AIR 1950 SC 27 to demonstrate that this was, in fact, incorrect as Article 21 was read together with Article 22. While Shri Gopal Sankaranarayanan may be correct, it is important to note that at least insofar as Article 19 was concerned, none of the judgments except that of Fazl Ali, J. were prepared to read Articles 19 and 21 together. Therefore, on balance, it is important to note that R.C. Cooper, (1970) 1 SCC 248 cleared the air to state that none of the fundamental rights can be construed as being mutually exclusive.]*

451. **Insofar as the other part of Fazl Ali, J.'s judgment is concerned, that "due process" was an elastic enough expression to comprehend substantive due process, a recent judgment in *Mohd. Arif v. Supreme Court of India* [*Mohd. Arif v. Supreme Court of India*, (2014) 9 SCC 737: (2014) 5 SCC (Cri) 408] by a Constitution Bench of this Court, has held: (SCC pp. 755-56, paras 27-28)**

> "27. The stage was now set for the judgment in *Maneka Gandhi* [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248]. Several judgments were delivered, and the upshot of all of them was that Article 21 was to be read along with other fundamental rights, and so read not only

has the procedure established by law to be just, fair and reasonable, but also the law itself has to be reasonable as Articles 14 and 19 have now to be read into Article 21. (See at SCC pp. 393-95, paras 198-204: SCR pp. 646-48 per Beg, C.J., at SCC pp. 279-84 & 296-97, paras 5-7 & 18: SCR pp. 669, 671-74 and 687 per Bhagwati, J. and at SCC pp. 335-39, paras 74-85: SCR pp. 720-23 per Krishna Iyer, J.) Krishna Iyer, J. set out the new doctrine with remarkable clarity thus: (SCC pp. 338-39, para 85: SCR p. 723)

> '85. **To sum up, "procedure" in Article 21 means fair, not formal procedure. "Law" is reasonable law, not any enacted piece.** As Article 22 specifically spells out the procedural safeguards for preventive and punitive detention, a law providing for such detentions should conform to Article 22. It has been rightly pointed out that for other rights forming part of personal liberty, the procedural safeguards enshrined in Article 21 are available. Otherwise, as the procedural safeguards contained in Article 22 will be available only in cases of preventive and punitive detention, the right to life, more fundamental than any other forming part of personal liberty and paramount to the happiness, dignity and worth of

> the individual, will not be entitled to any procedural safeguard save such as a legislature's mood chooses.'

28. Close on the heels of *Maneka Gandhi* case [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248] came *Mithu v. State of Punjab* [*Mithu v. State of Punjab*, (1983) 2 SCC 277: 1983 SCC (Cri) 405], in which case the Court noted as follows: (*Mithu case* [*Mithu v. State of Punjab*, (1983) 2 SCC 277: 1983 SCC (Cri) 405], SCC pp. 283-84, para 6)

> '6. … In *Sunil Batra v. Delhi Admn.* [*Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494: 1979 SCC (Cri) 155], while dealing with the question as to whether a person awaiting death sentence can be kept in solitary confinement, Krishna Iyer, J. said that though our Constitution did not have a "due process" clause as in the American Constitution; the same consequence ensued after the decisions in *Bank Nationalisation* case [*Rustom Cavasjee Cooper v. Union of India*, (1970) 1 SCC 248] and *Maneka Gandhi case* [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248] … In *Bachan Singh* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684: 1980 SCC (Cri) 580] which upheld the constitutional

> validity of the death penalty, Sarkaria J., speaking for the majority, said that if Article 21 is understood in accordance with the interpretation put upon it in *Maneka Gandhi* [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248], it will read to say that: (SCC p. 730, para 136)
>
> > "136. … 'No person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by valid law.' " '
>
> **The wheel has turned full circle. Substantive due process is now to be applied to the fundamental right to life and liberty**."

[*fn text*: Shri Rakesh Dwivedi has argued before us that in *Maneka Gandhi*, (1978) 1 SCC 248, Chandrachud, J. had, in para 55 of the judgment, clearly stated that substantive due process is no part of the Constitution of India. He further argued that Krishna Iyer, J.'s statement in *Sunil Batra*, (1978) 4 SCC 494 that a due process clause as contained in the US Constitution is now to be read into Article 21, is a **standalone statement of the law and that "substantive due process" is an expression which brings in its wake concepts which do not fit into the Constitution of India. It is not possible to accept this contention for the reason that in the Constitution Bench decision in Mithu, (1983) 2 SCC 277, Chandrachud, C.J., did not refer to his concurring judgment in *Maneka Gandhi*, (1978) 1 SCC 248, but instead referred, with approval, to Krishna Iyer, J.'s statement of the law in para 6. It is this statement that is**

reproduced in para 28 of *Mohd. Arif*, (2014) 9 SCC 737. Also, "substantive due process" in our context only means that a law can be struck down under Article 21 if it is not fair, just or reasonable on substantive and not merely procedural grounds. In any event, it is Chandrachud, C.J's earlier view that is a standalone view. In *Collector of Customs v. Nathella Sampathu Chetty*, (1962) 3 SCR 786: AIR 1962 SC 316: (1962) 1 Cri LJ 364, a Constitution Bench of this Court, when asked to apply certain American decisions, stated the following: (AIR p. 328, para 23: SCR p. 816)

> "23. … It would be seen that the decisions proceed on the application of the "due process" clause of the American Constitution. Though the tests of "reasonableness" laid down by clauses (2) to (6) of Article 19 might in great part coincide with that for judging of "due process", it must not be assumed that these are identical, for it has to be borne in mind that the Constitution Framers deliberately avoided in this context the use of the expression "due process" with its comprehensiveness, flexibility and attendant vagueness, in favour of a somewhat more definite word "reasonable", and caution has, therefore, to be exercised before the literal application of American decisions."

Mathew, J. in *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225: 1973 Supp SCR 1 commented on this particular passage thus: (SCC pp. 873-74, para 1695: SCR pp. 824-26)

> "1695. When a court adjudges that a legislation is bad on the ground that it is an unreasonable restriction, it is drawing the elusive ingredients for its conclusion from several sources. In fact,

you measure the reasonableness of a restriction imposed by law by indulging in an authentic bit of special legislation [See Learned Hand, Bill of Rights, p. 26].

> 'The words "reason" and "reasonable" denote for the common law lawyer ideas which the "Civilians" and the "Canonists" put under the head of the law of nature.' …

The limitations in Article 19 of the Constitution open the doors to judicial review of legislation in India in much the same manner as the doctrine of police power and its companion, the due process clause, have done in the United States. The restrictions that might be imposed by the legislature to ensure the public interest must be reasonable and, therefore, the Court will have to apply the yardstick of reason in adjudging the reasonableness. If you examine the cases relating to the imposition of reasonable restrictions by a law, it will be found that all of them adopt a standard which the American Supreme Court has adopted in adjudging reasonableness of a legislation under the due process clause…

In the light of what I have said, I am unable to understand how the word "reasonable" is more definite than the words "due process"."]

(*Emphasis added*)

82. The consequence, Dr Saraf submits, is plain: there is no governing statute, and hence there is no question of assailing one; and no question of 'substantive due process' can arise. But the law has evolved since Gopalan, and procedural fairness is a requisite of every government action. In the words of Fazl Ali J, *'law' means certain definite rules of proceeding and not something which is a mere pretence for procedure.* The dictum of Fazl Ali J was that any deprivation of life and personal liberty under Article 21 had to be preceded by "(i) a notice; (ii) an opportunity of being heard; (iii) adjudication by an impartial tribunal; and (iv) an orderly course of procedure." Not one of these can be eliminated, Dr Saraf submits, and we think correctly. The opportunity of being heard is the right to make a representation *before* an executive order is made; and it is also a right to make representation after the order showing reason why the order should be recalled, vacated or cancelled. The test is first of reasonableness of the measure being taken. If it is unreasonable, it cannot stand. An underlying fundamental postulate is that the order or measure in question must be made known. In *Anuradha Bhasin v Union of India*,[9] the Supreme Court held:

> **144.** One of the important criteria to test the reasonableness of such a measure is to see if the aggrieved person has the right to make a representation against such a restriction. **It is a fundamental principle of law that no party can be deprived of his liberty without being afforded a fair, adequate and reasonable opportunity of hearing. Therefore, in a situation where the order is silent on the material facts, the person aggrieved cannot effectively challenge the same. Resultantly, there exists no effective mechanism to judicially review the same**.

9 (2020) 3 SCC 637.

> (See *State of Bihar* v. *Kamla Kant Misra* [*State of Bihar* v. *Kamla Kant Misra*, (1969) 3 SCC 337] .) **In light of the same, it is imperative for the State to make such orders public so as to make the right available under Section 144(5) CrPC a practical reality**.
>
> (*Emphasis added*)

83. *Anuradha Bhasin* also holds that any restriction on fundamental rights must be tested on the principle of proportionality based on the nature of the emergency, and the nature, duration and extent of the restriction; and also whether it is the least restrictive measure possible.

> 68. In *Modern Dental College case* [*Modern Dental College & Research Centre v. State of M.P.*, (2016) 7 SCC 353 : 7 SCEC 1], this Court also went on to analyse that the principle of **proportionality is inherently embedded in the Indian Constitution under the realm of the doctrine of reasonable restrictions and that the same can be traced under Article 19**. …
>
> 69. Thereafter, a comprehensive doctrine of proportionality in line with the German approach was propounded by this Court in *Modern Dental College* case wherein the Court held that : (SCC pp. 414-15, paras 63-64)
>
> > "63. … **To put it pithily, when a law limits a constitutional right, such a limitation is constitutional if it is proportional. The law imposing restrictions will be treated as proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary**. …

> 64. **The exercise which, therefore, is to be taken is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests.**"

74. Taking into consideration the aforesaid analysis, Dr Sikri, J., in *K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India* [(2019) 1 SCC 1] [hereinafter "K.S. Puttaswamy (Aadhaar-5 J.)"] reassessed the test laid down in *Modern Dental College case* which was based on the German test and modulated the same as against the tests laid down by Bilchitz. Therein this Court held that: SCC p. 320, paras 157-58]

> "157. In *Modern Dental College & Research Centre* four sub-components of proportionality which need to be satisfied were taken note of. These are:
>
> (a) A measure restricting a right must have a legitimate goal (legitimate goal stage).
>
> (b) It must be a suitable means of furthering this goal (suitability or rational connection stage).
>
> (c) There must not be any less restrictive but equally effective alternative (necessity stage).
>
> (d) The measure must not have a disproportionate impact on the right-holder (balancing stage).
>
> 158. This has been approved in *K.S. Puttaswamy* [*K.S. Puttaswamy (Privacy-9 J.) v.*

> *Union of India*, (2017) 10 SCC 1] as well. Therefore, the aforesaid stages of proportionality can be looked into and discussed. Of course, while undertaking this exercise it has also to be seen that the legitimate goal must be of sufficient importance to warrant overriding a constitutionally protected right or freedom and also that such a right impairs freedom as little as possible. This Court, in its earlier judgments, applied German approach while applying proportionality test to the case at hand. We would like to proceed on that very basis which, however, is tempered with more nuanced approach as suggested by Bilchitz. This, in fact, is the amalgam of German and Canadian approach. We feel that the stages, as mentioned in *Modern Dental College & Research Centre* and recapitulated above, would be the safe method in undertaking this exercise, with focus on the parameters as suggested by Bilchitz, as this projects an ideal approach that need to be adopted."

75. Dr Chandrachud, J., in *K.S. Puttaswamy (Aadhaar-5 J.)*, made observations on the test of proportionality that needs to be satisfied under our Constitution for a violation of the right to privacy to be justified, in the following words : (SCC p. 819, para 1288)

> "1288. *In K.S. Puttaswamy v. Union of India* [K.S. Puttaswamy (Privacy-9 J.)], one of us (Chandrachud, J.), speaking for four Judges, laid down the tests that would need to be satisfied under our Constitution for violations of privacy to be justified. **This included the**

test of proportionality: (SCC p. 509, para 325)

> '325. … A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. **In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the threefold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them.**'
>
> **The third principle [(iii) above] adopts the test of proportionality to ensure a rational nexus between the objects and the means adopted to achieve them. The essential role of the test of proportionality is to enable the**

> **court to determine whether a legislative measure is disproportionate in its interference with the fundamental right. In determining this, the court will have regard to whether a less intrusive measure could have been adopted consistent with the object of the law and whether the impact of the encroachment on a fundamental right is disproportionate to the benefit which is likely to ensue. The proportionality standard must be met by the procedural and substantive aspects of the law.** Sanjay Kishan Kaul, J., in his concurring opinion, suggested a four-pronged test as follows: (SCC p. 632, para 638) …

76. After applying the aforesaid doctrine in deciding the constitutional validity of the Aadhaar scheme, Dr Chandrachud, J., in *K.S. Puttaswamy (Aadhaar-5 J.)* case reiterated the fundamental precepts of doctrine of proportionality in relation to protection of privacy interests while dealing with personal data: (SCC pp. 835-36, para 1324)

> "**1324. The fundamental precepts of proportionality, as they emerge from decided cases can be formulated thus:**

1324.1. A law interfering with fundamental rights must be in pursuance of a legitimate State aim;

1324.2. The justification for rights-infringing measures that interfere with or limit the exercise of fundamental rights and liberties must be based on the existence of a rational connection between those measures, the situation in fact and the object sought to be achieved;

1324.3. The measures must be necessary to achieve the object and must not infringe rights to an extent greater than is necessary to fulfil the aim;

1324.4. Restrictions must not only serve legitimate purposes; they must also be necessary to protect them; and

1324.5. The State must provide sufficient safeguards relating to the storing and protection of centrally stored data. In order to prevent arbitrary or abusive interference with privacy, the State must guarantee that the collection and use of personal information is based on the consent of the individual; that it is authorised by law and that sufficient safeguards exist to ensure that the data is only used for the purpose specified at the time of collection. Ownership of the data must at all times vest in the individual whose data is collected. The individual must have a right of access to the data collected and the discretion to opt out."

77. **This is the current state of the doctrine of proportionality as it exists in India, wherein proportionality is the key tool to achieve judicial balance. But many scholars are not agreeable to recognise proportionality equivalent to that of balancing**. …

78. **In view of the aforesaid discussion, we may summarise the requirements of the doctrine of proportionality which must be followed by the authorities before passing any order intending on restricting fundamental rights of individuals. In the first stage itself, the possible goal of such a measure intended at imposing restrictions must be determined. It ought to be noted that such goal must be legitimate. However, before settling on the aforesaid measure, the authorities must assess the existence of any alternative mechanism in furtherance of the aforesaid goal. The appropriateness of such a measure depends on its implication upon the fundamental rights and the necessity of such measure. It is undeniable from the aforesaid holding that only the least restrictive measure can be resorted to by the State, taking into consideration the facts and circumstances. Lastly, since the order has serious implications on the fundamental rights of the affected parties, the same should be supported by sufficient material and should be amenable to judicial review.**

106. We also direct that all the above procedural safeguards, as elucidated by us, need to be mandatorily followed. In this context, this Court in *Hukam Chand Shyam Lal* case [*Hukam Chand Shyam Lal v. Union of India*, (1976) 2 SCC 128], observed as follows : (SCC p. 133, para 18)

> "18. It is well settled that where a power is **required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all**

> **other modes of performance are necessarily forbidden.** It is all the more necessary to observe this rule where power is of a drastic nature.…"
>
> (*Emphasis added*)

84. On any of these tests, Dr Saraf submits, and especially the five-fold test enunciated in *Puttaswamy (Aadhaar-5J)*, the issuance of every single one of the LOCs is simply unsustainable. There is no notice. There is no hearing. Even a copy is not provided. One is simply stopped at a point of embarkation and told that some bank has triggered a LOC. Why, when and on what facts remains undisclosed. Such LOCs are contrary to the Union of India's framework itself. Even accepting that it is not the BoI or the Union of India that is liable, but only the originating agency, these LOCs constitute an impermissible restriction on personal liberty and the fundamental right to travel.

85. If therefore it is shown that the PSB-induced or triggered LOCs are not in conformity with the requirements of procedural fairness as enunciated by our Supreme Court, the inevitable consequence must be that they cannot be sustained.

G. THE SCOPE OF EXECUTIVE POWER UNDER THE CONSTITUTION OF INDIA

86. On the scope of executive power under the Constitution of India, we believe Mr Singh's submissions, the Affidavit in Reply and

the written arguments are somewhat off the mark. The reason is that the question is not whether the executive has *any* power under the Constitution of India, but whether such power that the Constitution of India confers can be used to infringe a fundamental right.

87. The submissions by the Union of India proceed on this basis: that the Constitution of India itself provides for executive power. It is in exercise of this power, *and because there is no controlling statute*, that the OMs are framed. But the OMs do not per se restrict travel. They are only a framework. Therefore, it is argued, there is no infringement of any fundamental right.

88. As we said, this misses the point almost entirely. The OMs do allow certain agency to request LOCs to be issued. Chairmen, Managing Directors and CEOs of PSBs are among such persons. The question is whether the LOCs under the OM framework issued at the instance of PSBs violate Article 21 rights.

89. Further, not all LOCs are alike. As we have seen, the Union of India itself says that a LOC may be issued for diverse reasons and actions. Restraining travel is only one of them; and we are concerned with only that one.

90. Little is therefore to be gained by a lengthy discussion on whether or not there exists executive power. We note the submissions in brief.

91. The submission is that the 'practice of issuing LOCs has constitutional, statutory and legal backing'. Reference is invited to Articles 53, 73 and 77 of the Constitution, and to certain entries in Lists I and III of the VIIth Schedule. We extract the relevant provisions.

> **53. Executive power of the Union:**
>
> (1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinates to him in accordance with this Constitution.
>
> (2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.
>
> (3) Nothing in this article shall
>
> (a) Be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or
>
> (b) Prevent Parliament from conferring by law functions on authorities other than the President.
>
> **73. Extent of Executive Power of the Union**
>
> (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend
>
> (a) to the matters with respect to which parliament has power to make laws; and
>
> (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything, in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

77. Conduct of Business of the Government of India

(1) All executive action of the Government of India shall be expressed to be taken in the name of the president.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rues to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India and for the allocation among Ministers of the said business:

SEVENTH SCHEDULE

(ARTICLE 246)

LIST-I UNION LIST

9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the Security of India; persons subjected to such detention.

10. Foreign affairs; all matters which bring the Union into relation with any foreign country.

11. Diplomatic, consular and trade representation.

19. Admission into and emigration and expulsion from India passports and visas.

LIST-III : CONCURRENT LIST

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

3. Preventive detention for reasons connected with the security of a State, the maintenance of public order or the maintenance of supplies and services essential to the community; persons subjected to such detention.

92. Then a reference is made to the Government of India (Allocation of Business) Rules 1961.

93. The submission is that the executive power of the Union is co-extensive with Parliamentary legislative power. But if this supposed to suggest that the expression *except according to procedure established by law* in Article 21 includes mere executive action de hors a statute, statutory rule or statutory regulation, then that flies in the face of every single decision of the Supreme Court from *Gopalan* onwards. Nobody has ever been able to suggest that in a constitutional

democratic republic, the executive enjoys uncontrolled power to abridge fundamental rights without there being a statute. Indeed, the argument is like of MC Escher's fantabulistic mazes — steps that lead nowhere except to themselves in an infinite loop, for instance. For what is being suggested is that (a) there is no controlling statute; therefore (b) executive action must suffice, and consequently (c) mere executive action can infringe an Article 21 fundamental right. That is the inevitable consequence of this argument, and it simply cannot be accepted. We need to quote paragraph 23 of the Affidavit in Reply in this regard:

> 23. **I say that the executive instructions issued by the Central Government would cover this unlegislated field** in the areas where the Union of India has powers under the Constitution.
>
> (*Emphasis added*)

94. Indeed they would not. They cannot. At least not under our Constitution. Yet, paragraph 34 of the written submissions says:

> 34. **It is submitted that there is no Parliament made law which deals with issuance of a LOC. Hence, the Executive has in accordance with its wide and extensive power framed the Guidelines for issuance of a LOC by the subject OM**.
>
> (*Emphasis added*)

95. As we noted this entirely begs the question about fundamental rights under Article 21 being curtailed by some clandestine procedure in issuing and operating PSB-requested LOCs. This is important in view of the submission by Mr Singh, viz., that it is the responsibility

of the originating agency — in this case the PSBs — to ensure compliance with all legal requirements. As far as the Union of India is concerned, therefore, the question is *not* about LOCs 'generally' or as a class, but whether these particular PSB-driven LOCs conform to the legal mandate. For instance, it may be perfectly legitimate to have a watch-and-report LOC at the instance of Interpol. That can hardly be used as a justification for a deprivation of a right to travel engrafted into Article 21 by a creditor bank. The two are simply not comparable.

96. Consequently, some of the decisions cited by Mr Singh will not carry the matter further; these merely interpret the co-extensive power of the executive.[10] They do not address the issue of curtailment of fundamental rights. And again, these submissions are directed — as paragraph 36 of the written submissions makes clear — to the executive power to issue the OMs.

97. Indeed, the proposition may be overbroad. For, in *Rai Saheb Ram Jawaya Kapur v State of Punjab*,[11] the Supreme Court said that the executive's powers are the residue of the functions that remain after the legislature and the judiciary are taken away. This means, clearly, that the executive function supplement but do not substitute statute where a statute is necessary. The executive may assume powers of subordinate legislation or of a quasi-judicial nature when empowered to do so by an enacted statute. The executive may not in any event contravene the Constitution. For the executive to encroach

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10 *NDMC v Tanvi Trading & Credit (P) Ltd*, (2008) 8 SCC 765; *Bishambar Dayal Chandra Mohan v State of UP*, (1982) 1 SCC 39.

11 (1955) 2 SCR 22.

upon the private rights of a citizen, there must be some specific legislation. Even if an executive action is backed by a specific legislation, it is still liable to be struck down if it involves the infringement of fundamental rights.

98. In any case, powers under Article 73 (or Article 162) cannot possibly be used to curtail *fundamental rights*: *State of Bihar v Project Uchcha Viday Shikshah Sangh & Ors*.[12] There is not a single authority we can find that would suggest so; everything points to the contrary.

99. The entire argument proceeds on a false premise: that the OMs issued by the MHA constitute "due process of law" or "procedure established by law". Article 13 defines the words "law" and "laws in force". It has been interpreted in many instances to mean *law enacted by Parliament*. This is also the interpretation of 'except according to procedure established by law' in Article 21 from *Gopalan* onwards. In *State of UP v Johri Mal & Ors*,[13] it was held that where a complete codification exists in statute, it cannot be substituted by executive instructions. The Court observed that executive instructions can be amended, altered or withdrawn at the whims and caprice of the executive for the party in power. Executive instructions, the Court held, do not carry the same status as a statute.

100. The OMs are *ex facie* not "law" and are by no stretch of imagination "procedure established by law". It is inconceivable that the OMs — purely executive instructions or a framework or

12 (2006) 2 SCC 545.

13 (2004) 4 SCC 714.

guidelines — can ever curtail the fundamental right to travel abroad. But Mr Singh may be correct in saying that the OMs on their own and per se do nothing in this direction. They are literally inoperable on their own. They only require a process to be followed in getting a LOC issued; and the liability and responsibility for the validity of the LOC rests with the originating agency. But if the OM is not law, nor procedure established by law, then neither is the LOC that is issued under any OM. If that process of issuing the LOC is faulty, or if the LOCs are issued in a manner contrary to the OMs, or worse yet, if the LOCs — not being law, and not being under any 'law' or 'procedure established by law' — infringe fundamental rights, then the LOCs cannot be sustained.

101. The expression '*procedure established by law*' immediately connotes two aspects operating simultaneously: (i) there must be a procedure; and (ii) it must be 'established' by law. It is, therefore, not enough to say merely that there is a 'procedure'. When we speak of it being 'established', we mean that the procedure is set down not only with a degree of structural formality, but that it is a procedure that has statutory force. Executive instructions, guidelines and frameworks absent a controlling statute do not and cannot constitute a 'procedure established by law'.

102. The powers of the executive are vast and have, therefore, not been listed in detail. We do not suggest that executive powers may only be conferred through statute. Some executive actions — for example, purely administrative decisions — do not require an enacted statute. However, the executive may not, in exercise of its

authority, infringe the rights of citizens on the basis that there exists a gap in legislation.[14]

103. If an executive instruction has drastic consequences for a person, it must meet the tests of reasonableness and proportionality. The elements of natural justice, even if not explicitly provided, will be read into any such circular. In *State Bank of India v Jah Developers Pvt Ltd*,[15] the Supreme Court held that even a circular issued under a RBI master circular (regarding wilful defaulters) could not violate a fundamental right; and there had to be an opportunity (though not necessarily through a lawyer) to make a representation.

104. In *State Bank of India & Ors v Rajesh Agarwal & Ors*,[16] (regarding the RBI master circular on frauds), the Supreme Court held:

> 36. **We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence : (i) nemo judex in causa sua, which means that no person should be a Judge in their own cause; and (ii) audi alteram partem, which means that a person**

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14 *State of Madhya Pradesh & Anr v Thakur Bharat Singh*, AIR 1967 SC 1170.

15 (2019) 6 SCC 787.

16 (2023) 6 SCC 1.

affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power. [*Union of India v. J.N. Sinha*, (1970) 2 SCC 458]

70. In *Mangilal v. State of M.P.* [(2004) 2 SCC 447 : 2004 SCC (Cri) 1085], a two-Judge Bench of this Court held that the principles of natural justice need to be observed even if the statute is silent in that regard. In other words, a statutory silence should be taken to imply the need to observe the principles of natural justice where substantial rights of parties are affected : (SCC pp. 453-54, para 10)

> "10. *Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand*. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial

> character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. *Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. … Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it.* These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves."
>
> (*emphasis supplied*)
>
> (*Emphasis added*)

105. The Supreme Court has held that the civil consequences of the impounding of a passport necessitate that the affected holder be given an opportunity of hearing before the impounding.[17] As a corollary, the civil consequences of a LOC should necessitate that the affected person be given a hearing before the issue of a LOC against them.

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17 *State of Orissa v Binapani Devi*, AIR 1967 SC 1269.

H. THE DOCTRINE OF OCCUPIED FIELD & THE PASSPORTS ACT, 1967

106. The judgment of PN Bhagwati J in *Maneka Gandhi* outlines the structure of the Passports Act, 1967. Dr Saraf submits that the Passports Act inter alia regulates the departure from India and entry into India of citizens of India *and for other persons*. The long title says as much in so many words. Under Section 3, no person shall depart from, or attempt to depart from India unless he holds a valid passport or travel document.

107. There are different categories of passports (Section 4). An application must be made for a passport or travel document (Section 5). This may be refused under Section 6. The duration of the passport or travel document is controlled by Section 7. Conditions may attach to passports or travel documents under Section 9.

108. Then Section 10 provides for variation, impounding and revocation of passports and travel documents. It sets out a detailed procedure.

109. Section 10A and 10B were added by the 2002 amendment. Section 10A provides for the suspension of passports or travel documents in certain cases. Section 10B deals with validation of intimations. Sections 10, 10A and 10B read thus:

> **10. Variation, impounding and revocation of passports and travel documents.—**

(1) The passport authority may, having regard to the provisions of sub-section (1) of Section 6 or any notification under Section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.

(2) The passport authority may, on the application of the holder of a passport or a travel document, and with the previous approval of the Central Government also vary or cancel the conditions (other than the prescribed conditions) of the passport or travel document.

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,—

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf:

Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) If the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

(4) The passport authority may also revoke a passport or travel document on the application of the holder thereof.

(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause to be impounded or revoke a passport or travel document on any ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.

(7) A court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel document:

Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

(8) An order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) On the revocation of a passport or travel document under this section the holder thereof shall, without delay

surrender the passport or travel document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in this behalf in the order of revocation.

10-A. Suspension of passports or travel documents in certain cases.—

(1) Withstanding prejudice to the generality of the provisions contained in Section 10, if the Central Government or any designated officer is satisfied that the passport or travel document is likely to be impounded or caused to be impounded or revoked under clause (c) of sub-section (3) of Section 10 and it is necessary in the public interest so to do, it or he may,—

(a) by order, suspend, with immediate effect, any passport or travel document;

(b) pass such other appropriate order which may have the effect of rendering any passport or travel document invalid, for a period not exceeding four weeks:

Provided that the Central Government or the designated officer may, if it or he considers appropriate, extend, by order and for reasons to be recorded in writing, the said period of four seeks till the proceedings relating to variation, impounding or revocation of passport or travel document under Section 10 are concluded.

Provided further that every holder of the passport or travel document, in respect of whom an order under clause (a) or clause (b) of this sub-section had been passed, shall be given an opportunity of being heard within a period of not later than eight weeks reckoned from the date of passing of such order and thereupon the Central Government may, if necessary, by order in writing, modify or revoke the order passed under this sub-section.

> (2) The designated officer shall immediately communicate the orders passed under sub-section (1), to the concerned authority at an airport or any other point of embarkation or immigration, and to the passport authority.
>
> (3) Every authority referred to in sub-section (2) shall, immediately on receipt of the order passed under sub-section (1), give effect to such order.
>
> **10-B. Validation of intimation.**—Every intimation given by the Central Government or the designated officer, before the commencement of the Passports (Amendment) Act, 2002, to any immigration authority at an airport or any other point of embarkation or immigration, restricting or in any manner prohibiting the departure from India of any holder of the passport or travel document under sub-section (3) of Section 10, shall be deemed to be an order under sub-section (1) of Section 10-A and such order shall continue to be in force for a period of three months from the date of commencement of the Passports (Amendment) Act, 2002, or the date of giving such intimation, whichever is later.
>
> *Explanation.*—For the purposes of Sections 10-A and 10-B, the expression "designated officer" means such officer or authority designated, by order in writing, as such by the Central Government.
>
> (*Emphasis added*)

110. Dr Saraf's submission is that this schema completely occupies the field of control of persons (not just citizens) out of India. Sections 10(3)(c), 10(3)(e) and 10(3)(h) in particular exactly parallel clauses in the OMs. Yet the OMs are not said to have been issued under the Passports Act at all. Section 10(3)(c) is operable 'in the public interest' and permits a suspension or invalidation of the passport or travel document.

111. In effect, he submits, LOCs achieve the same object as Section 10A — the restriction of travel abroad in public interest — but without any statutory safeguards. In an unfettered exercise of executive action, the OMs expand who may restrict the right to travel abroad, for how long and why. Whereas Section 10A confers a statutory power on the Central Government and designated officers to restrict the right to travel, the 15 authorities designated by the MHA to approve LOC requests derive their power from executive fiat. Section 10A limits the suspension of a passport to four weeks (extendable for reasons recorded in writing), but the latest 2021 OM allows LOCs to operate virtually in perpetuity. Section 10A gives the affected passport holder a time-bound opportunity to be heard. The OMs promise no such procedural protection.

112. Parliamentary intent is clear from the Statement of Objects and Reasons of the 2002 Amendment. It recognizes the absence of a

> "statutory provision in the Passports Act, 1967 to prevent a person indulging in criminal or anti-national activities from leaving the country during the period when action to revoke or impound his passport … [is] … initiated."

113. The Bill introduced in the legislature explicitly acknowledged that before the announcement of the Ordinance that preceded it,

> "the concerned authorities were issuing "Look Out Circulars" to prevent such persons from leaving the country."

The insertion of Sections 10A and 10B via amendment was intended to pre-empt and prevent random executive intervention in the field.

114. In *Suresh Nanda v CBI*,[18] the Supreme Court considered whether a passport could be impounded under Section 104 of the CrPC. Recognizing the Passports Act as a "special Act" providing for the impounding of passports, the Court ruled that the special act would prevail over the general act. It held where "there is a special Act dealing with [a] specific subject, resort should be had to that Act instead of [a] general Act providing for the matter connected to the specific Act."

115. In *Paluru Ramkrishnaiah & Ors v Union of India & Ors*,[19] the Supreme Court held that in the absence of legislative (i.e., statutory) rules, it was open to the government to take a decision in exercise of powers under Article 73 (for the Union Government) or Article 162 (the corresponding provision for the State Government). Specifically, the Supreme Court held:

> "An executive instruction can make a provision only with regard to a matter which is not covered by the Rules but such executive instruction cannot override any provision of an existing Rule."

116. In *Chairman, Administrative Committee, UP Milk Union & Dairy Federation Centralised Services v Jagpal Singh*,[20] the Supreme Court held in paragraph 31 that pure departmental executive

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18 (2008) 3 SCC 674.

19 (1989) 2 SCC 541.

20 (2021) 5 SCC 529.

instructions cannot displace a statutory rule. See also: *PD Aggarwal & Ors v State of UP & Ors.*[21]

117. In summation, Dr Saraf submits that Sections 10A and 10B of the Passports Act exhaust the universe of restrictions on travel, a fundamental right guaranteed to all 'persons' under Article 21. If this right is to be curtailed, it can only be done by Parliament by enacting a statute — and that has been done by the Passports Act. Such an abridgment cannot be done by executive action, rules or guidelines outside or de hors a controlling statute. Indeed, Section 10A is nothing but the LOC; and Section 10A comes in only because the OMs do not have statutory backing.

118. The submission is only partly correct. *Firstly*, as Mr Singh points out, LOCs may be requested for purposes *other* than restraint from travel. Paragraph 9 of the Affidavit in Reply lists these:

> "(a) Detain and hand over to local police (in cognizable offence);
>
> (b) Detain and inform (wait for next instructions);
>
> (c) Prevent entry into India (only in case of foreigners);
>
> (d) Prevent departure from India (for both Indian and foreigners);
>
> (e) Inform only arrival/departure (discreet watch);
>
> (f) Customs LOC (inform Customs authority on entry/exit for their follow up)

21 (1987) 3 SCC 622.

(g) Allow departure only if permitted by Court, else exit not allowed (Usually being ordered by the Courts in India);"

Dr Saraf's submission is focussed only on item (d) above. The Passports Act will not cover any of the other purposes.

119. *Secondly*, the impounding of a passport is done by a passport authority. In the case of LOCs, it is the originating agency that has the responsibility and liability; and unless that authority is one under the Passports Act, there is no question of the originating agency impounding or suspending a passport or travel document.

120. This is the point Mr Singh makes in paragraphs 38 and 39 of the written submissions:

> 38. The Passports Act, 1967 deals, inter alia, with issuance of passports and suspension and/or revocation of passports and provisions related thereto. It does not deal with or address aspects pertaining to issuance of a LOC whereby a person can be put on a watchlist or arrested or detained or prevented departure. A LOC as explained earlier is not only limited to preventing departure but encompasses various possible actions.
>
> 39. Further, even with respect to preventing departure it may be noted that the provisions of the Passports Act, 1967 authorise a passport authority to impound a passport where he deems it necessary but as explained in the LOC mechanism, such discretion is vested in the Originating Authority since the facts would be to their exclusive knowledge.

121. Mr Singh also submits that prevention from departure from India is not only and always a matter of impounding or suspending a passport. There is an in-between grey zone where travel may legitimately be required to be curtailed but which does not go quite as far as impounding a passport or travel document. This is a situation not covered by the Passports Act. In paragraph 40 of the written submissions, he explains:

> 40. **A LOC may be issued even though the passport of the person is valid. There may be instances where no cause for revocation or suspension of passport is made out but still a person may be prevented departure for the reasons provided in the OM.** To illustrate one may consider a case where there is no conviction nor a criminal proceeding pending in a Criminal Court as would be necessary for suspension or revocation of a passport but investigation is ongoing. A prime suspect in the ongoing investigation is seeking to flee the country. **In such a case, the investigation agency would need to be empowered without seeking revocation of passport to seek to prevent the departure of the prime suspect. Economic offenders would be prime examples where such an exercise would be necessary**.
>
> (*Emphasis added*)

122. Mr Singh now carefully traces a route through all this. An LOC may indeed curtail the right to travel abroad, but without a suspension or impounding of the passport or travel document. An arrested person cannot travel abroad; but his passport remains valid. The issuance of the LOC is not to cancel or suspend the passport. But if the issuance of the LOC by the originating agency violates any constitutional principle regarding procedural fairness, then that is not the (so to speak) 'look out of the Bureau of Immigration or the Central

Government'; it is the sole and entire liability of the originating agency, in this case, the public sector banks.

123. Mr Singh reiterates the point that the OMs do not themselves impose restrictions on the right to travel abroad, nor do they curtail any fundamental right. They are merely guidelines — and necessary ones to avoid complete arbitrariness — prescribing a mechanism for issuing a LOC for any of several different purposes. Only clauses 8(g) and 8(j) (of the 2010 OM, corresponding to clauses 6(H) and 6(L) of the 2021 consolidated OM), no clause even hints at a travel restriction. Paragraph 8(g) of the 2010 OM (corresponding to clauses 6(H) of the 2021 OM) is further clarified by paragraph 8(h) of the 2010 OM (corresponding to clause 6(I) of the 2021 OM) to cover a situation where there is no cognizable offence under the IPC or other penal law. In that situation, the OM specifically says that the LOC subject *cannot be detained/arrested or prevented from leaving the country*. *The originating agency can only request that they be informed about the arrival / departure of the subject in such cases*. The proforma reasons are also essential. Without these, as clause 8(g) (201 equivalent: clause 6(H)) says the LOC subject *cannot* be arrested or detained.

124. For convenience, we tabulate these clauses from the 2010 and 2021 OMs below.

Sr No	2010 OM	2021 OM
1	**8(g)** Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed *Proforma regarding*	**6(H)** Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed *Proforma regarding*

Sr No	2010 OM	2021 OM
	'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.	*'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained*.
2	**8(h)** *In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating agency can only request that they be informed about the arrival/ departure of the subject in such cases.*	**6(I)** *In cases where there is no cognizable offence under IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The Originating Agency can only request that they be informed about the arrival/departure of the subject in such cases.*
3	8(j) In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, anti social elements etc in larger national interest.	6(L) In exceptional cases, LOCs can be issued even in such cases, as may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B) above, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the

Sr No	2010 OM	2021 OM
		larger public interest at any given point in time.

125. Thus, Mr Singh says, it is not enough to attack the OMs with this kind of a broad-brush approach. The OMs must be navigated carefully for they have in-built safety mechanisms. The rights of persons subjected to LOCs have been balanced and protected.

126. He also submits that the power of arrest or detention in cognisable offence cases, and the power to prevent departure is *already* explicitly available to investigating agencies under the CrPC. For example: Section 37 of the CrPC requires every person to assist a Magistrate or Police Officer reasonably demanding his aid inter alia to prevent the escape of any person who is liable to be arrested or to prevent the breach of peace. Section 38 directs that a person may aid in the execution of a warrant if need be. The CrPC also has detailed provisions regarding the arrest of a person (including arrest by private persons in Section 43). He also refers to the provisions of Sections 72 to 75, 78, 79, 105B(3), 109, 110 and 149 to 152 would also be relevant in this context. It is well-settled that the Code of Criminal Procedure 1973, is one of the exceptions to personal liberty of an individual: *State of Maharashtra v Captain Buddhikota Subha Rao*.[22] This facet was recognized long ago by the Delhi High Court in *Sumer Salkan*.

127. He agrees that the cognizable / no cognizable case scenario under clauses 8(g) and 8(h) of the 2010 OM (corresponding to

22 1989 Supp (2) SCC 605.

clauses 6(H) and 6(I)) of the 2021 OM) does not arise in the present batch of petitions. What concerns the Petitioners is the *exception* in paragraph 8(j) of the 2010 OM, considerably expanded in clause 6(L) of the 2021 consolidated OM. It is this that is being invoked by the PSBs. That clause now has five discernible components, viz., if the departure is:

1. detrimental to the sovereignty or security or integrity of India; or
2. detrimental to the bilateral relations with any country; or
3. detrimental to the strategic ***and/or economic interests of India***; or
4. such that if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State; or
5. such that the departure ought not be permitted in the larger public interest at any given point in time.

128. These are not areas covered by the Passports Act. The public sector banks are invoking part of item 3 of the list above. Consequently, the OMs do not even envisage (let alone confer) any wide and untrammelled power. They only permit the originating agency in *specified circumstances* to seek an LOC preventing the departure of a person from India; and it is for the originating agency to ensure that all other legal (and constitutional) requirements are met. Further, the clause is meant to be used in *exceptional* circumstances. Every routine case cannot be an exceptional one. The mere possibility — or even actuality — of abuse by public sector

banks will not invalidate the provision. Several courts have upheld LOCs issued under this provision: *Kiran Somasekhar v State of Andhra Pradesh*;[23] *Chaitya Shah v Union of India*;[24] *C Sivasankaran v Foreign Regional Registration Officer* (where there was an ongoing investigation in a criminal case of fraud by the CBI);[25] *Kakulamarri Kalyan Srinivasa Rao v Central Bureau of Investigation Bank Securities and Frauds Cell*;[26] *Mohamed Anzer v The State through Inspector of Police*;[27] *GSC Rao v State of UP*.[28]

129. There are, Mr Singh points out, unforeseeable situations that must be addressed. The authorities mentioned are sufficiently senior to be assumed to act responsibly and within the framework of the law. Most are investigative agencies with powers of criminal investigation. But situations are possible even outside criminal law that might demand immediate travel curtailment (Covid-era travel is cited as an example in the public interest). Every case has to be measured separately; there can be no omnibus challenge to the OMs on the doctrine of occupied field. Even in cases other than a criminal investigation, such a power may be necessary. For instance, the SFIO may seek to prevent a person from absconding from India under the 'exceptional circumstances' clause where a SFIO investigation is still

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23 2021 SCC OnLine AP 3431.

24 2021 SCC OnLine Bom 3967 regarding the Serious Fraud Investigation Office (SFIO) triggered LOC.

25 2019 SC OnLine Mad 2587. Affirmed in appeal: see 202 SCC OnLine Mad 2656.

26 2019 SCC OnLine Mad 15924.

27 2015 SCC OnLine Mad 6099.

28 2018 SCC OnLine All 599.

ongoing and should not be allowed to be compromised. Under the Companies Act 2013, the SFIO does not register a FIR at all. Yet it investigates fraud and based on its findings, files a complaint. There is no reason why such an investigation should be allowed to be hobbled. Mr Singh therefore submits that the exceptional cases clause is limited and narrowly defined. It is necessary in the larger public interest. Further, the OM does not prescribe how or in what manner a LOC must be issued under clause 8(j) of the 2010 OM (corresponding to Clause 6(L) of the 2021 OM, which is an expansion). The originating agency must exercise its own discretion. If the LOC it requests impinges a fundamental right, it is for the originating agency to explain and defend the measure it sought.

130. Consequently, from any perspective, it is impossible to hold, he submits, that the Passports Act completely occupies the field.

131. Dr Saraf's response is that no provision of the CrPC constitutes, or can ever constitute, the 'statutory legal backing' for the OMs and the LOCs regime. Indeed, the OMs are framed — as the Affidavit in Reply of the Union of India itself says and the OMs themselves say — precisely because there is a legislative vacuum. Neither Section 37 nor Section 41(1) of the CrPC empower anyone to issue a LOC. In any case, those powers are available only to the police. The Chairman, Managing Director or CEO of a bank is not a policeman. The originating agency is a non-police agency. It provides no recourse. It takes no prior approval. There is no form of oversight, let alone judicial oversight. In *Suresh Nanda*, the Supreme Court held that the power to impound a passport is necessarily excluded from

any police power under Section 104 of the CrPC *because of the Passports Act*.

132. We believe Mr Singh is correct and that Dr Saraf may have misunderstood the frame of his submissions. We have not understood Mr Singh to suggest that the OMs are issued *under* the CrPC or even because of it. His reference to the CrPC is merely illustrative; and his submission has many such illustrations. All of them are directed to one proposition: that, leaving aside these PSBs and their LOCs, there are conceivably myriad situations in which a LOC even restraining departure without impounding of a passport or a travel document may be necessary and perfectly legitimate. Mr Singh is correct in saying that there is no one-size-fits-all formula and that the Petitioners have extrapolated from the PSB-originating LOCs to every single LOC irrespective of origin, reason or purpose. For instance, it can hardly be suggested that a detain-and-hand-over to local police (in cognizable offences) LOC, or prevent entry into India (only in case of foreigners) LOC; or an inform-only of arrival/departure (discreet watch) LOC, a customs LOC or an LOC in enforcement of a court prohibition are all universally bad or covered by the Passports Act.

133. For this reason, too, we are not persuaded that the OMs generally are without the authority of law, arbitrary or illegal per se. As we have seen, there are many situations, diverse purposes and varied actions that might legitimately form the basis of a specific LOC.

134. This is distinct from the argument that permitting the LOCs at the instance of public sector banks and by their senior officials is itself a vulnerability in the OMs; that is to say, the OMs are bad to that extent. We proceed to consider that set of submissions next.

I. ARE THE OMS ULTRA VIRES ARTICLE 14? IMPERMISSIBLE CLASSIFICATION IN THE OMS

135. We have already seen how, at the instance of the Ministry of Finance, the OMs were amended to include "Chairmen/Managing Directors/Chief Executive Officers of all public sector banks" at item 6(B)(xv) of the list of originating agencies in the 2021 consolidated OM. We keep in mind the submission of Mr Singh that this inclusion does not exempt the PSBs or their named officers from compliance with every legal standard.

136. The case of the Petitioners is that this is, pure and simple, a classic case of improper and impermissible classification. There is no logical reason why the public sector banks should be treated as a class apart from other banks, especially when *all* banks, privately held and those in the public sector are equally regulated by the RBI inter alia under the Banking Regulation Act 1949 and various circulars issued by the RBI (including those relating to wilful defaulters, banking fraud, declaration of non-performing assets and so forth). Dr Saraf points out that it is utterly trivial to demonstrate that this classification is impermissible. There is, first of all, no discernible, let alone stated, nexus between the classification and the purpose sought

to be achieved; that is to say, why public sector banks *alone* should have this authority and not other banks that are also identically controlled and regulated. As he points out, except for State Bank of India, not a single public sector bank is in the top five banking companies in India. All the others are private banks. The consequences are immediately obvious. If a borrower arranges its or her or his affairs so that the dealings are only with non-public sector banks, no LOC can ever be issued against the borrower or individuals connected with the borrower under these OMs. But if there is even one public sector bank, then there is a risk of an LOC being issued.

137. The classification defence comes from both the public sector banks and the Mr Singh, the learned ASG. Mr Singh draws on the Affidavit in Reply filed by one of the respondent banks, basically to say that there has been a recent upsurge in the number of wilful defaulters and economic offenders of public financial institutions and some have fled the country 'usurping public money or defrauding such public financial institutions'.

138. But this is surely no ground, for no one is able to show that *only* public sector banks are so affected. In paragraph 82 of the written submissions, there is a reference to Nirav Modi and Vijay Mallya. Poorer examples are hard to find because the entities that these persons controlled also had exposure to other banks.

139. The submission that private banks have not complained entirely misses the point. That would be an argument on *discrimination*, someone complaining about being wrongfully

included or excluded. The argument confuses *discrimination* with *classification*. The two sometimes overlap, but not always. Someone who is wrongly brought in or left out may complain of invidious discrimination, which would include classification. But is also legitimate to argue that through an *impermissible classification*, one that is not reasonable, does not treat those similarly situated alike, and does not demonstrate a nexus with the object of the classification, the complainant has been made to suffer an infringement of some fundamental right, although there is no *discrimination* or singling out of the complainant per se.

140. Even there, the defence is untenable for a simple reason. This classification creates a wholly artificial distinction between those who borrow from one or more public sector banks and those who borrow only from private sector banks. The first is liable to have some fundamental right adversely affected. The second is not. Why there should be such a distinction is unclear. If it is suggested that those who borrow from public sector banks are undeserving or not entitled to protection under Part III of the Constitution, then that submission has only to be stated to be rejected. The issue therefore is whether it is permissible to confer this kind of power on one segment of the banking sector without demonstrable and meaningful modes of distinction between others in the banking sector.

141. It is suggested that, at best, this is a case of under-classification; there can, indeed, legitimately be a valid classification with a solitary member of the class. But the reliance on the Supreme Court decision in *State of Gujarat v Shri Ambica Mills Ltd*[29] is entirely inaccurate. The

29 (1974) 4 SCC 656.

Supreme Court did *not* hold, as is being suggested, that all under-inclusion is axiomatically or a priori valid. Indeed, it held the reverse, as we can see from the very paragraphs cited before us:

> "54. **A reasonable classification is one which includes all who are similarly situated and none who are not.** The question then is: what does the phrase "similarly situated" mean? **The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good**.
>
> 55. **A classification is under-inclusive when all who are included in the class are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under-inclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the same burden on others who are similarly situated.** A classification is over-inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. In other words, this type of classification imposes a burden upon a wider range of individuals than are included in the class of those attended with mischief at which the law aims. Herod ordering the death of all male children born on a particular day because one of them would some day bring about his downfall employed such a classification.
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> 56. The first question, therefore, is, whether the exclusion of establishments carrying on business or trade and employing less than 50 persons makes the classification under-inclusive, when it is seen that all factories employing 10 or 20 persons, as the case may be, have been included and

that the purpose of the law is to get in unpaid accumulations for the welfare of the labour. Since the classification does not include all who are similarly situated with respect to the purpose of the law, the classification might appear, at first blush, to be unreasonable. But the Court has recognised the very real difficulties under which legislatures operate — difficulties arising out of both the nature of the legislative process and of the society which legislation attempts perennially to re-shape — *and it has refused to strike down indiscriminately all legislation embodying classificatory inequality here under consideration*. Mr Justice Holmes, in urging tolerance of under-inclusive classifications, stated that **such legislation should not be disturbed by the Court unless it can clearly see that there is no fair reason for the law which would not require with equal force its extension to those whom it leaves untouched.** [*Missouri, K&T Rly v. May*, 194 US 267, 269] What, then are the fair reasons for the non-extension? What should the Court when it is faced with a law making an under inclusive classification i areas relating to economic and tax matters? Should it, by its judgment, force the Legislature to chose between action or perfection?"

(*Emphasis added*)

142. But the next portions of *Ambica Mills* are crucial:

58. **The piecemeal approach to a general problem permitted by under-inclusive classifications, appears justified when it is considered that legislative dealing with such problems is usually an experimental matter.** It is impossible to tell how successful a particular approach may be, what dislocations might occur, what evasions might develop, what new evils might be generated in the attempt. Administrative expedients must be forged and tested. **Legislators, recognising these factors, may wish to**

proceed cautiously, and courts must allow them to do so. [See Joseph Tussman and Jacobusten Brook, The Equal Protection of the Law, 37 California Rev 341].

59. **Administrative convenience in the collection of unpaid accumulations is a factor to be taken into account in adjudging whether the classification is reasonable.** A legislation may take one step at a time addressing itself to the phase of the problem which seems most acute to the legislative mind. **Therefore, a legislature might select only one phase of one field for application of a remedy.** [See *Two Guys from Harrison-Allentown v. McGinlev*, 366 US 582, 592]

60. It may be remembered that Article 14 does not require that every regulatory statute apply to all in the same business: **where size is an index to the evil at which the law is directed, discriminations between the large and small are permissible, and it is also permissible for reform to take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind**.

61. A legislative authority acting within its field is not bound to extend its regulation to all cases which it might possibly reach. **The legislature is free to recognise degrees of harm and it may confine the restrictions to those classes of cases where the need seemed to be clearest** (*see Mutual Loan Co. v. Martell*, 56 L Ed 175, 180]).

62. In short, the problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions requiring different remedies. Or so the legislature may think (see *Tigner v. Texas*, 310 US 141].

64. **Laws regulating economic activity would be viewed differently from laws which touch and concern freedom of speech and religion, voting, procreation, rights with respect to criminal procedure, etc.** The

prominence given to the equal protection clause in many modern opinions and decisions in America all show that **the Court feels less constrained to give judicial deference to legislative judgment in the field of human and civil rights than in that of economic regulation and that it is making a vigorous use of the equal protection clause to strike down legislative action in the area of fundamental human rights.** [See "Developments Equal Protection", 32 Harv, Law Rev 1065, 1127]

63. Once an objective is decided to be within legislative competence, however, the working out of classifications has been only infrequently impeded by judicial negatives. The Court's attitude cannot be that the State either has to regulate all businesses, or even all related businesses, and in the same way, or, not at all. An effort to strike at a particular economic evil could not be hindered by the necessity of carrying in its wake a train of vexatious, troublesome and expensive regulations covering the whole range of connected or similar enterprises.

Equal protection clause rests upon two largely subjective judgments: one as to the relative invidiousness of particular differentiation and the other as to the relative importance of the subject with respect to which equality is sought. [See Cox, "The Supreme Court Foreword", 1965 Term, 80 Harv. Daw Rev. 91-95]

65. The question whether, under Article 14, a classification is reasonable or unreasonable must, in the ultimate analysis depend upon the judicial approach to the problem. The great divide in this area lies in the difference between emphasising the actualities or the abstractions of legislation. The more complicated society becomes, the greater the diversity of its problems and the more does legislation direct itself to the diversities.

(*Emphasis added*)

143. Clearly, the submission on under-inclusion or under-classification is misdirected. The inclusion *only* of public sector banks is not experimental. It is not a cautious first step. It is per se exclusionary of those identically situated.

144. Ms Maravarman endeavoured an argument that PSBs have much wider exposure than private sector banks (based on 2019 data, unverified and with no data source referenced, let alone a verifiable one). Questions of size (and, as we noted, four of the five biggest banks in India are *not* public sector banks) will not sustain the defence, for it is of no avail when it is set up against an infringement of fundamental rights and human rights. In that situation, size does not matter.

145. More interesting still is the tabulation in paragraph 3 her written submissions of those borrowers 'who have settled abroad'. This is in the context of paragraphs 28 and 29 of an Affidavit in Reply on behalf of the one of the PSBs, and referenced by Mr Singh:

> 28. I say that vide O.M No. 25016/10/2017-Imm(Pt) dated 12.10.2018 (Ref Exh "C", hereinafter referred to as the O.M dated 12.10.2018) it has been provided that LOC could also be issued on the request of (Chairman of State Bank of India and Managing Directors & Chief Executive Officers of the all Public Sector Banks". **It is further submitted that the reason for issuance of O.M dated 12.10.2018 is that in the recent past there have been incidents where wilful defaulters or economic offenders of public financial institutions have left the country after usurping public money or defrauding such public financial institutions. It is further submitted that once such wilful defaulters or economic offenders leave the shores of India, the process**

> **of tracking them down and bringing them to justice is a long drawn battle, which inordinately delays in the recovery of public funds**.
>
> 29. **I say that the Government of India is finding it extremely difficult, cumbersome and expensive and is facing lot of legal roadblocks in getting wilful defaulters and economic offenders back to India to face the law, who successfully evaded the process of law by fleeing from the country**."
>
> (*Emphasis added*)

146. To begin with, paragraphs 28 and 29 do not even attempt to indicate that this is a problem *peculiar to PSBs*. What we are being told is that (perhaps because PSBs seem to be more liberal (or less cautious) in lending) the problem for PSBs is more acute in terms of volumes, and consequently a trammelling of Article 21 rights of PSB borrowers may be perfectly all right. That borders on the absurd.

147. But just how many such financial fugitives are there, according to the banks, persons who have 'settled abroad' and therefore present this huge problem to PSBs? Paragraph 3 of Ms Maravarman's note tell us. There are *five*. That is all. Exactly *five*: Vijay Mallya, Nirav Modi, Mehul Choksi, Jatin Mehta and "Sandesnas (Sterling Biotech)" (*sic*; presumably Nitin Sandesara and family). This, we are asked to believe, is such a monumental problem that every single borrower from a PSB, with no regard at all to degree, must be lumped in the class.[30]

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30 The rest of the note is a reproduction of Articles 13, 19 and 21. The note from Mr Shinde does not address the constitutional point meaningfully. It

148. The remaining question goes totally unanswered. Is it to be assumed or pre-supposed by a court that just because a borrower is travelling abroad therefore he is *bound to settle abroad and flee the country*?

149. Consequently, on the question of the Article 14 challenge in relation to impermissible or invalid classification by inclusion of only PSBs (through their Chairmen, Managing Directors and Chief Executive Officers) is ultra vires Article 14 as being an impermissible and invalid classification, and being manifestly arbitrary.

150. Clause 8(b)(xv) of 2010 amended OM (equivalent to Clause 6(B)(xv) of the 2021 consolidated OM) is struck down.

J. THE VALIDITY OF THE IMPUGNED LOCS

151. Once we have held that the inclusion of the PSBs is impermissible, every LOC issued must necessarily fail. But we have heard elaborate arguments on the footing that even if the inclusion of PSBs is valid, the LOCs themselves are liable to be quashed. We proceed to consider these submissions.

152. The challenge is mounted on two distinct grounds.

(i) Every LOC is ultra vires Articles 14 and 21 of the Constitution of India (including for infringing a

focusses on the individual defaults alleged. Ms Parasnis has presented some authorities.

fundamental right except according to a procedure established by law; and a failure to abide by mandated minimum procedural norms; unreasonableness; arbitrariness; want of proportionality), and

(ii) All the LOCs are arbitrary, unreasonable and disproportionate in equating the financial interest of a public sector bank with the "the economic interests of India".

153. We decline to consider the submission that the LOCs are 'ultra vires the OMs', because that posits that the OMs are 'the law', i.e., are statutory. They are not. If the OMs are merely guidelines or a framework, then the LOCs cannot stand or fall depending on how closely they hew to that framework. If the framework is bad or illegal or invalid, everything done under that framework is bad, illegal and invalid. But if the framework is not held to be illegal, the LOC may still be held to be illegal on distinct grounds, and not merely for non-adherence to general guidelines. The submission in this regard goes nowhere.

154. Before we proceed further, the some features that appear to be common to all LOCs.

I. Common to all LOCs

155. The LOCs all have at least these commonalities.

(1) No prior notice is ever given to the subject of the intended or proposed LOC.

(2) There is no prior hearing.

(3) There is no prescribed avenue of recourse or hearing or opportunity to make a representation either before or after the LOC is issued.

(4) A copy of the LOC is never given, nor is a cause or reason disclosed. In many cases, the LOCs were disclosed only in these proceedings.

II. No oversight mechanism

156. There is no prior oversight mechanism of any kind. The Chairman, Managing Director or Chief Executive Officer of the public sector bank is supposedly sufficiently senior to serve as an adequate check. That can never be. As Dr Saraf points out, the bank is the lender in a transaction in which the person against whom the LOC is issued is a borrower and/or a guarantor. Thus, such a coercive power impinging on the fundamental rights of a person can be exercised against him by a private party who is his opponent in a lis and has the mandate to recover monies from him. This is manifestly arbitrary and in violation of Articles 14 and 21 of the Constitution.

157. Clause 8(k) of the 2010 OM as amended (equivalent to Clause 6(M) of the 2021 OM) provides oversight even for non-police bodies like the NCW and NHRC by requiring them to first approach the police and have the police scrutinise and then make the request themselves after following the procedure prescribed in the OM. Under the Protection of Human Rights Act, 1993, the composition of

the NHRC includes a Chairperson and two additional members who have been a judge of the Supreme Court and a Chief Justice of a High Court respectively and therefore, the NHRC is staffed with legally knowledgeable and responsible members. Nevertheless, even these persons — unarguably more legally equipped than the Chairman, Managing Directors and Chief Executive Officers of public sector banks — are required to go through appropriate police channels in order to exercise the power to issue an LOC. In effect, the Chairmen, Managing Directors and Chief Executive Officers have been elevated to the same status as high-ranking police officers, i.e. they have been included in Clause 8(b) (Clause 6(B) of the 2021 OM) and not 8(k)/Clause 6(M). This is simply incomprehensible.

III. No internal guidelines

158. There are no stated or disclosed guidelines applicable to PSBs. We find this particularly problematic. We have been asked simply to 'trust' the public sector banks — because they are public sector banks and for no other reason. We are not told whether this power to trigger a LOC can be utilized above a certain debt threshold or even for a default of a single rupee. We are not told if it will be applied to credit card unpaid debt, overdue vehicle loans, home loans, collateralized personal loans or the like. There is no statement against whom the LOC can be issued, in what circumstances and subject to what conditions. Is a debt of Rs 5 crores sufficient to trigger a LOC? Or must it be at least Rs 100 crores? Who will decide this? Is it consistent across PSBs? Can it be applied to employees of PSBs themselves? Or, for that matter, can one PSB apply it to an overdue credit card debt of

the Chief Executive Officer of some other PSB? If there is to be this kind of power, and the theory is that it is legitimate, then like all theories it must be tested at its polarities or extremities. If the theory or assumption or premise collapses there, the entire edifice crumbles. Clearly, the power is unguided and uncanalized.

159. Under our Constitution, the exercise of executive power is, if not restrained, at least modulated. Above all, the exercise of such executive power cannot ever be arbitrary, whimsical, capricious or unguided. Many Supreme Court decisions have so held in widely divergent contexts: *State of Madhya Pradesh & Anr v Baldeo Prasad*;[31] *State of Rajasthan v Nath Mal & Anr*.[32] In *State of West Bengal v Anwar Ali Sarkar & Ors*,[33] the Supreme Court specifically held that discretionary power even if conferred by legislation (which the OMs are not), if uncontrolled and unguided would render the legislation itself ultra vires Article 14. It is no answer to say that the executive has unlimited power to delegate. The action itself could not be sustained.

160. Ms Mistry relies, we think with justification, on the decision of the Supreme Court in *Dwarka Prasad Laxmi Narain v State of Uttar Pradesh & Ors*.[34] In paragraphs 9 and 10, the Supreme Court held:

> 9. The provision contained in Clause 3(1) of the Order that "no person shall stock, sell, store for sale or otherwise utilise or dispose of coal except under a licence granted

31 AIR 1961 SC 293.

32 AIR 1954 SC 307.

33 1952 1 SCC 1 : AIR 1952 SC 75.

34 1954 SCR 803.

under this Order" is quite unexceptional as a general provision; in fact, that is the primary object which the Control Order is intended to serve. There are two exceptions engrafted upon this general rule: the first is laid down in sub-clause (2)(a) and to that no objection has been or can be taken. The second exception, which is embodied in sub-clause (2)(b) has been objected to by the learned counsel appearing for the petitioners. This exception provides that nothing in Clause 3(1) shall apply to any person or class of persons exempted from any provision of the above sub-clause by the State Coal Controller, to the extent of such exemption. **It will be seen that the Control Order nowhere indicates what the grounds for exemption are, nor have any rules been framed on this point. An unrestricted power has been given to the State Controller to make exemptions, and even if he acts arbitrarily or from improper motives, there is no check over it and no way of obtaining redress. Clause 3(2)(b) of the Control Order seems to us, therefore, prima facie to be unreasonable.** We agree, however, with Mr Umrigar that this portion of the Control Order, even though bad, is severable from the rest and we are not really concerned with the validity or otherwise of this provision in the present case as no action taken under it is the subject-matter of any complaint before us.

10. The more formidable objection has been taken on behalf of the petitioners against Clause 4(3) of the Control Order which relates to the granting and refusing of licences. **The licensing authority has been given absolute power to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any licence under this Order and the only thing he has to do is to record reasons for the action he takes. Not only so, the power could be exercised by any person to whom the State Coal Controller may choose to delegate the same, and the**

choice can be made in favour of any and every person. It seems to us that such provision cannot be held to be reasonable. No rules have been framed and no directions given on these matters to regulate or guide the discretion of the Licensing Officer. Practically the Order commits to the unrestrained will of a single individual the power to grant, withhold or cancel licences in any way he chooses and there is nothing in the Order which could ensure a proper execution of the power or operate as a check upon injustice that might result from improper execution of the same. Mr Umrigar contends that a sufficient safeguard has been provided against any abuse of power by reason of the fact that the licensing authority has got to record reasons for what he does. This safeguard, in our opinion, is hardly effective; for there is no higher authority prescribed in the Order who could examine the propriety of these reasons and revise or review the decision of the subordinate officer. The reasons, therefore, which are required to be recorded are only for the personal or subjective satisfaction of the licensing authority and not for furnishing any remedy to the aggrieved person. It was pointed out and with perfect propriety by Mr Justice Matthews in the well-known American case of *Yick Wo v. Hopkins* [1886 SCC OnLine US SC 188 : 30 L Ed 220 : 118 US 356 at p. 373 (1886)] **that the action or non-action of officers placed in such position may proceed from enmity or prejudice, from partisan zeal or animosity, from favouritism and other improper influences and motives which are easy of concealment and difficult to be detected and exposed, and consequently the injustice capable of being wrought under cover of such unrestricted power becomes apparent to every man, without the necessity of detailed investigation.** In our opinion, the provision of Clause 4(3) of the U.P. Coal Control Order must be held to void as imposing

> an unreasonable restriction upon the freedom of trade and business guaranteed under Article 19(1)(g) of the Constitution and not coming within the protection afforded by clause (6) of the Article.
>
> (*Emphasis added*)

161. Procedural or processual vagueness is equally proscribed. This was most dramatically illustrated by the Supreme Court in *Shreya Singhal v Union of India*.[35]

IV. Natural Justice: hearing and bias

162. Two principles have informed judicial review in this country throughout its jurisprudential history: (i) *Nemo debet esse judex in propria causa* — no person may be a judge in her or his own cause, or no man can act as both at the one and the same time—a party or a suitor and also as a Judge, or the deciding authority must be impartial and without bias; and (ii) *audi alteram partem* — Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority. The latter principle is ancient; we find it in every sacred text somewhere.[36]

163. In the issuance of LOCs by public sector banks, there is no prior hearing at all; and, equally, there can be no doubt that the issuing

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35 (2015) 5 SCC 1.

36 Bible, New King James Version, John 7:51 : "*Does our law judge any man before it hears him and knows what he is doing?*" Proverbs, 18:13: "*He who answers a matter before he hears it, it is folly and shame to him.*"

bank is directly a claimant. There is, therefore, a complete and direct violation of both rules of natural justice, and a resultant bias. This is not just a *likelihood* of bias, for the self-interest of the bank is actually the avowed reason for the unilateral action.

164. The Supreme Court decision in *PD Dinakaran (1) v Judges Inquiry Committee*,[37] has an encyclopaedic overview. This is so utterly fundamental, that the relevant paragraphs must be quoted:

> 31. **The consideration of the aforesaid question needs to be prefaced by a brief reference to the nature and scope of the rule against bias and how the same has been applied by the courts of common law jurisdiction in India for invalidating judicial and administrative actions/orders. Natural justice is a branch of public law. It is a formidable weapon which can be wielded to secure justice to citizens. Rules of natural justice are "basic values" which a man has cherished throughout the ages. Principles of natural justice control all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is a part of law which relates to administration of justice. Rules of natural justice are indeed great assurances of justice and fairness. The underlying object of the rules of natural justice is to ensure fundamental liberties and rights of subjects. They thus serve public interest. The golden rule which stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice.**
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> 32. **The traditional English Law recognised the following two principles of natural justice:**

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37 (2011) 8 SCC 380.

> **"(a) *Nemo debet esse judex in propria causa*: No man shall be a judge in his own cause, or no man can act as both at the one and the same time—a party or a suitor and also as a Judge, or the deciding authority must be impartial and without bias; and**
>
> **(b) *Audi alteram partem*: Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority."**

However, over the years, the courts throughout the world have discovered new facets of the rules of natural justice and applied them to judicial, quasi-judicial and even administrative actions/decisions. At the same time, the courts have repeatedly emphasised that the rules of natural justice are flexible and their application depends upon the facts of a given case and the statutory provisions applicable, if any, nature of the right which may be affected and the consequences which may follow due to violation of the rules of natural justice.

41. In this case, we are concerned with the application of first of the two principles of natural justice recognised by the traditional English Law i.e. *nemo debet esse judex in propria causa*. **This principle consists of the rule against bias or interest and is based on three maxims: (i) No man shall be a judge in his own cause; (ii) Justice should not only be done, but manifestly and undoubtedly be seen to be done; and (iii) Judges, like Caesar's wife should be above suspicion. The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as Judge of a cause in which he himself has some interest either**

pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undetected. **He should not allow his personal prejudice to go into the decision making. The object is not merely that the scales be held even; *it is also that they may not appear to be inclined.*** If the Judge is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially.

42. **A pecuniary (bias) interest, however small it may be, disqualifies a person from acting as a Judge.** Other types of bias, however, do not stand on the same footing and the courts have, from time to time, evolved different rules for deciding whether personal or official bias or bias as to subject-matter or judicial obstinacy would vitiate the ultimate action/order/decision.

50. **It is, of course, clear that any direct pecuniary or proprietary interest in the subject-matter of a proceeding, however small, operates as an automatic disqualification. In such a case the law assumes bias.** What interest short of that will suffice?

57. It is, thus, evident that the English courts have applied different tests for deciding whether non-pecuniary bias would vitiate judicial or quasi-judicial decision. Many Judges have laid down and applied the "real likelihood" formula, holding that the test for disqualification is whether the facts, as assessed by the court, give rise to a real likelihood of bias. Other Judges have employed a "reasonable suspicion" test, emphasising that justice must be seen to be done, and that no person should adjudicate in any way if it might reasonably be

thought that he ought not to act because of some personal interest.

62. **In India, the courts have, by and large, applied the "real likelihood test" for deciding whether a particular decision of the judicial or quasi-judicial body is vitiated due to bias**. In Manak *Lal v. Dr. Prem Chand Singhvi* [AIR 1957 SC 425] it was observed: (AIR p. 429, para 4)

> "5. … every member of a tribunal that [sits to] try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that **Judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal.** It is in this sense that it is often said that justice must not only be done but must also appear to be done."

71. **The principles which emerge from the aforesaid decisions are that no man can be a judge in his own cause and justice should not only be done, but manifestly be seen to be done.** Scales should not only be held even but they must not be seen to be inclined. **A person having interest in the subject-matter of cause is precluded from acting as a Judge. To disqualify a person from adjudicating on the ground of interest in the subject-matter of lis, the test of real likelihood of the bias is to be applied.** In other words, one has to enquire as to whether there is real danger of bias on the part of the person against whom such apprehension is

> expressed in the sense that he might favour or disfavour a party. **In each case, the court has to consider whether a fair-minded and informed person, having considered all the facts would reasonably apprehend that the Judge would not act impartially. To put it differently, the test would be whether a reasonably intelligent man fully apprised of all the facts would have a serious apprehension of bias.** In cases of non-pecuniary bias, the "real likelihood" test has been preferred over the "reasonable suspicion" test and the courts have consistently held that in deciding the question of bias one has to take into consideration human probabilities and ordinary course of human conduct. **We may add that real likelihood of bias should appear not only from the materials ascertained by the complaining party, but also from such other facts which it could have readily ascertained and easily verified by making reasonable inquiries**.
>
> (*Emphasis added*)

165. The fact that the public sector bank is directly concerned with the recovery of debt *and is yet armed with this unilateral power* only makes matters worse. As we have seen, in *Rajesh Aggarwal*, the Supreme Court specifically noted, inter alia, that the principles of *audi alteram partem* would be read into any processual system that affected civil rights. But these are *fundamental* rights; and the right to Article 21 cannot be abrogated in this fashion. Here, the public sector bank becomes judge and executioner at once. The canon of *nemo judex in causa sua* is automatically violated.

V. No demonstrated nexus to the purpose sought to be achieved

166. Not once have we been shown that preventing anyone travelling abroad has even remotely addressed the issue — viz., that debt has been recovered *because* the person has been denied permission to travel. Indeed, carried further there is no reason on this logic why a person should simply be prevented from travelling overseas. Even if it were so shown, this would not bring it within the framework of a permissible restriction on an Article 21 right.

167. If the fundamental right to personal liberty is to be compromised like this, we might as well have actual detention. The LOCs boil down to nothing but a strong-arm tactic to bypass or leapfrog what PSBs clearly see as inconveniences and irritants — the courts of law.

VI. Unreasonableness and disproportionality

168. The law in this regard is well settled. Our Supreme Court, on an exhaustive consideration of the law as it evolved in England, and taking into account the principles enunciated in *Associated Provincial Picture Houses v Wednesbury Corporation*[38] and *Council of Civil Service Unions v Minister for the Civil Service ("**CCSU**")*[39] has drawn a

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38 *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*, [1948] 1 KB 223

39 *Council Of Civil Service Unions & Ors v Minister for the Civil Service*[1983] UKHL 6 : [1984] 3 All ER 935 : [1984] 3 WLR 1174.

distinction in *Union of India v G Ganayutham*[40] between primary and secondary judicial review. The first occurs where fundamental rights are involved, the second where they are not. The Supreme Court itself has had occasion to comment that there may indeed be cases in judicial review that are covered by both. Further, the evolution of law has taken into account emerging doctrines, that is to say Wednesbury unreasonableness on the one hand and proportionately as a more recent emergent doctrine.

169. In *Wednesbury*, Lord Greene said:

> "… **It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority. … In another, it is taking into consideration extraneous matters.** It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

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40 (1997) 7 SCC 463.

…

"… **it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable.** … The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another."

(*Emphasis added*)

170. In *CCSU*, Diplock LJ for the House of Lords spoke of 'irrationality' in these words:

> By 'irrationality' I mean what can by now be succinctly referred to as *Wednesbury* unreasonableness**. It applies to a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it**.
>
> (*Emphasis added*)

171. Even as *Wednesbury* unreasonableness continued to inform decisions of Courts with the power of judicial review, not only here but in many other jurisdictions, there came into ascendance a parallel doctrine of proportionality. This is not necessarily linked to the award of punishment. It may be a facet of reasonableness. Its tests are slightly different from those of *Wednesbury* unreasonableness. The doctrine tells us that in any executive or administrative action, the act or thing done or ordered to be done cannot be so disproportionate to the cause for that order. To put it more colloquially, an administrator

or an executive cannot use our hammer to kill an ant.[41] See: *R v Goldstein*, per Diplock LJ [42]: "This would indeed be using a sledge-hammer to crack a nut." Or a paring knife, not a battle axe: *Central Cooperative Bank v Coimbatore District Central Cooperative Bank Employees Association & Anr*.[43]

172. In *CCSU*, Diplock LJ foresaw the advent of the proportionality doctrine:

> "**Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'**. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. *I have in mind particularly the possible adoption in the future of the principle of 'proportionality'*… "
>
> (*Emphasis added*)

173. The *CCSU* standard was accepted in *Union of India & Anr v G Ganayutham*.[44] The two doctrines received an elucidation in *Om*

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41 See: *R v Goldstein*, [1983] 1 WLR 151 : [1983] 1 All ER 434 : per Diplock LJ: "This would indeed be using a sledge-hammer to crack a nut." Or a paring knife, not a battle axe: *Central Cooperative Bank v Coimbatore District Central Cooperative Bank Employees Association & Anr*, (2007) 4 SCC 669.

42 [1983] 1 WLR 151 : [1983] 1 All ER 434.

43 (2007) 4 SCC 669.

44 (1997) 7 SCC 463.

Kumar & Ors v Union of India,[45] particularly on the question of primary judicial review (where fundamental rights are involved) and secondary judicial review (where they are not).[46] The scope of the proportionality principle came to be examined in *Coimbatore District Central Cooperative Bank v Coimbatore District Central Cooperative Bank Employees Association & Anr*.[47] The Supreme Court said:

> 17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. **If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".**
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> 18. **"Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.**
>
> …

45 (2001) 2 SCC 386.

46 See also: *Kerala State Beverages (M&M) Corporation Ltd v PP Suresh & Ors*, (2019) 9 SCC 710.

47 (2007) 4 SCC 669.

> 21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no "pick and choose", selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. **It is not permissible to use a "sledgehammer to crack a nut". As has been said many a time; "where paring knife suffices, battle axe is precluded"**.
>
> (*Emphasis added*)

174. As the Supreme Court itself noted, the proportionality principle is a test of whether the decision-maker has achieved the correct balance: *Chairman, All India Railway Recruitment Board & Anr v K Shyam Kumar & Ors*.[48] In *Ganayutham*, the Supreme Court said:

> **To arrive at a decision on "reasonableness" the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one**.
>
> (*Emphasis added*)

175. At least one decision of the Supreme Court reviews more recent thinking in England that the doctrine of proportionately has supplanted *Wednesbury* unreasonableness but our Supreme Court held that there is no such clear-cut division: *Jitendra Kumar & Ors v*

48 (2010) 6 SCC 614.

State of Haryana & Anr.[49] In given cases both will apply. *Wednesbury* unreasonableness will speak to the rationality of a decision-making process. It has distinct components. One of these is a test of procedural irregularity. Another test is one of reasonableness, to test whether the decision is of a kind that no reasonable person could ever take. In the words of Diplock LJ in *CCSU*, the Wednesbury principle, formulated by Lord Greene, is whether the decision is so outrageous in its defiance of law or logic that it cannot possibly be sustained. Proportionality will speak to, as the Supreme Court said in *All India Recruitment Board*, examining if the decision achieves the required balance. In a complete analysis, the Supreme Court held:

> *Wednesbury and Proportionality*
>
> 36. *Wednesbury* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] **applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to "assess the balance or equation" struck by the decision-maker. Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard the fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice it to say that**

49 (2008) 2 SCC 161 : "We, with greatest respect, do not have any such problem. This Court not only has noticed the development of law in this field but applied the same also."

there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalise or lay down a straitjacket formula and to say that *Wednesbury* has met with its death knell is too tall a statement. Let us, however, recognise the fact that the current trend seems to favour proportionality test but *Wednesbury* has not met with its judicial burial and a State burial, with full honours is surely not to happen in the near future.

37. **Proportionality requires the court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. The court entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate i.e. well balanced and harmonious, to this extent the court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere.**

38. Leyland and Anthony in Textbook on Administrative Law (5th Edn. OUP, 2005) at p. 331 has amply put as follows:

> "**Proportionality works on the assumption that administrative action ought not to go beyond what is necessary to achieve its desired results (in everyday terms, that you should not use a sledgehammer to crack a nut) and in contrast to irrationality is often**

understood to bring the courts much closer to reviewing the merits of a decision."

39. The courts have to develop an indefeasible and principled approach to proportionality, till that is done there will always be an overlapping between the traditional grounds of review and the principle of proportionality and the cases would continue to be decided in the same manner whichever principle is adopted. **Proportionality as the word indicates has reference to variables or comparison, it enables the court to apply the principle with various degrees of intensity and offers a potentially deeper inquiry into the reasons, projected by the decision-maker**.

Application of the principles

42. We will now apply the proportionality test to the three alternatives suggested. Principle of proportionality, as we have already indicated, is more concerned with the aims of the decision-maker and whether the decision-maker has achieved the correct balance. **The proportionality test may require the attention of the court to be directed to the relative weight according to interest and considerations.** When we apply that test and look at the three alternatives, we are of the view that the decision-maker has struck a correct balance in accepting the second alternative. The first alternative was not accepted not only because such a process was time-consuming and expensive, but nobody favoured that option, and even the candidates who had approached the court were more in favour of the second alternative. Applying the proportionality test also in our view the Board has struck the correct balance in adopting the second alternative which was well balanced and harmonious.

43. **We, therefore hold, applying the test of *Wednesbury* unreasonableness as well as the proportionality test, the decision taken by the Board in the facts and circumstances of this case was fair,**

> **reasonable, well balanced and harmonious.** By accepting the third alternative, the High Court was perpetuating the illegality since there were serious allegations of leakage of question papers, large scale of impersonation by candidates and mass copying in the first written test.
>
> (*Emphasis added*)

176. The LOCs all fail both the *Wednesbury* and proportionality tests. In their origins and issuance they are ex facie arbitrary, unreasonably, unguided and unsupervised; and they are wholly disproportionate in what they seek to do and for what reason.

177. It is also well-settled that to survive a test of proportionality as applied under Article 14, the 'least invasive' or 'least intrusive' test must be passed. If the same objective can be achieved — recovery of debt — by other, less invasive means, then a rule or a conferred power that allows an invasive/intrusive measure cannot be sustained: *Om Kumar v Union of India*;[50] *Anuradha Bhasin*, paragraph 61. Ms Mistry correctly relies on the decision of the Supreme Court in *NK Bajpai v Union of India & Anr*.[51]

VII. "The economic interests of India"; "larger public interest"

178. Mr Singh's submission that the OMs confer only a 'limited power to be exercised in exceptional cases' does not commend itself. The raft of LOCs we see does not seem to accord with either of this

50 (2001) 2 SCC 386.

51 (2012) 4 SCC 653.

postulates. Curtailing a fundamental right under Article 21 is not a 'limited power'; and it is certainly not being exercised in 'exceptional cases'. Every single case is being treated as 'exceptional'. There is little achieved by pointing out that not all borrowers have LOCs issued against them. The more telling point is that there is no discernible or disclosed basis on which the LOCs are in fact being issued against any borrower.

179. Fundamental rights are not meant to protect the majority. The argument of a 'wider public interest' is simply contrary to settled law. We need look no further than the decision cited by Ms Mistry in *NK Bajpai*.

180. Mr Singh's reliance on *YS Jagan Mohan Reddy v CBI*[52] is curiously misdirected. That was not a case about an infringement of a fundamental right. It was a case about corruption in public office. Observations of the Supreme Court cannot be read out of context.

181. Nobody denies that economic offenders must be brought to book (*State of Gujarat v Manoharlal Jitamalji Porwal*;[53] State of *Maharashtra v Vikram Anantrai Doshi*,[54]). But not one of the judgments relied on by Mr Singh or any of the advocates for the banks tells us that a fundamental right can be curtailed or violated in pursuit of this objective. If a fundamental right under say Article 19 is to be constrained, the restriction must fit *exactly* within Articles 19(2) to

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52 (2013) 7 SCC 439.

53 (1987) 2 SCC 364.

54 (2014) 15 SCC 29.

19(6). Restrictions are narrow and limited; freedoms are not. They are, indeed, infinitely elastic, and nothing demonstrates this better than the steady expansion of the ambit of Article 21 over the last six or seven decades.[55]

182. We state this plainly as our understanding of the law: no amount of 'public interest' can substitute for a 'procedure established by law', i.e., by a statute, statutory rule or statutory regulation in the matter of deprivation of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India.

183. But let us return for a moment, just to end this, to a closer reading of the clause in question. As amended and consolidated, it reads thus:

> **In exceptional cases**, LOCs can be issued even in such cases, **as may not be covered by the guidelines above**, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B) above, **if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India** or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State

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55 The reliance on *Ajay Canu v Union of India*, (1988) 4 SCC 156, is very odd. The challenge there was to a rule requiring two-wheeler drives to wear a helmet. This was assailed as being against some fundamental right. That is hardly comparable with a case of deprivation of a facet of personal liberty.

> and/or **that such departure ought not be permitted in the larger public interest** at any given point in time.
>
> (*Emphasis added*)

184. In the view that we have taken, we do not think it is necessary to examine further Dr Saraf's submission whether the financial interests of public sector banks is encompassed in the phrase "detrimental to the … economic interests of India". It may or may not be, but for our purposes, absolutely nothing will turn on it.

VIII. Fugitive Economic Offenders Act, 2018

185. As we conclude, we must note one further aspect in the context of these LOCs being said to be valid measures against economic offenders and fugitives. The arguments of the Union of India and the banks completely elide mention of the fact that there is now the Fugitive Economic Offenders Act 2018. This received Presidential Assent and came into force on 21st April 2018. An Act to provide for measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian courts, to preserve the sanctity of the rule of law in India and for matters connected therewith or incidental thereto — precisely the avowed objective of these PSB-driven LOCs.

186. The Statement of Objects and Reasons of the preceding Bill says this:

Statement of Objects and Reasons.—

There have been several instances of economic offenders fleeing the jurisdiction of Indian courts anticipating the commencement of criminal proceedings or sometimes during the pendency of such proceedings. The absence of such offenders from Indian courts has several deleterious consequences, such as, it obstructs investigation in criminal cases, it wastes precious time of courts and it undermines the rule of law in India. Further, most of such cases of economic offences involve non-repayment of bank loans thereby worsening the financial health of the banking sector in India. The existing civil and criminal provisions in law are inadequate to deal with the severity of the problem.

2. **In order to address the said problem and lay down measures to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts, it is proposed to enact a legislation, namely, the Fugitive Economic Offenders Bill, 2018, to ensure that fugitive economic offenders return to India to face the action in accordance with law.**

3. The said Bill, inter alia, provides for:

(i) the definition of the fugitive economic offender as an individual who has committed a scheduled offence or offences involving an amount of one hundred crore rupees or more and has absconded from India or refused to come back to India to avoid or face criminal prosecution in India;

(ii) attachment of the property of a fugitive economic offender and proceeds of crime;

(iii) the powers of Director relating to survey, search and seizure and search of persons;

> (iv) confiscation of the property of a fugitive economic offender and proceeds of crime;
>
> (v) disentitlement of the fugitive economic offender from putting forward or defending any civil claim;
>
> (vi) appointment of an Administrator for the purposes of the proposed legislation;
>
> (vii) appeal to the High Court against the orders issued by the Special Court; and
>
> (viii) placing the burden of proof for establishing that an individual is a fugitive economic offender on the Director or the person authorised by the Director.
>
> 4. The Bill seeks to achieve the above objectives.
>
> (*Emphasis added*)

187. Clause 2 is really the precise justification being given to us for the LOCs — which are without a controlling 'law'. Clause 3(i) provides some guideline as to who is a fugitive economic offender and who is not. This is in stark contrast to the OMs and the LOCs.

188. What is interesting about this Act is not what it does but what it does not do: it does *not*, though it is a statute, provide for the unilateral stoppage of persons from travelling overseas. It does not reach into the heart of Article 21.

189. Section 2(f) tells us who a fugitive economic offender is:

> (f) "fugitive economic offender" means any individual against whom a warrant for arrest in relation to a scheduled offence has been issued by any Court in India, who—
>
> > (i) has left India so as to avoid criminal prosecution; or

(ii) being abroad, refuses to return to India to face criminal prosecution;

190. No LOC is issued under this Act. It is not even invoked. Yet we are told that LOCs are necessary *because there are no other means to proceed against economic offenders/fugitives*. This is contrary to the definition of a fugitive economic offenders in Section 2(f) of the Fugitive Offenders Act, 2018.

191. The Act provides for an application for a declaration of a fugitive economic offender (Section 4), attachment of property (Section 5), search and seizure (Sections 8 to 9) and, importantly, notice and hearing (Section 10 and 11). None of these basic requirements are to be found in the OMs or the so-called procedure (there is none) followed in PSB-triggered LOCs.

192. This Act on its own negates the entire justification for the PSB-driven LOCs. It upends every argument in defence, including that of 'larger public interest' and the 'economic interests of India'. Notably the SOR does *not* speak of the 'economic interests of India'. It restricts itself to the 'financial health of the banking sector' — quite correctly — and observes that this is adversely affected by non-repayment of bank loans. But that is precisely the justification and only justification for the issuance of the LOCs.

IX. Rival Judgments of High Courts on LOCs

Both sides have relied on a catena of judgments of various High Courts regarding LOCs. Little is gained by a more elaborate study of these, as they are all fact dependent.

K. CLAUSE 6(J) OF THE 2021 CONSOLIDATED OM

193. We do not think this question need detain us for too long. Earlier, the OMs said that LOCs had a limited 'shelf-life'; they expired after one year. Now they continue until cancelled. This may be nothing more than an administrative necessity. It does not do away with any of the other requirements for issuing LOCs in the first place.

L. CONCLUSIONS

194. For these reasons, we believe the Petitions will succeed in part. We return to the questions we had formulated at the beginning, with our answers against each.

Q No	Question	Finding
I	Can the right to travel abroad, part of the fundamental right to life under Article 21 of the Constitution of India, be curtailed by an executive action absent any governing statute or controlling statutory provision?	No

Q No	Question	Finding
II	Is the entire field of controlling entry and exit from India's borders already fully occupied by a statute, viz., the Passports Act 1967 and, if so, can the OMs authorise the issuance of such LOCs de hors the Passports Act?	The field is not fully occupied by the Passports Act. The OMs may validly authorise the issuance of LOCs in cases other than the ones under consideration in the cases before us (for instance, at the request of another agency or following an order of a Court).
III	Are the OMs per se arbitrary and unconstitutional as ultra vires Articles 14 and 21 of the Constitution of India?	No
IV	Is the inclusion of Chairman/Managing Directors/CEOS of all public sector banks in Clause 6(B)(xv) of the 22nd February 2021 OM, effected by the previous amendment, bad in law and liable to be struck down on the ground of (a) arbitrariness; (b) unreasonableness; (c) improper and invalid classification; or (d) conferment/delegation of uncanalised and excessive power?	On all these grounds and others as analysed above, YES

Q No	Question	Finding
V	Is Clause 6(L) of the 22nd February 2021 OM to the extent it is applied to PSBs ultra vires Articles 14 and 21 of the Constitution of India, as also arbitrary, unreasonable and disproportionate inter alia because the financial interests of a particular bank or even a group of banks or all public sector banks together cannot reasonably, rationally or logically be equated with or be placed on the same level as the 'economic interests of India'?	Is not required to be decided.
VI	Is Clause 6(J) of the 22nd February 2021 OM liable to be quashed in its entirety as being ultra vires Articles 14 and 21 of the Constitution of India, as also per se and manifestly arbitrary, unreasonable and disproportionate because it allows LOCs to continue until cancelled instead of providing a fixed term for them?	No
VII	Are the impugned LOCs—	
(i)	ultra vires the OMs;	Does not arise
(ii)	ultra vires Articles 14 and 21 of the Constitution of India (including for infringing a fundamental right except according to a procedure established by law; and a failure to abide by mandated minimum procedural norms;	Yes

Q No	Question	Finding
	unreasonableness; arbitrariness; want of proportionality), and	
(iii)	Arbitrary, unreasonable and disproportionate in equating the financial interest of a public sector bank with the "the economic interests of India".	Does not require to be decided.

195. Consequently:

(a) Clause 8(b)(xv) of the 2010 amended OM (equivalent to Clause 6(B)(xv) of the 2021 consolidated OM) which includes the Chairmen, Managing Directors and Chief Executive Officers of all public sector banks as authorities who may request the issuance of a Look Out Circular is quashed.

(b) All the LOCs are quashed and set aside.

(c) The Bureau of Immigration will ignore and not act upon any LOCs issued by any public sector banks. All databases will be updated accordingly. We do not expect the public sector banks to do this, and therefore direct the Bureau of Immigration or MHA to do the needful.

(d) All authorities at all ports of embarkation will be informed and apprised accordingly.

196. Further:

(a) This order will not and does not affect any existing restraint order issued by a competent authority, court, tribunal or investigative or enforcement agency, or in

enforcement of any order of a court. Where, for instance, the DRT or a criminal court has issued a restraint order (even if this is at the instance of public sector bank), that order will continue to operate. The invalidation of the present LOCs cannot and will not affect such orders.

(b) The banks are also always at liberty to apply to any court or tribunal under applicable law for an order against an individual borrower, guarantor or person indebted restraining such person from travelling overseas.

(c) In addition, the banks may invoke powers under the Fugitive Economic Offenders Act, 2018, where applicable, notwithstanding this judgment in regard to any LOC.

(d) This judgment cannot and will not prevent the Union of India from framing an appropriate law and establishing a procedure consistent with Article 21 of the Constitution of India.

197. Parties to bear their own costs.

198. The application for a stay of the operative portion, at least to the extent of striking down Clause 8(b)(xv) of the 2010 OM for a few weeks cannot be accepted in the view that we have taken.

(Madhav J. Jamdar, J) **(G. S. (Patel, J)**

ANNEXURE

(1) COMPILATION OF OFFICE MEMORANDA ISSUED BY THE MINISTRY OF HOME AFFAIRS

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OFFICE MEMORANDUM DTD 27.10.2010

MOST IMMEDIATE

No. 23016/31/2010-Imm.
Government of India
Ministry of Home Affairs
Foreigners Division

Jaisalmer House, 26 Mansingh Road,
New Delhi the 27 October, 2010

OFFICE MEMORANDUM

Subject: Issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners

Under the existing practice, the issuance of LOCs is governed by this Ministry's letter number 25022/13/78-F.I dated 5.9.1979 and OM number 25022/20/98-F.IV dated 27.12.2000.

2. It has, *inter alia*, been stated in the letter dated 5.9.1979 of MHA was 'apart from the Govern India in the Ministry of Home Affairs, circulars are issued by various authorities for keeping a watch or arrival/departure of Indians and foreigners. These authorities include the Ministry of External Affairs, the Customs and Income Tax Departments, Directors of Revenue Intelligence, Central Bureau of Investigation, Interpol, Regional Passport Officers, Police authorities in various States, etc. It has further been stated that 'unless otherwise specified in the warning circular itself the circular issued by any of the various authorities specified above will be regarded as invalid if it is more than one year old and the card will be weeded out. For the future, it is considered that whenever any authority issues a warning circular to the immigration authorities, the period of validity should be clearly specified in the circular. If this is not done, the circular will be considered to be valid only

for a period of one year from the date of issue and a watch will be maintained by the person concerned at the immigration check posts only for that period.'

3. The OM dated 27.12.2000 of MHA specifies the steps required to be taken for opening an LOC in respect of Indian citizen. It has been mentioned in the said OM that the request for opening an LOC in respect of an Indian citizen is required to be made to all the Immigration Check Policy (ICP) in the country in a prescribed proforma. It has further been specified 'the request for opening of LOC must invariably be issued with the approval of an Officer not below the rank of Deputy Secretary to the Government of India Joint Secretary in the State Government/concerned Superintendent of Police at district level.' Further, 'Care must be taken by the originating [illegible] has complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma…..' It is further provided that 'an LOC is valid for a period of one year. It can, however, be extended further before the expiry of one year period. In [illegible] the request for extension of LOC is received before expiry of one year period [illegible] LOC will automatically be closed by the Immigration Officer concerned after expiry of one year period.'

The Hon'ble High Court of Delhi, in Writ Petition (Civil) No. 10180 of 2009 Shri Vikram Sharma vs. Union of India and Ors.] considered the [illegible] a request for the issuance of an LOC could be made by the National Commission for Women (NCW). While disposing of the said Writ Petition, the High Court in its order dated 26.7.2010 observed that 'a request for the issuance of an LOC could not have emanated from the NCW. It had to come from either the Central or the State Government and that too in the prescribed and then again only by the officers of a certain rank. In this context, while criminal courts dealing with cases of criminal law enforcement can issue directions, which may result in the issuance of an LOC, there is no such power vested either under the Cr.P.C. or the Passports Act or under the MHA's circular, in statutory bodies like the NCW. Being granted the powers of a civil court for a limited purpose does not vest the NCW with the powers of a criminal court and it has no authority as of today to make a request for the issuance of an LOC.

[Illegible] the Court further observed, "there are a large number of statutory commissions at the level of the Centre and the States which perform judicial functions and are vested with, for the purpose of conducting inquiries upon receiving complaints, the powers of a civil court. These include the National Human Rights Commission ('NHRC'), the NCW, the National Commission for Protection of Children's Rights. These statutory bodies, however, have not been vested with the powers of a criminal court and do not have powers to enforce criminal law. It is for the Government of India to take a policy decision on whether it wants to vest such statutory tribunal/commissions with criminal law enforcement powers. Since as of today, they have no such power, it is imperative that the MHA should issue further clarificatory circulars or office memoranda clearly stating that the request for issuance of LOCs cannot 'emanate' from statutory bodies like the NCW. If at all, such bodies should bring the necessary facts to the notice of law enforcement agencies like the police, which will then make the request for issuance of an LOC upon an assessment of the situation, and strictly in terms of the procedure outlined for the purpose. This clarification will be issued by the MHA, in consultation with the other concerned agencies, including representatives of the statutory bodies referred to, within a period of 12 weeks from today.

6. In a related judgment delivered on 11.8.2010 by the Hon'ble High Court of Delhi in W.P. (Crl.) No. 1315/2008-Sumer Singh Salkan Vs. Asstt. Director & Ors and Crl. Ref.1/2006-Court on on its Motion Re: State Vs. Gurnek Singh etc., the Court has answered four questions raised by a lower court on the LOC. These questions are as below:

a) What are the categories of cases in which the Investigating agency are seek recourse of Look-out-Circular and under what circumstances.

b) What procedure is required to be followed by the investigating agency before opening a Look-out-Circular?

c) What is the remedy available to the person against whom such Look-out-Circular has been opened?

d) What is the role of the concerned Court when such a case is brought before it and under what circumstances the subordinate courts can intervene?

7. The High has answered these questions in its judgment dated 11.8.2010 which are reproduced below for guidance of all concerned agencies.

a) Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court agencies NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.

b) The Investigating officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs giving details & reasons for seeking LOC. The competent officer alone shall give directions for opening LOC by passing an order in this respect.

c) The person against whom LOC is issued must join investigation by appearing before IO or should surrender before the court concerned or should satisfy the court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC to explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where case is pending or having jurisdiction on concerned police station on an application by the person concerned.

d) LOC is a coercive measure to make a person surrender to the Investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs.

8. In accordance with the order dated 26.7.2010 of the High Court of Delhi the matter has been discussed with the concerned agencies and the governing guidelines are hereby laid down regarding issuance of LOCs in respect of Indian citizens and foreigners:

a) The request for opening an LOC would be made by the originating agency to Deputy Director, Bureau of Immigration (BoI), East Block-VIII R.K. Puram, New Delhi – 66 (Telefax: 011-2619244) in the Proforma enclosed.

b) The request for opening of LOC must invariably be issued with the approval of an officer not below the rank of

i. Deputy Secretary to the Government of India; or

ii. Joint Secretary in the State Government; or

iii. District Magistrate of the District concerned; or

iv. Superintendent of Police(SP) of the District concerned; or

v. SP in CBI or an officer of equivalent level working in CBI; or

vi. Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level (including Assistant Director (Ops.) in Headquarters of NCB); or

vii. Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Excise and Customs; or

viii. Assistant Director of IB/BoI; or

ix. Deputy Secretary of R&AW; or

x. An officer not below the level of Superintendent of Police in National Investigation Agency; or

xi. Assistant Director of Enforcement Directorate; or

xii. Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary of the Government of India; or

xiii. Designated officer of Interpol

Further, LOCs can also be issued as per directions of any Criminal Court in India.

The name and designation of the officer signing the Proforma for issuance of an LOC must invariably be mentioned without which a request for issuance of LOC would not b entertained.

d) The contact details of the originator must be provided in column VI of the enclosed Proforma. The contact telephone/mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow up action.

e) Care must be taken by the originating agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above. It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters, as given in the enclosed Proforma, apart from sex and nationality, are available. However, LOC can also be issued if name and passport particulars of the person concerned are available. It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to minimize harassment to genuine passengers.

f) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.

g) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.

h) In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating agency can only request that they be informed about the arrival/ departure of the subject in such cases.

i) The LOC will be valid for a period of one year from the date of issue and name of the subject shall be automatically removed from the LOC thereafter unless the concerned agency requests for its renewal within a period of one year. With effect from 1.1.2011, all LOCs with more than one year validity shall be deemed to have lapsed unless the agencies concerned specifically request BoI for continuation of the names in the LOC. However, this provision for automatic deletion after one year shall not be applicable in following cases:

a) Ban-entry LOCs issued for watching arrival of wanted persons which have a specific duration;

b) loss of passport LOCs (which ordinarily continue till the validity of the document);

c) LOCs regarding impounding of passports;

d) LOCs issued at behest of Courts and Interpol

(j) In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, anti social elements etc in larger national interest.

The following procedure will be adopted in case statutory bodies like the NCW, the NHRC and the National Commission for Protection of Children's Rights request for preventing any Indian/foreigner from leaving India. Such requests along with full necessary facts are first to be brought to the notice of law enforcement agencies like the police. The S.P. concerned will then make the request for issuance of an LOC. Upon an assessment of the situation, and strictly in terms of the procedure outlined for the purpose. The immigration/emigration authorities will strictly go by the communication received from the officers authorized to open LOCs as detailed in the para 8(b) above.

It is requested that the contents of this OM may be brought to the notice of all concerned for strict compliance.

Encl: As above

(Anuj Sharma)
Director (I&C)
Tel: 23389288

To

1. Chief Secretaries of all the State Governments/UT Administrations
2. All Secretaries to the Government of India
3. Director IB, North Block
4. Secretary (R), Cabinet Secretariat, Bikaner House Annexe
5. Director, CBI, North Block
6. Director General, Narcotics Control Bureau, R.K. Puram

7. Chairman, CBEC, Department of Revenue, M/o Finance, North Block
8. Chairman, CBDT, Department of Revenue, M/o Finance, North Block
9. DG, Directorate of Revenue Intelligence, CBEC 'D' Block, IP Estate
10. Director of Enforcement, Enforcement Directorate, Lok Nayak Bhawan
11. Additional Secretary, D/o Legal Affairs, M/o Law & Justice, Shastri Bhawan
12. Additional Director, Bureau of Immigration, R.K. Puram
13. JP Meena, Joint Secretary, NHRC, New Delhi
14. Ms Sundari Subramaniam Pujari, JS, NCW, 4-Deen Dayal --- Marg, New Delhi
15. Shri B.K. Sahu, Registrar, National Commission for Protection of Children's Rights, New Delhi
16. Shri B.K. Gupta, Additional Secretary (CPV), MEA, Patiala House
17. Shri Narinder Singh, JS (L&T), MEA, ISH Building, Bhagwan Das Road
18. JS (IS-I), MHA, North Block
19. JS (IS-II), MHA, North Block
20. JS (J-II), Department of Justice, Jaisalmer House
21. JS (Kashmir), MHA, North Block

OFFICE MEMORANDUM DTD 05.12.2017

IMMEDIATE

No. 23016/10/2017-Imm(Pt.)
Government of India
Ministry of Home Affairs
Foreigners Division
(Immigration Section)
*****

First Floor, Open Gallery, MIDC National Stadium,
India Gate, New Delhi, dated 05.12.2017

OFFICE MEMORANDUM

Subject: "Amendments in Circular dated 27.10.2010 for issuance of LOC in respect of Indian citizens and foreigners" - reg.

In continuation to this Ministry OM No. 25016/31/2010-Imm dated 27.10.2010 and as approved by the Competent Authority the following amendment is hereby issued:-

Amendment—

Read as:

> *"In exceptional cases, LOCs can be issued even in such case as would not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (b) of the above-referred OM, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time."*

Instead of:

> *"In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, anti-national elements etc in larger national interest."*

2. Time remaining contents of the OM No. 25016/31/2010-Imm dated 27.10.2010 under reference will remain the same.

3. It is requested that the contents of this circular may be brought to the notice of all concerned for strict compliance.

(Pravin Horo Singh)
Director

(Imm.)

Tel: 2307 7503.

To

i. Chief Secretaries of all State Governments/UT Administrations.
ii. All Secretaries to the Government of India.
iii. Director, IB, North Block.
iv. Secretary (R), Cabinet Secretariat, Bikaner House Annexe.
v. Director, CBI, North Block
vi. Director General, Narcotics Control Bureau, R.K. Puram.
vii. Chairman, CBEC, Department of Revenue, M/o Finance, North Block.
viii. Chairman, CBDT, Department of Revenue, M/o Finance, North Block.
ix. DG, Directorate of Revenue Intelligence, CBEC, 'D' Block IP Estate
x. Director of Enforcement, Enforcement Directorate, Lok Nayak Bhawan.
xi. Additional Secretary, D/o Legal Affairs, M/o Law & Justice, Shastri Bhawan.
xii. Additional Director, Bureau of Immigration, R.K. Puram.
xiii. Joint Secretary, NHRC, New Delhi.
xiv. Joint Secretary, NCW, New Delhi.
xv. Registrar, National Commission for Protection of Children's Rights, New Delhi.
xvi. Additional Secretary (CPV), MEA, New Delhi.

xvii. Joint Secretary (L&T), MEA, New Delhi.
xviii. Joint Secretary (IS-I), MHA, North Block.
xix. Joint secretary (IS-II), MHA, NDCC-II Building, New Delhi.
xx. JS (J-II), Department of Justice, Jaisalmar House, New Delhi.
xxi. JS (Kashmir), MHA, North Block.

OFFICE MEMORANDUM DTD 19.07.2018

IMMEDIATE

No. 25016/10/2017-Imm(Pt.)
Government of India
Ministry of Home Affairs
Foreigners Division
(Immigration Section)

Hall No. 18, 2nd Floor, Open Gallery, MDCNS,
India Gate, New Delhi, dated 19.07.2018

OFFICE MEMORANDUM

Sub: "Amendments in Circular dated 27.10.2010 for issuance of LOC in respect of Indian citizens and foreigners" - reg.

The undersigned is directed to refer to this Ministry's letter No. 25016/10/2017-Imm (Pt) dated 05/12/2017 regarding the above cited subject. In this regard it is clarified that the amended para in this OM may please be treated the replacement to para 8(j) of this Ministry OM No. 25016/31/2010-Imm dated 27.10.2010.

2. The remaining contents of the OM No. 25016/31/2010-Imm dated 27.10.2010 under reference will remain the same.

3. It is requested that the contents of this circular may be brought to the notice of all concerned for strict compliance.

4. This issues with the approval of the Competent Authority.

(Shamim Ahmed)
Under Secretary to the Govt. of India
Tele Fax: 2307 7502.

To

i. Chief Secretaries of all State Governments/UT Administrations
ii. All Secretaries to the Government of India
iii. Director, IB, North Block.
iv. Secretary (R), Cabinet Secretariat, Bikaner House Annexe.
v. Director, CBI, North Block
vi. Director General, Narcotics Control Bureau, R.K. Puram.
vii. Chairman, CBEC, Department of Revenue, M/o Finance, North Block.

OFFICE MEMORANDUM DTD 19.09.2018

No. 25016/10/2017-Imm(Pt.)
Government of India
Ministry of Home Affairs
Foreigners Division
(Immigration Section)
*****

Major Dhyan Chand National Stadium, India Gate,
New Delhi, dated 19th September, 2018

OFFICE MEMORANDUM

Sub: Issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners

******

The undersigned is directed to refer to this Ministry's O.M. no. 25016/31/2010-Imm dated 27th October, 2010 and subsequent O.M. no. 25016/10/2017-Imm (Pt.) dated 5th December, 2017 & 19th July, 2018 on the above mentioned subject and to say that the request of the Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs to include an officer of SFIO not below the rank of Additional Director (in the rank of Director in the Government of India) in the list of officers who can make a request to opening a Look Out Circular (LOC) has been considered in this Ministry.

2. It has accordingly been decided, with the approval of the competent authority, to add the following as sub-para (xiv) in para 8 (b) of this Ministry's O.M. no. 25016/31/2010-Imm dated 27th October, 2010:-

> "xiv) An officer of Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India)"

3. The remaining contents of this Ministry's O.M. no. 25016/31/2010-Imm dated 27th October, 2010 under reference shall remain the same.

4. It is requested that the contents of this circular may be brought to the notice of all concerned for strict compliance.

(Pramod Kumar)
Director
(Immigration)
Tel. no. 23077508

To

Ministry of Corporate Affairs [Serious Fraud Investigation Office] [Shri Sanjay Sood, Additional Director], CGO Complex, New Delhi

Copy to :

i. Chief Secretaries of all State Governments/UT Administrations.
ii. All Secretaries to the Government of India.
iii. Chairperson, National Commission for Women
iv. Director, IB, North Block.
v. Secretary (R), Cabinet Secretariat
vi. Director, CBI
vii. Director General, Narcotics Control Bureau, R.K. Puram, New Delhi
viii. Chairman, CBEC, Department of Revenue, M/o Finance, North Block, New Dehi
ix. Chairman, CBDT, Department of Revenue, M/o Finance, North Block, New Dehi
x. DG, Directorate of Revenue Intelligence, CBEC, 'D' Block IP Estate, New Dehi
xi. Director of Enforcement, Enforcement Directorate, Lok Nayak Bhawan, New Delhi
xii. Additional Secretary, D/o Legal Affairs, M/o Law & Justice, Shastri Bhavan.
xiii. Joint Secretary, NHRC, New Delhi.
xiv. Joint Secretary, NCW, New Delhi.
xv. Registrar, National Commission for Protection of Children's Rights, New Delhi.
xvi. Joint Secretary (CPV), Ministry of External Affairs, New Delhi.
xvii. Joint Secretary (L&T), Ministry of External Affairs, New Delhi.
xviii. Joint Secretary (IS-I), Ministry of Home Affairs, North Block, New Delhi

xix. Joint secretary (IS-II), Ministry of Home Affairs, NDCC-II Building, New Delhi.
xx. JS (J-II), Department of Justice, Jaisalmer House, New Delhi.
xxi. JS (K), Ministry of Home Affairs, North Block, New Delhi

MINISTRY OF FINANCE OFFICE MEMORANDUM DTD 04.10.2018

F. No.6/3/2018-BO. II
Government of India
Ministry of Finance
Department of Financial Services

3rd Floor, Jeevan Deep Building
Sansad Marg, New Delhi – 110001
Date : 4th October, 2018

OFFICE MEMORANDUM

Subject: Empowerment of heads of Public Sector Banks to issue requests for opening Look Out Circulars (LOCs)

This is with reference to the Central Bureau of Investigation (CBI)'s letter No. 125/3/HO2/ BS&FZ/2018 dated 24.09.2018 to the Department of Financial Services (DFS) (copy enclosed) requesting that appropriate officers of banks be empowered to request for opening of Look Out Circular (LOCs) against economic offenders/defaulters. In this context, it may be mentioned that:

(a) Issuance of LOCs in respect of Indian citizens and foreigners is governed by instructions contained in the Ministry of Home Affairs (MHA)'s OM dated 27.10.2010, as amended by MHA's OM dated 05.12.2017.

(b) Paragraph 8(b) of MHA's OM dated 27.10.2010 lists those authorities of minimum rank with whose approval the request for opening of LOC must be issued. The list does not include officers of bank at present.

(c) As per the amended Paragraph 8(l) (amended through MHA's OM dated 05.12.2017) "**In exceptional cases, LOCs can be issued even in such case as would not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities**

mentioned in clause (b) of the above-referred OM, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time."

(d) It is, therefore, clear that the guidelines enable LOCs against persons who are fraudsters/persons who wish to take loans, willfully default/ launder money and then escape to foreign jurisdictions, since such action would not be in the economic interests of India, or in the larger public interest.

2. Therefore, as suggested by CBI, MHA is requested to kindly amend the OM dated 27.10.2010 and include in the list of authorities under Paragraph 8(b) another category, as follows:

> "(xiv) Chairman (State Bank of India/ Managing Directors and Chief Executive Officers (MD & CEOs) of all other Public Sector Banks"

3. Reference is also invited to DFS's OM of even number dated 30.07.2018, circulating the Minutes of the Meeting of the Committee to discuss, issues, related to renunciation of Indian citizenship, dual citizenship and validity of passport (copy enclosed). It is again requested that necessary action may kindly be taken urgently by MHA and the Ministry of External Affairs (MEA) on the decisions taken by the Committee, under intimation of DFS.

(Raghav Bhatt)
Deputy Director (BO.II)
011-23748715

(Enclosed: As above)

Shri Rajib Gauba
Secretary

Ministry of Home Affairs, North Block, New Delhi

OFFICE MEMORANDUM DTD 12.10.2018

F.No.25016/10/2017-Imm
Government of India
Ministry of Home Affairs
Foreigners Division
(Immigration Section)

Hall No. 18, 2nd floor, Open Gallery, MDCNS
India Gate, New Delhi 12, Oct, 2018

Office Memorandum

Subject: **Empowerment of heads of Public Sector Banks to issue requests for opening Look Out Circulars (LOCs)**

With reference to your OM F.No.6/3/2018-Bo.II dated 04 October, 2018, the undersigned is directed to forward herewith a copy of this Ministry even OM No. 25016/10/2017-Imm (pt) dated 12 October, 2018 alongwith copies of the references mentioned in the OM regarding issuance of Look Out Circulars (LOCs) in respect of Indian Citizens and Foreigners for information and necessary action.

(Shamim Ahmed)
Under Secretary to the Govt. of India
Tele. Fax : 011-23077502

Shri Raghav Bhatt,
Deputy Director (BO.II),
Ministry of Finance
Department of Financial Services
3rd Floor, Jeevan deep Building, Sansad Marg
New Delhi -110001.

OFFICE MEMORANDUM DTD 12.10.2018

No. 25016/10/2017-Imm(Pt.)
Government of India
Ministry of Home Affairs
Foreigners Division
(Immigration Section)

Hall No. 18, 2nd Floor, Open Gallery, MDCNS,
India Gate, New Delhi, dated 12.10.2018

OFFICE MEMORANDUM

Sub: Issuance of Look Out Circulars (LOCs) in respect of Indian citizens and Foreigners-reg.

The undersigned is directed to refer to this Ministry's letter No. OM No. 25016/31/2010-Imm dated 27.10.2010 and subsequent OM No. 25016/10/2017-Imm (pt) dated 05.12.2017, 19.07.2018 & 19.09.2018 on the above mentioned subject and to say that request of the Department of Financial Services, Ministry of Finance to include "Chairman (State Bank of India)/Managing Directors and Chief Executive Officers (Mds and CEOs) of all other Public Sector Banks" in the list of officers who can make a request for opening of Look Out Circulars (LOCs) has been considered in this Ministry.

2. It has accordingly been decided, with the approval of the Competent Authority, to add the following as sub-para (xv) in para 8(b) of this Ministry's OM No. 25016/31/2010-Imm dated 27th October, 2010:-

"(xv) Chairman/Managing Directors/Chief Executive of all Public Sector Banks."

2. The remaining contents of the OM No. 25016/31/2010-Imm dated 27.10.2010 under reference will remain the same.

3. It is requested that the contents of this circular may be brought to the notice of all concerned for strict compliance.

(Pramod Kumar)
Director (Immigration)
Tele Fax: 011-2307 7505.

To

The Secretary Ministry of Finance, Government of India

OFFICE MEMORANDUM DTD 10.05.2019

No. 25016/10/2017-Imm(Pt.)
Government of India
Ministry of Home Affairs
Foreigners Division
(Immigration Section)
*****

Hall No. 18, 2nd Floor, Open Gallery, MDCNS,
India Gate, New Delhi, the 10th May 2019

OFFICE MEMORANDUM

Sub: Empowerment of heads of Public Sector Banks to issue requests for opening of Look Out Circulars (LOCs)

****

The undersigned is directed to refer to the O.M. no. 6/3/2018-BO.II dated 18th April, 2019 from the Ministry of Finance, Department of Financial Services on the above mentioned subject and to say that the matter has been examined in this Ministry.

2. In this context, it may be stated that this Ministry vide O.M. of even number dated 12th October, 2018 has already included Chairman/ Managing Director/ Chief Executive of all Public Sector Banks in the list of officers who can make a request for opening of Look Out Circulars (LOCs). Further, as per this Ministry's O.M. no. 25016/31/2010-Imm dated 27.10.2010 (copy enclosed), an officer not below the rank of deputy Secretary to the Government of India (which includes an officer not below the rank of Deputy Secretary in the Department of Financial Services) is also authorized to make a request for opening of LOC.

3. It may also be pointed out that as per this Ministry's O.M. of even number dated 05.12.2017 (copy enclosed), in exceptional cases, LOCs can be issued even in such cases, as would not be covered by the guidelines contained in this Ministry's O.M. dated 27.10.2010, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in the O.M., if it appears to such authority based on inputs received that the departure of such person is detrimental to the

sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/ or that such departure ought not be permitted in the larger public interest at any given point of time.

4. In view of the position stated in paras 2 & 3 above, it is evident that officers not below the rank of Chairman/Managing Director/ Chief Executive of all Public Sector Banks are competent to request for opening LOC at any point of time if departure of a particular person from India is perceived to be detrimental to the 'economic interests of India' or if the departure of such person from India 'ought not be permitted in the larger public interest'. Therefore, Department of Financial Services may suitably advise all Public Sector Banks to the effect that the competent authorities of Public Sector Banks may make a request for opening LOC against a person at any point of time without waiting for the investigation agencies to take action for opening LOC.

5. At the same time, wherever the investigation agencies have already registered cases, they (investigation agencies) should not refer the case back to the Bank. The investigation agencies should themselves take pro-active steps to open an LOC wherever so required. The investigation agencies are also being suitably advised separately.

6. Further, the officers of financial institutions and the officers of investigating agencies are expected to act in tandem and ensure that wherever required LOCs are opened in time to prevent the departure of persons from India against the economic interest of the country or against the larger public interest. Precious time should not be lost in referring the issue back and forth.

7. The issues with the approval of the competent authority.

(Shamim Ahmed)
Under Secretary to the Govt. of India
Tel. no. 23077502

To
Department of Financial Services
[Shri Raghav Bhatt, Deputy Director (BO.II)],
Ministry of Finance
3rd Floor, Jeevan deep Building, Sansad Marg
New Delhi -110001.

Copy to: Shri Rajeev, Ranjan Verma, Joint Director, Bureau of Immigration, R.K. Puram, New Delhi.

OFFICE MEMORANDUM DTD 22.02.2021

No. 25016/10/2017-Imm(Pt.)
Government of India
Ministry of Home Affairs
Foreigners Division
(Immigration Section)
*****

Hall No. 18, 2nd Floor, MDCN Stadium,
India Gate, New Delhi, dated: 22nd February 2021

OFFICE MEMORANDUM

Sub: Consolidated guidelines for issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners-reg.

****

The undersigned is directed to say that the Ministry of Home Affairs had issued detailed guidelines from time to time regarding issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners. The guidelines issued vide letter No.25022/13/78-F.I dated 05.09.1979 & O.M. No. 25022/20/98-F.IV dated 27.12.2000 were incorporated in the consolidated guidelines issued vide this Ministry's O.M. No. 25016/31/2010-Imm. dated 27.10.2010, which was in accordance with the order dated 26.07.2010 in W.P. © - 10180/2009 of the Hon'ble High Court of Delhi. These guidelines were subsequently modified vide this Ministry's O.Ms no. 25016/10/2017-Imm (Pt.) dated 05.12.2017, 19.09.2018 and 12.10.2018.

2. The Hon'ble High Court of Delhi, in Writ Petition (Civil) No.10180 of 2009 – Shri Vikram Sharma vs. Union of India and Ors., had considered the question whether a request for the issuance of an LOC could be made by the National Commission for Women (NCW). While disposing of the said Writ Petition, the Hon'ble High Court, in its order dated 26.07.2010, observed as follows:-

> 'A request for the issuance of an LOC could not have emanated from the NCW. It had to come from either the

Central or the State Government and that too only in the prescribed form and then again only by the officers of a certain rank. In this context, while criminal courts dealing with cases of criminal law enforcement can issue directions, which may result in the issuance of an LOC, there is no such power vested either under the Cr.P.C. or the Passports Act or under the MHA's circular, in statutory bodies like NCW. Being granted the powers of a civil court for a limited purpose does not vest the NCW with the powers of a criminal court and it has no authority as of today to make a request for the issuance of an LOC….'

The Court further observed as follows:-

"There are a large number of statutory commissions at the level of the Centre and the States which perform judicial functions and are vested with, for the purpose of conducting inquiries upon receiving complaints, the powers of a civil court. These include the National Human Rights Commission (NHRC), the NCW, the National Commission for Protection of Children's Rights. These statutory bodies, however, have not been vested with the powers of a criminal court and do not have powers to enforce criminal law. It is for the Government of India to take a policy decision on whether it wants to vest such statutory tribunals/ commissions with criminal law enforcement powers. Since as of today, they have no such power, it is imperative that the MHA should issue further clarificatory circulars or office memoranda clearly stating that the request for issuance of LOCs cannot 'emanate' from statutory bodies like the NCW. If at all, such bodies should bring the necessary facts to the notice of law enforcement agencies like the police, which will then make the request for issuance of an LOC upon an assessment of the situation, and strictly in terms of the procedure outlined for the purpose. This clarification will be issued by the MHA, in consultation with other concerned agencies, including

representatives of the statutory bodies referred to, within a period of 12 weeks from today…."

3. In a related judgment delivered on 11.08.2010 by the Hon'ble High Court of Delhi in W.P. (Crl.) No. 1315/2008-Summer Singh Salkan Vs. Asstt. Director & Ors and Crl. Ref.1/2006-Court on its Own Motion Re: State Vs. Gurnek Singh etc., the Court has answered four questions raised by a lower court on the LOC. These questions framed by the Court were as follows:

(a) What are the categories of cases in which the investigating agency can seek recourse of Look-out-Circular and under what circumstances?

(b) What procedure is required to be followed by the investigating agency before opening a Look-out-Circular?

(c) What is the remedy available to the person against whom such Look-out Circular has been opened?

(d) What is the role of the concerned Court when such a case is brought before it and under what circumstances the subordinate courts can intervene?

4. The Hon'ble High Court in its aforesaid judgment dated 11.08.2010 answered these questions, which are reproduced below, for guidance of all concerned agencies:

(a) Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite Non Bailable Warrant (NBW) and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.

(b) The Investigating Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details and reasons for seeking LOC. The competent officer alone shall give directions for opening LOC by passing an order in this respect.

(c) The person against whom LOC is issued must join investigation by appearing before I.O. or should surrender

before the court concerned or should satisfy the court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC & explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where case is pending or having jurisdiction over concerned police station on an application by the person concerned.

(d) LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs.

5. In pursuance of the order dated 26.07.2010 of the Hon'ble High Court of Delhi, this Ministry issued detailed consolidated guidelines vide this Ministry's O.M. No. 25016/31/2010-Imm dated 27.10.2010, which were subsequently modified vide this Ministry's O.M. no. 25016/10/2017-Imm (Pt.) dated 05.12.2017, 19.09.2018 and 12.10.2018 as mentioned in para 1 above.

6. The existing guidelines with regard to issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners have been reviewed by this Ministry. After due deliberations in consultation with various stakeholders and in suppression of all the existing guidelines issued vide this Ministry's letters/ O.M. referred to in para 1 above, it has been decided with the approval of the competent authority that the following consolidated guidelines shall be followed henceforth by all concerned for the purpose of issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners:-

(A) The request for opening an LOC would be made by the Originating Agency (OA) to the Deputy Director, Bureau of Immigration (BoI), East Block- VIII, R.K. Puram, New Delhi – 110666 (Telefax: 011-26192883, email: boihq@nic.in) in the enclosed Proforma.

(B) The request for opening of LOC must invariably be issued with the approval of an Originating agency that shall be an officer **not below the rank of—**

i. Deputy Secretary to the Government of India; or

ii. Joint Secretary in the State Government; or

iii. District Magistrate of the District concerned; or

iv. Superintendent of Police (SP) of the District concerned; or

v. SP in CBI or an officer of equivalent level working in CBI; or

vi. Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level [including Assitant Director (Ops.) in Headquarters of NCB]; or

vii. Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Indirect Taxes and Customs; or

viii. Assistant Director of Intelligence Bureau/Bureau of Immigration (BoI); or

ix. Deputy Secretary of Research and Analysis Wing (R&AW); or

x. An officer not below the level of Superintendent of Police in National Investigation Agency; or

xi. Assistant Director of Enforcement Directorate; or

xii. Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary to the Government of India; or

xiii. Designated officer of Interpol; or

xiv. An officer of Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs not below the

rank of Additional Director (in the rank of Director in the Government of India); or

xv. Chairman/ Managing Directors/ Chief Executive of all Public Sector Banks.

(C) LOCs can also be issued as per directions of any Criminal Court in India. In all such cases, request for opening of LOC shall be initiated by the local police or by any other Law Enforcement Agencies concerned so that all parameters for opening LOCs are available.

(D) The name and designation of the officer signing the Proforma for requesting issuance of an LOC must invariably be mentioned without which the request for issuance of LOC would not be entertained.

(E) The contact details of the Originator must be provided in column VI of the enclosed Proforma. The contact telephone/ mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow up action. Originator shall also provide the following additional information in column VI of the enclosed Proforma to ensure proper communication for effective follow up action:-

i. Two Gov/NIC email IDs

ii. Landline number of two officials

iii. Mobile numbers of at least two officials, one of whom shall be the originator

(F) Care must be taken by the Originating Agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above. It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters viz. Name & percentage, passport number or Date of Birth are available. However, LOC can also be issued if name and passport particulars of the person concerned are available. It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to

minimize harassment to genuine passengers. Details of Government identity cards like PAN Card, Driving License, Aadhar Card, Voter Card etc. may also be included in the request for opening LOC.

(G) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.

(H) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.

(I) In cases where there is no cognizable offence under IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The Originating Agency can only request that they be informed about the arrival/departure of the subject in such cases.

(J) The LOC opened shall remain in force until and unless a deletion request is received by BoI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC if any, immediately after such a review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BoI immediately so that liberty of the individual is not jeopardized.

(K) On many occasions, persons against whom LOCs are issued, obtain Orders regarding LOC deletion/ quashing/ suspension from Courts and approach ICPs for LOC deletion and seek their departure. Since ICPs have no means of verifying genuineness of the Court Order, in all such cases, orders for deletion/quashing/ suspension etc. of LOC, must be communicated to the BoI through the same Originator who

requested for opening of LOC. Hon'ble Courts may be requested by the Law Enforcement Agency concerned to endorse/convey orders regarding LOC suspension/ deletion/ quashing etc. to the same law enforcement agency through which LOC was opened.

(L) In exceptional cases, LOCs can be issued even in such cases, as may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B) above, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time.

(M) The following procedure will be adopted in case statutory bodies like the NCW, the NHRC and the National Commission for Protection of Children's Rights request for preventing any Indian/ foreigner from leaving India. Such requests along with full necessary facts shall be brought to the notice of law enforcement agencies like the police. The Superintendent of Police (S.P.) concerned will then make the request for issuance of an LOC upon an assessment of the situation, and strictly in terms of the procedure outlined for the purpose. The immigration/emigration authorities will strictly go by the communication received from the offences authorized to open LOCs as detailed in clause (B) above.

(N) For effective and better interception of LOC subjects, following guidelines shall be followed by the Originator:-

i. Specific action to be taken by the Immigration authorities on detection must be indicated in the filled LOC proforma.

ii. In case of any change in parameters/ actions/ investigating officer/ Originator contact details or if any court order is passed in the case, the same should be brought to the notice

of the BoI immediately by the originating agency concerned for making necessary changes in the LOC.

iii. For LOCs originated on court orders, the concerned PS/IO should send the identifying parameters of the subject to the BoI as court orders contain only name and parentage of the subject.

iv. In case an LOC is challenged and stayed by the concerned court or a court issues any directive with regard to the LOC, the originator must inform the BoI urgently and accordingly seek amendment/deletion of the LOC.

v. Whenever the subject of LOC is arrested or the purpose of the LOC is over, a deletion request shall be sent by the Originator immediately to the BoI.

vi. The Originator must respond promptly whenever the subject/ likely match is deleted at the ICP. The confirmation regarding the identity of the subject and action to be taken must be informed immediately to the ICP.

vii. The BoI would form a team to coordinate matters regarding the LOC. This team would contact the LOC issuing agencies to get the status of LOC updated.

viii. Each LOC Originating Agency referred in para 6 (B) above will appoint a Nodal officer as indicated in Annexure-I for coordination/updation of LOC status with BoI. The said team of BoI [as mentioned in para 6(N) (vii)] would remain in constant touch with this Nodal Officer.

7. It is requested that the consolidated guidelines as contained in this O.M. may be brought to the notice of all concerned for strict compliance.

(**Sumant Singh**)
Director (Immigration)
Tele Fax: 011-23077503

To

1. All Secretaries to the Government of India
2. Chief Secretaries of all State Governments/UT Administrations
3. Secretary, Department of Financial Services, Ministry of Finance, Jeevan Deep Building, New Delhi
4. Additional Chief Secretaries/Principal Secretaries (Home) of all States/UTs
5. DGPs of all States/UTs
6. Chairperson, National Commission for Women, New Delhi
7. Director, IB, North Block, New Delhi
8. Secretary, (R), Cabinet Secretariat, New Delhi
9. Director, CBI, North Block, New Delhi
10. Director General, Narcotics Control Bureau, R.K. Puram, New Delhi
11. Chairman, CBIC, Department of Revenue, M/o Finance, North Block, New Delhi
12. Chairman, CBDT, Department of Revenue, M/o Finance, North Block, New Delhi
13. DG, Directorate of Revenue Intelligence, CBIC, 'D' Block, IP Estate, New Delhi
14. Director of Enforcement, Enforcement Directorate, Lok Nayak Bhawan, New Delhi
15. Additional Secretary, D/o Legal Affairs, M/o Law & Justice, Shastri Bhawan, New Delhi
16. Additional Director, Bureau of Immigration
17. Additional Secretary, Department of J&K, MHA, North Block, New Delhi
18. Additional Director, Ministry of Corporate Affairs [Serious Fraud Investigation Office], CGO Complex, New Delhi
19. Joint Secretary, NHRC, New Delhi
20. Joint Secretary, NCW, New Delhi
21. Registrar, National Commission for Protection of Children's Rights, New Delhi
22. Joint Secretary, Ministry of Women & Child Development, New Delhi
23. Joint Secretary (L&T), MEA, New Delhi
24. Joint Secretary (IS-I), MHA, North Block, New Delhi
25. JS (J-II), Department of Justice, Jaisalmer House, New Delhi

ANNEXURE

(2) TABULATION OF CASES

ANNEXURE
TABULATION OF CASES

SR NO	WP NO	TITLE	CITIZENSHIP	POSITION	BANK	QUANTUM OF LOAN	LOC DETAILS	PRAYERS	CRIMINAL PROCEEDINGS	CIVIL PROCEEDINGS	WD STATUS	NOTES
1	51 / 2020	SHRIKANT BHASI v BUR OF IMM		-> Founder / Chairman of Carnival Group -> Founder of AOPL	SBI	Rs 6249.50 cr - pg 59	Stopped on 8.06.2019	-> Withdraw/ recall LOC -> Quash impugned LOC	N/A	-> DRT proceedings	N/A	-> Pg 9, Para 23 -> Pg 111, Pg 113 (SBI Policy on Request for LOC)
2	162 / 2020	JUBIN K THAKKAR v UOI		Promoter/ Director	BoB	OTS of 33.50 cr (27.50 cr paid i.e. 80% of OTS (pg 10)	Stopped on 19.10.2019	-> Quash LOC -> Refrain from implementing LOC -> 12.10.2018 OM -> LOC against OM	N/A	N/A	N/A	-> P & R2 had OTS - P to pay 25% of loan (Ord dtd 26.02.2020)
3	719 / 2020	VIRAJ CHETAN SHAH v UOI		-> Appointed Director in uncles company - P & S Jewellery Limited on 01.02.2012 -> Resigned as Director on 05.07.2014 -> Started working with Doring Consultancy Services in 2015 -> Financial Analyst at Ellington Captial Limited	BoB	300 + 490cr (pg 246)	Stopped on 13.08.2019 (pg 219)	-> Quash / set aside 2010 OM, 2017 OM, 2018 OM -> Quash 2018 OM -> Stay 2018 OM -> Declare LOC unconstitutional -> Stay LOC -> Injuction against 2018 OM (pg 45-47)	FIR filed on 10.12.2019 (pg 519)	N/A	-> Declared on 11.04.2017 by Central Bank -> Declared on 29.05.2019 by Bank of Baroda	-> Lead Matter -> Director from 2012-2015 - Total exposure during this time was Rs 300,00,00,000/- -> Deed of Guarantee from consortium banks on 29.05.2013 -> Company declared NPA

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TABULATION OF CASES

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4	837 / 2020	GAURAV TAYAL v BUR OF IMM		Freelance Consultant Not a Guarantor/ Director Former Director M/s Asahi Fibers Ltd 2012-13	All Bk	Never borrowed from R2 Bank Never defaulted	Stopped on 21.03.2019	-> Quash and withdraw LOC -> Stay LOC	N/A	N/A	N/A	-> Holds 12,240/- shares of insolvent KSL & Industries Ltd. (0.01% of total shareholdings) - gift of grandfather when minor, Pg 7, Para 12 -> DRT proceeding against KSL by Bank, P not a party, Pg 53, Para 4 -> Asahi Fibers corp guarantor for loan by KSL, Pg 53, Para 5 -> KSL & Asahi insolvent, IPR appointed, Pg 54, Para 7
5	140 / 2021	PRASAD ATTALURI v BUR OF IMM	Permanent resident of HK	Director	BoB	$2,082,986.05 as of October 2019 (pg 9)	Informed of LOC between 07.12.2019-08.12.2019 when P landed in Hyderabad	-> LOC invalid -> Records relating to LOC -> Withdraw LOC -> Stay LOC	N/A	N/A	N/A	-> NPL as on 23.08.2019 (pg 77)

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6	195 / 2021	ANIL BHANWARLAL v BUR OF IMM	Permanent resident of Hong Kong for 35 years	Proprietor of Rinky Gems Co Guarantor	BoB	USD 996,254.59 Around Rs 7 crore	Stopped on 8.12.2019	-> Withdraw and Quash LOC -> Pendency - stay LOC (pg 20-21)	N/A	N/A	N/A	-> Bank of Baroda, Hong Kong loaned amount -> Bank of Baroda, Fort issued LOC -> MD of Bank of Baroda vetoed P's settlement proposal accepted by senior management
7	1762 / 2021	KESHAV ASHOK PUNJ v BUR OF IMM		-> Never been a promoter /director of PSL Ltd (fathers company) -> Shareholder of 2.41% of company (amounting to Rs 30,11,550) (pg 9)	BoB	274.60cr (pg 175, 204, 207)	->Stopped on 24.08.2021 -> 2nd LOC issued by R2 on 24.08.2021 (pg 201, 204, 207)	-> Quash LOC -> Quash and set aside 12.10.2018 OM -> Withdraw LOC -> Stay LOC and travel ban (pg 42-43)	FIR filed on 4.01.2019 (pg 204/207) + criminal proceedings ongoing	N/A	N/A	

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8	2200 / 2021	ANIL M HOWALE v UOI		Former Director of Arch Infra Projects Nirman [resigned from the post in 2009]	BoB	Total payable - P + Borrower Company + other guarantors = **Rs 62,21,61,335.37/-** (pg 130 of Affidavit in Reply by R5)	Stopped on 20.01.2021	-> Call for records relating to opening of LOC -> Declare LOC illegal, bad in law and void -> Permit P to travel abroad for business purposes -> Permit P to travel abroad to Dubai and USA during mentioned periods -> Permit P to travel to Dubai and UAE during mentioned periods as per invitation letter (pg 17)	-> CBI Special Case No. 89 of 2010, 93 of 2010 -> S.120B r/w 420, 467, 468, 471 of IPC + S.13(2) r/w S.13(1)(d) of Prevention of Corruption Act 1988	-> OTS submitted - company under CIRP by NCLT and IBC -> During CIRP, Auditor ordered to carry out transaction audit -> Recovery process under SARFESI Act - all personal assets were pledges and mortgaged to the Bank, including LIC policies and residential flat	-> Declared WD on 02.05.2019	-> Received show cause notice to declare WD status on 27.07.2018 -> Accounts of company declared NPA on 31.12.2011 (2 years after P seized to be a Director) -> CBI Court allowed P to travel in 2020 - 2021 but LOC by PSBs (pg 13)
9	2681 / 2021	AA ESTATES v STATE BANK OF INDIA		P1 - AA Estates Private Ltd. P2 - Director P3 - Director P4 - Guarantor	SBI	Rs 151, 72, 34, 979 on 30.11.2021 (pg 374)	LOC signed by Chairman of bank on 11.12.2019	-> Quash LOC, declare unconstitutional, ultra vires OM 27.10.2010, 12.10.2018 -> Quash Impugned RBI Circular 01.07.2016 as unconstitutional, illegal	-> P1 account declared fraud w/o notice, no speaking order on basis of private forensic report	-> IBC petition before NCLT withdrawn u/s. 12A -> DRT proceedings	-> Declared WD on 14.08.2020, confirmed by Review Committee on 26.03.2021	-> Declared P1's account as NPA on 18.032014 -> Rs issued I/C, tagged fraud etc while in settlement talks with P

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								-> Quash declaration of P1 account as fraud, ultra vires RBI I/C -> Pendency: Stay effect of ^ (pg 66-70)				
10	2843 / 2021	PUNIT AGARWAL v RESERVE BANK OF INDIA		Former Director & Guarantor	SBI	62,90,00,000	Stopped on 01.02.2020	-> Stay classification of WD -> Restrain classification of WD -> Stay LOC	N/A	-> Co. in winding-up proceedings in BHC	Declared WD on 09.10.2019 (pg 187)	
11	2624 / 2021	PUNIT AGARWAL v BOB		(same as above)	BoB	62,90,00,000 (pg 146)	Stopped on 01.02.2020	-> Furnish copy of resolution of Identification Committee -> Remove WD status -> Quash LOC -> Suspend display of WD status -> Restrain from implementing LOC	FIR No. RC-DAI-2021-A-2021 dtd. 08.06.2021 w CBI, ACB, New Delhi u/s 120B r/w 420 IPC & S. 13(2) r/w 13(1)(d) of the PC Act	-> P filed WP (L) No. 432/2020 against Union Bank of India for removal of WD status -> P filed WP (L) No. 413/2020 against State Bank of India for LOC & WD status	Declared WD on 24.10.2019 (pg 69)	

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12	3338 / 2021	KARAN BAHETI v UOI		Promoters of Belchina (UAE) and other companies in the UAE	BoB	AED 14.172. million (pg 228 - Reason for issuing LOC Performa) -> 43.46cr paid back (pg 65)	-> LOC Open Date: 1.10.2019 -> LOC NO: 1947546	-> Quash and set aside 2010, 2017, July 2018, 19.09.2018 OM, 12.10.2018 OM, 2019 OM -> Produce 1979 MHA letter, 2000 OM, 12.10.2018 OM -> Produce LOC - P1 -> Quash LOC - P1 -> Disclose whether LOC is issued against P2 -> Quash P2 LOC -> Allow P to travel to UAE -> Stay all impugned OMs -> Stay LOC Stay on travel ban (pg 75)	No FIR / legal proceedings instituted in India	-> No civil proceedings in India -> Civil suit decreed against P in Dubai (Bank of Baroda Deira Branch) - recovery of 11,120,330AED (22/23cr) + 9% interest from 02.03.2019 (pg 64-65)	N/A	-> Lead Matter -> Request for issuance of LOC not clear
13	3775 / 2021	KANNAN VISHWANATH v UOI		Former Promoter	BoB	200.29 cr (pg 8)	AffR in DRT by R3 revealed LOC	-> 22.02.2021 OM -> Quash LOC -> Stay implementation of 22.02.2021 OM -> Stay LOC -> Disclose details of LOC	FIR & charge sheet by CBI u/Ss. 109, 420, 409, 477-A of IPC - granted bail on 03.01.2020 (pg 82) - travel permitted on 25.01.2021, 15.11.2021, 10.12.2021 (pg	-> DRT proceedings - DRT permitted P to travel by ord dtd. 13.12.2021 (pg 74) -> Winding-up ptns made absolute by	N/A	-> Co. in liquidation

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									92)	Orders dtd. 18.02.2015 & 12.01.2016 (pg 39, 63)		
14	3952 / 2021	DEEPAK SHENOY v STATE BANK OF INDIA		Director of Medec/ not guarantor or signatory	SBI	Petitioner's Company needs to pay Rs. 56.41 cr with notional interest to SBI as on 17.02.22 (pg 170 of AffR)	12.12.2021	-> Quash LOC	India Factoring and Finance Solutions Pvt. Ltd filed two complaints against compnay under section 138 of Non-Negotiable Instruments Act 1881. Settled by two awarded dated 1.8.2021	20.7.2018, Bombay Highcourt order that Company is to be wound up. (pg 123 of main peitition)	Sundar Industries Limtied declared WD on 18.62016 (pg 180 of affidavait in reply)	-> Company availed credit facilities since 2011 and has been classified as NPA on 28.05.15 (pg 150 of affidavity in reply)
15	4356 / 2021	RIHEN HARSHAD METHA v UOI		-> Handled and took over family diamond jewellry business in 20o6	BoB	40,93,61,799.60cr (pg 75)	LOC Open Date: 18.12.2020 1st LOC No: 1949738 2nd LOC No: 1939739 (pg 92)	-> Set aside LOC and travel ban ->Quash and set aside OM ->Stay on LOC and travel ban (pg 30)	-> No FIR filed -> No criminal proceedings (pg 20, Ground D)	N/A	N/A	
16	5450 / 2021	SAMIR PRAVIN SHAH v BUR OF IMM		Guarantor, C Mahendra Exports Ltd.	BoB	O/s on NPA acc of 186.56 cr (pg 69)	Stopped on 24.07.2021	-> Quash LOC	N/A	-> NPA declaration 25.08.2014 (pg 69) -> Appeal before DRAT pending re	N/A	

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										SARFAESI dismisssed by DRT Ahmedabad		
17	18651 / 2021	DINANATH SONI v UOI		Executive Director - On Board of Directors - resigned in 2017	BoB	-> Cred Facility of 5cr + Term Loan of 3cr -> Aggregate Amount of **9.87cr**	Stopped on 15.08.2021	-> Withdraw / cancel the LOC -> Stay effect of impugned LOC	N/A	-> NPA declaration 28.09.2012	-> Declared on 21.12.2018	-> No ED, SFIO, EOW investigation -> No FIR registered -> LOC issued against P's brother
18	46 / 2022	RAJENDRA KAIMAL v BOB		Promoter & MD, Guarantor in Term Loan of 50 cr	BoB	Term Loan of 50 cr (pg 8)	Informed on 24.11.2021 by letter (pg 164-A) - however allowed to travel on 30.11.2021 (pg 15)	-> Quash LOC -> Direct Rs to refrain from implementing LOC	-> Section 138 of NI Act proceedings before Chief Metropolitan Magistrate - granted bail (pg 10)	-> Co. Ptn. No. 572/2013 - Orders dtd. 13.06.2016 & 01.02.2017 (pgs 50 & 59) - dismissed as withdrawn on 20.07.2018 (pg 111) -> DRT Del proceedings in Org App No. 568/2018 (pg 116)	N/A	-> CDR proceedings failed -> Declared as Sick Industrial Co. by Order dtd. 26.07.2016 (pg 46) (Act now repealed) -> NBW Appl. cancelled by Magistrate (pg 109)
19	63 / 2022	AJIT KAMATH v BOB		Promoter & MD	BoB	50 cr (pg 8)	Stopped on 30.11.2021	-> Quash LOC -> Refrain from acting on LOC (pg 31)	Section 138 of NI Act proceedings before Chief Metropolitan Magistrate (pg 10)	-> DRT proceedings (p 13)-> Winding-up Petition withdrawn (pg 13)	N/A	

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20	621 / 2022	MAMTA KISHORE APPARAO v BOB		Former Promoter/Director	BoB & IDBI	Personal guarantee against Ps (Guarantor: SS Investment Pvt Ltd) of Rs. 124,98,38,005.99 9 (pg 244)	Stopped on 18.08.2021	-> Stay LOC -> Challenging RBI (Frauds classification & reporting by commercial banks and select FIs) Directions, 2016 -> Records of ex-parte declaration of Ps acc as 'fraud' - quash declaration -> Records of all consequential actions taken by Rs in relation to 'fraud' declaration - quash consequential actions	N/A	-> NCLT Liquidation order dtd. 26.09.2019 (pg 130) in Co. Ptn. No. 54/I&B/2019 -> Challenged the wrongful declaration of Ps as WD in WP (L) No. 19855/2021 (pending admission)	Declared on 13.10.2021 (pg 145)	

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21	937 / 2022	PRADEEP AGARWAL v UOI		Former Promoter, Director & Guarantor	BoB (HK)	-> WCF of $20 million (pg 71) -> O/s NPA account = 103.96 cr (pg 74)	(pgs 119 and 121) -> LOC No. 1947305 -> Opened on 24.09.2019 -> LOC Retention Date - 23.09.2020	(pg 26) -> 12.10.2018 OM -> Produce LOC -> Refrain from implementing LOC -> LOC against decree by HK HC	N/A	-> Civil Suit in HK HC - Decree dtd. 20.09.2018 for $19,385,256.10 + $15,214,229.85 (interest) & costs = $10,045 (pg 114)	N/A	-> OTS Proposal dtd. 09.21.2019 rejected for 25% of outstanding (pg 93) -> OTS of $5 million accepted by bank on 24.12.2019 (pg 115) -> P's net worth **Rs.** 32,30,51,198 (pg 73) -> Declared NPA on 03.01.2016 (pg 74) -> Co. liquidated & liquidator appointed

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22	2053 / 2022	ARIEZ RUSTOM TATA v. UOI		Director till 2014/ Guarantor	SBI	- Say India borrowed Rs. 28,00,00,000 from Andhra Bank -Say India borrowed Rs, 27,00,00,000 from State Bank of Bikaner -Dyanmix borrowed Rs. 37,70,00,000 from State Bank of Patiala -Danaioro borrowed Rs. 30,00,00,000 from Punjab National Bank - Lily borrowed Rs. 30,00,00,000 from Bank of India	Stopped on 13th March 2022	-> Declare OM unconstitutional -> Quash LOC -> Declare LOC violates the guidelines -> Restraining respondents from implementing OM and LOC	->Fine Jewellery (supplier) filed a complaint under Negotiable and Instrument Act 1881, against all directors of NASCENT, including Petitioner. -> Fine jwellery filed a criminal case before Metropolitan Magistrate Court no. 42, against NASCET'S directors including petitioner. -> Assistant Commission of Income Tax filed Criminal Case before Chief Metropolitan Magistrate 38th Court, against all directors of Yash Jewellery including Petitioner.	-> Andhra Bank issues two notices against Say India under SARFASI -> DRT proceedngs against Say India -> A Creditor of Say India initiated proceedings under IBC in NCLT -> State of Bank issued noticed against Lily under SARFAESI - >One of Crediors of Lilly filed an application under IBC in NCLT. -> One of the Creditors of Daniaoro initiated IBC proceedings under NCLT. -> Union of India filed a petition before NCLT from taking possesion of asset. -> One of the Crediots of NASCENT have itiated IBC proceedings	Declared as WD by State Bank of India	-> Say India declared NPA on 7th Aug 2014 -> Lily declared NPA on 1st Feb 2014 -> Dynamix decalred NPA on 31st Dec 2016 -> Daniaoro declared NPA on 8th June 2016

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23	2866 / 2022	NEHA HARESH DHARMANI v UOI		Guarantor of Maldar Barrels Pvt Ltd and KC Industries, (pg 75)	BoB	137 cr: (pg 76) -> Haresh Trading Co - 39.52cr -> Maldar Barrels Pvt Ltd - 80.41 cr -> KC Industries - 17.68 cr	Informed of LOC on 7.09.2018 (pg 9)	-> 27.10.2010 OM -> 04.10.2018 OM -> 12.10.2018 OM -> 22.11.2018 OM -> Permit travel -> Furnish copies of LOC -> Quash LOCs	-> Case No. RCBSM2016E0006 u/Ss. 120B, 420, 467 & 468 of IPC & Ss. 13(2) r/w 13(1)(d) of PCA, 1988 filed by R3 -> No chargesheet filed in FIR (for 5 yrs)	N/A	N/A	
24	3056 / 2022	NIHAR N. PARIKH v UOI		-> Former director of Shrenuj Co & Ltd, resigned from BoD on 27.01.16 -> Now with Trezza Jewels LLP, Mumbai	IB, BoB		Stopped on 27.02.2022	Quash and set aside -> 27.10.2010 OM -> 04.10.2018 OM -> 12.10.2018 OM -> 22.11.2018 OM -> LOC, permit travel pg 40-42)	N/A	-> P impleaded as D in DRT proceedings against Co in 2016	N/A	-> P tricked into Guarantee agreements based on false reps by consortium Pg. A -> *Ex-parte* DRT order 15.06.2016 prevents P & other directors from travelling abroad w/o permission -> P had gained permission to travel from DRT-1 Pg. 250 -> BoI accepted Co's request for waiver of personal guarantee of P in 2014-15, pg

SR NO	WP NO	TITLE	CITIZENSHIP	POSITION	BANK	QUANTUM OF LOAN	LOC DETAILS	PRAYERS	CRIMINAL PROCEEDINGS	CIVIL PROCEEDINGS	WD STATUS	NOTES
												17
25	5608 / 2022	PRAVIN MEHTA v UOI	Permanent resident of Hong Kong	Guarantor, C Mahendra Exports Ltd.	BoB	-> Rs 904, 50,19,287/- outsanding as on 30.11.2014 (pg 118)	Stopped on 23.10.2021	-> 1 2.10.2018 OM - unconstitutional -> Quash LOC -> LOC issued in violation of guidelines -> Permit travel (pg 46-48)	N/A	-> Winding up - BHC passed order, later transferred to NCLT -> SARFAESI DRT proceedings, bank in possession of property	-> WD Notice on 26.04.21, w/o basis on which notice served -> Another WD Notice on 01.11.2021 erroneously stated that P was a Director -> No WD declaration	-> Loan accounts declared as NPA by Bank of Baroda in August 2014 -> P joint owner of mortgaged properties; brother of Mr. Champak Mehta, Promoter and Board member

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26	5610 / 2022	PARAS MEHTA v UOI		Guarantor	BoB	Facilites obtained by Bank included securities for mortgage of property of which petitioner was joint owner. So, he become guarantor -> Rs 904, 50,19,287/- outsanding as on 30.11.2014 (pg 112)	Stopped on 23.10.2021	-> Declare OM dated 12.10.18 as unconstitutional -> Refrain implementing priovisions of said OM and LOC against Petitioner -> Quash LOC -> Declare impugned LOC as violating guidelines (pg 40-42)	N/A	-> Application filed by HDFC bank in 2018, Bombay High Court passed an order for winding up for the Company -> Bank of Baroda intitiated proceedings to take over physcial posession of the property under SARFAESI Act. Bank has custody of said property.	N/A	
27	(St.) 6654 / 2022	CHETAN RAMNIKLAL SHAH v UOI		P1 - Former Director, Ps - Guarantors	BoB	Rs 106.61 cr + interest	Stopped on 08.03.2022	-> Set aside LOC, -> Direct Rs to withdraw LOC, -> Refrain from preventing travel abroad, -> Stay LOC	-> FIR lodged on 21.11.2019-> Co. acc declared as fraud on 22.03.2019 (FMR No. Dena 1901_0014) filed w RBI (pg 81)	-> Taken symbolic possession of secured assets of Co. u/ SARFAESI Act, -> DRT proceedings (SA No. 172/2019)	N/A	-> Declared NPA on 02.05.2016

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28	7310 / 2022	ANIL DHANPAT AGARWAL v. UOI & Ors.		Director of Readymade Steel Singapore Pte. Ltd/ personal gaurantee in loans	UBI	100 cr loan from Union Bank of India, Hong Kong Branch in 2012. Futher availaed loan facilites from same Bank Brach in 2016.	Stopped on 3.10.2021	-> Quash LOC -> Restraining Respondents from implementing LOC against Peitioner -> Permit to travel between 20th March 2022 and 8th April 2022	N/A	-> Union Bank of India initiated proceedings under SARFAESI against petitioner to recover his bungalow, despite RSSP's account not being decalred NPA -> The bank initiated DRT proceedings	N/A	-> Peititoner paid an amout of 1 Cr to Union Bank of India through KH Goes Pte. Ltd.
29	8821 / 2022	PURUSHOTTAM CHAGGANLAL MANDHANA v UOI			BoB		Letter confirming that a LOC was issued by Bank - 10.12.2021 (pg C)	-> Declare OM as uncostitutional, illegal and bad in law -> Set aside / quash the LOC issued against P -> Stay effect of OM 2021 -> Stay LOC -> Allow P to travel to and from India -> Direct R3 to furnish and disclose material with relevant forms / performa	N/A	-> Corporate Insolvency Resolution Process initiated 29.09.2017 -> NCLT passed an order approving Final Resolution Plan	N/A	

ANNEXURE
TABULATION OF CASES

SR NO	WP NO	TITLE	CITIZENSHIP	POSITION	BANK	QUANTUM OF LOAN	LOC DETAILS	PRAYERS	CRIMINAL PROCEEDINGS	CIVIL PROCEEDINGS	WD STATUS	NOTES
								(pg 21)				
30	11128 / 2022	ANJU RAJESH PODDAR v UOI		-> Former Director -> Guarantor	**SAME AS BELOW**							
31	11141 / 2022	RAJESH PODDAR v UOI		-> Financial Consultant for investment banking [Eisen Consultancies]-> Director of Loha Ispat Ltd	SBI	-> RAA outstanding 30.05cr -> AUCA oustanding 259.05cr (pg 74)	-> P came to know about the LOC through the WD Committee	-> Call for all documents relating to records pertaining to LOC and travel ban imposed / Quash the LOC -> Restrain all officers from taking any steps in furtherance of the LOC and restraining the international travel of the P-> Stay LOC and travel ban -> Permit Petitioner to travel abroad	N/A	-> SBI initiated proceedings before DRT (SARFAESI Act)-> Declared NPA in 2015	-> Wilful Defaulter Identification Committee-> Wilful Default Review Committee Declared on 27.12.18	-> P cooperated with Bank - handed over possession of his mortgaged personal assets including DEMAT a/c

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								(subject to usual undertakings in Para 11, pg 22)(pg 24)				
32	12086 / 2022	SALIL CHATURVEDI v UOI & Ors.	From 11th July 2017, citizen of St. Kitts and Nevis	Non executive director	UBI	Borrowed loan from consortium of banks led by Union of India	January 2021	-> Quash LOC -> Restraining Respondents and associates from acting on LOC against Petitioner -> Allow Petitioner to travel to Dubai and London 13th April and 4th May 2022. (pg 28-30)	N/A	-> Company winding up proceedings -> DRT proceedings	N/A	

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33	12614 / 2022	MANAPPADMOM GANAPATHY SUBRAMNIAM v BUR OF IMM & Ors.		Director (resigned on 6.1.16)	SBI	-> Former Company borrowed loan from Bank of Baroda	Stopped at 15.04.2022	-> Quash LOC -> Direct Ps to withdraw LOC -> Direct respondents to remove the name of Peititoner from list of wilful defaulters -> Stay the implementation of LOC and allow Petitoner to travel (pg 32 and 33)	N/A	N/A	Declared WD by State Bank of India on 30.04.2018	-> Petitioner has never taken any loan from State Bank of India or defaulted or any loan from said Bank or others. -> Petitioner was not a guarantor in any loan given to his former compnay. -> Petitioner resgined in 2016 and former compnay had acknowledged his resgination, yet was noted as WD in 2018.
34	12873 / 2022	MANISH OMPRAKASH GARG v UOI & Ors.		Director / Guarantor	SBI	Total of 15 accounts submitted to WDRC for review with an outstanding of Rs. 1743 Crore; page 69	Date not given	->Quash impunged LOC -> Stay on LOC -> Restraining the Respondents and associates from acting on LOC against Petitioner; prohbiting them from imposing a travel ban; pg	N/A	-> DRT Proceedings ->Edelweiss Assets Reconstruction Company Limited filed proceedigns under SARF AESI act -> State Bank of India filed insolvency	N/A	-> DRT proceedings and Edelweiss Asset Reconstruction Compnay proceedings are not listed before presiding officer till now as compliance from

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								23& 24		proceedings before NCLT		Respondent Bank is pending. -> Insolvency proceedings are under section 95 of IBC 2016; Pg 7
35	14347 / 2022	SMITESH SHAH v UOI		Director of Calyx Pharmaceuticals at time of loan from R1-17 Personal guarantor	SBI	-> 2016 DRT order for 31 cr recovery from IDBI -> Resolution plan approved by NCLT in 2019 - 95% haircut = 68.3 cr (total outstanding 1418 cr)	P learned of LOC in BoI's Affidavit in Reply 25.03.22	-> Quash LOC -> Pendency - suspend LOC -> Set aside I/O DRT Mumbai 2 18.04.22 -> Direct DRT to stop entertaining OAs filed by R1-17 in violation of IBC, 2016 (pg 23-24)	-> IDBI declared Calyx account as fraud 10.06.20, pg 141 -> P contends Rs created a bogey CBI investigation -> BoI relied on alleged complaint but CBI has never taken action against P, no FIR	-> DRT, DRAT proceedings in 2016 -> NCLT order 16.04.19 (pg 34) -> DRT OA 2022 by IDBI - Ord dtd. 18.04.2022 (pg 169)	-> Declared on 29.06.21 (pg 139)	-> DRT 30.08.16 order restrained P from leaving India w/o permission -> P first alerted to LOC in Affidavit of BofI during IA filed before DRT for travel permission (pg 152)

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36	17482 / 2022	PRADEEP AGARWAL v UOI		Director of Psons Limited (currently undergoing liquidation) - incorporated in HK	BoB	-> See S. No. 22, WP 937/2022	Stopped on 29.10.2019 (pg 6)	-> Declare 2018 OM as ultra vires, unconstitutional and void -> Command R3 to produce LOC and quash the LOC -> Command R1-R3 to forthwith refrain from implementing the provisions of the 2018 OM against the P -> Declare that the LOC has been issued in violation of the 2010 OM and quash / set aside the LOC -> Command R1-3 to forthwith refrain from acting upon the LOC -> Restrain R1-3 and any other agents from implementing the 2018 OM and the LOC -> Permit P to travel to Zimbabwe on a	N/A	N/A	-> No declaration of WD because no default has been committed in India (pg 28)	-> NPA status to company in 09.2016 + winding up petitions by creditors -> Financial facility availed by Psons in HK from PNB HK in $ -> How can BoB take action against P in respect of debt owed to PNB HK?

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								regular basis for a period of 4 months -> Direct R3 to communicate its consent for P's travel (pg 34-36)				
37	17515 / 2022	PRADEEP AGARWAL v UOI MINISTRY OF HOME AFFAIRS										

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38	17810 / 2022	HARBHAJAN SINGH & ANR v BUR OF IMM & ORS		Husband & wife both former directors of Hydroair Tectonics (PDC) Ltd. now in liquidation	BoB	-> Approx 245 cr at time of DRT, (pg 10, Para f) -> 153 outstanding	Stopped on 21.05.2022	-> Quash & withdraw LOC -> Remove from WD list	N/A	-> DRT proceedings for recovery of 245 cr -> Properties attached/sold + payment by P = 92 cr secured -> Request for OTS failed	Declared by Bank of Baroda	-> Loaned from Vijaya Bank & consortium banks, now merged with Bank of Baroda -> NPA declaration on 22.07.11