IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5301 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 4449 of 2020
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 4449 of 2020
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 4449 of 2020
With
CIVIL APPLICATION (FOR DIRECTION) NO. 4 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 4449 of 2020
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 5 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 4449 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 6776 of 2020
With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 6776 of 2020
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 6776 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH

and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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PRAVINSINH INDRASINH MAHIDA

Versus

STATE OF GUJARAT

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Appearance:

SPECIAL CIVIL APPLICATION NO.5301 OF 2020:

MR MIHIR THAKORE SENIOR COUNSEL WITH MR DHAVAL D VYAS(3225) for the Petitioner(s) No. 1,2,3,4,5

MR KAMAL TRIVEDI ADVOCATE GENERAL WITH MR VINAY VISHEN AGP for the Respondent(s) No. 1,2

SPECIAL CIVIL APPLICATION NO.6776 OF 2020:

MR PRAKASH K JANI, SENIOR COUNSEL WITH MR ARCHIT P JANI WITH MR AMIT M BAROT, ADVOCATES for the Petitioners

MR KAMAL TRIVEDI ADVOCATE GENERAL WITH MR VINAY VISHEN AGP for the Respondent(s) No. 1,2

MR HR PRAJAPATI, ADVOCATE appearing for the for the respondent No.5 - SHRI GANESH KHAND UDHYOG SAHAKARI MANDALI LIMITED

SPECIAL CIVIL APPLICATION NO.4449 OF 2020:

MR MIHIR JOSHI, SENIOR COUNSEL WITH MR DIPEN DESAI ADVOCATE for the Petitioners

MR KAMAL TRIVEDI ADVOCATE GENERAL WITH MR VINAY VISHEN AGP for the Respondent(s) No. 1,2

MR SAURABH SOPARKAR SENIOR COUNSEL WITH MR JIGAR GADHAVI, ADVOCATE appearing for THE GUJARAT STATE FEDERATION OF COOPERATIVE SUGAR FACTORIES LIMITED

MR VC VAGHELA ADVOCATE appearing for THE SHREE NARMADA KHAND UDHYOG LIMITED

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CORAM:**HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH**

and

HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 27/08/2021

COMMON CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 Since the issues raised in all the captioned writ applications are the same and the challenge to the legality and constitutional validity of the Gujarat Cooperative Societies (Amendment) Act, 2019 is also

common in all the writ applications, those were taken up for hearing analogously and are being disposed of by this common judgement and order.

- For the convenience of exposition, this judgement is divided into the following parts:

Sr. No.	Paras	Description
1	3 to 10	Facts giving rise to the writ applications
2	11 to 14	Submissions canvassed on behalf of the writ applicants
3	15	Case law relied upon on behalf of the writ applicants
4	16 to 18	Submissions canvassed by the learned Advocate General appearing on behalf of the State
5	19	Case law relied upon by the learned Advocate General
6	20 to 21	Submissions canvassed by Mr. Soparkar, the learned Senior Counsel appearing on behalf of the Federation of Cooperative Sugar Factories Limited
7	22	Case law relied upon by Mr. Soparkar
8	25 to 37	Events leading to the impugned amendments
9	38 to 46	97th Amendment of the Constitution in relation to the cooperative societies
10	47 to 49	Events leading to the removal of the Sugar Cooperative Societies from the list of specified cooperative societies under Section 74(C) of the Act.
11	50 to 62	Statutory provisions
12	63 to 105	Final analysis
13	106 to 127	Case law relied upon on behalf of the respondents
14	128	Final conclusion

2 For the sake of convenience, the Special Civil Application No.5301 of 2020 is treated as the lead matter.

3 By this writ application under Article 226 of the Constitution of

India, the writ applicants seek to question the constitutional validity of the Gujarat Cooperative Societies (Amendment) Act, 2019.

4 The facts giving rise to this litigation may be summarized as under:

5 The writ applicant No.1 is a member of the Shree Kamrej Vibhag Sahakari Khand Udhyog Mandali Limited, the writ applicant No.2 is a member of the Shree Kantha Vibhag Sahakari Khand Udhyog Mandali Limited, the writ applicant No.3 is a member of the Shree Sayan Vibhag Khand Udhyog Mandali Limited, the petitioner No.4 is a member of the Shree Mahuva Pradesh Sahakari Khand Udhyog Mandali Limited and the writ applicant No.5 is a member of the Shree Sayan Vibhag Khand Udhyog Mandali Limited.

6 The cooperative sugar factories of which the writ applicants are its members are the cooperative societies registered or deemed to be registered under the Gujarat Cooperative Societies Act, 1961 (for short, "the Act, 1961"). The writ applicants, in their memorandum of writ application, have given a fair idea of the history of the cooperative movement in the country. We quote the brief history in the words of the writ applicants themselves as under:

> *"5. The petitioners submit that in order to properly consider the issue in the present petition, a brief history of the Co-operative movement in the country would be necessary. The petitioners submit that the Government to India had placed on the statute book the first piece to legislation pertaining to co-operative societies which was known as the Co-operative Credit Societies Act, 1904. The petitioners submit that the necessity to such legislation was felt because there was no other Act at that time under which an association or a society could be formed for the purposes to promoting the economic interest to its members in accordance with the well recognised co-operative principles and therefore the co-operative*

societies had to be organised under the Indian Companies Act 1882 and therefore the provisions to the Companies Act 1882 were wholly inapt to the societies envisaged for implementation to the recognised co-operative principles.

6. The petitioners submit that the Government also thought it desirable to confer upon such societies certain kind of privileges and facilities so as to encourage and assist the formation and working to such societies. It is further submitted that Co-operative Credit Societies Act, 1904 was based on the English Friendly Societies Act of 1896. Two basic objectives prompted the Government of India to enact this Act namely simplicity and elasticity.

7. The petitioners submit that the experience which the Government acquired in the course of working of the Co-operative Credit Societies Act, 1904 was not satisfactory since any worthwhile progress was marked in development of the rural credit. Therefore, it was in the need of an hour to remove the lacuna that the Cooperative Societies Act, 1912 was enacted which was the second phase of the co-operative movement in this country. The first major structural change which was sought to be achieved by the Co-operative Societies Act, 1912 was that the distinction between rural and urban societies was done away with and co-operative societies with other objectives besides credit facilities were permitted to be formed so as to promote the economic interest of their members.

8. The petitioners submit that the third phase was reached with the appointment and report of Madagan Committee on Co-operation in 1915 which examined the entire movement from all the relevant angles and made many constructive suggestions which had far-reaching repercussions.

9. The petitioners submit that the fourth phase was reached when by the Government of India Act, 1959 6 operation became a provincial subject and it came to be administered by the ministers of provincial Government.

10.The petitioners submit that the erstwhile province of Bombay was the first provincial Government which took lead in the matter by enacting the Bombay Co-operative Societies Act, 1925, As contradistinguished with the Co-operative Societies Act, 1912which was restricted as its operation to agriculturists, artisans and persons of limited means, while the Bombay Act of 1925 was extended to all the persons having common economic needs irrespective of the needs being limited of otherwise. The preamble of Bombay Co-operative Societies Act, 1925 recited that it was enacted with a view to facilitate the formation and working of co operative societies for promotion of thrift

self-help and mutual aid not only amongst agriculturists but also other persons with common economic need so as to bring about better living better business and better methods of production. It is further submitted that in the year 1944 comprehensive amendment took place in the Act of 1925 where in following points were taken into consideration:

> *i. The tendency to gradual removal to bureaucratic control over the control over the cooperative movement.*
>
> *ii. Splitting up to a single society into two or more societies wherever the members so desire.*
>
> *iii. Incorporating adequate safeguards for recovery to advances by the societies to their members.*

11. The petitioners submits that after the bifurcation to the Bombay State in May 1960 and consequent setting up to Gujarat State the need was felt by the Government of the new State of Gujarat to consolidate and amend the law relating to co-operative societies in the State of Gujarat and therefore the Gujarat Co-operative Societies Act, 1961 was enacted and put on the statute book.

12. The petitioner submits that the Gujarat Co-operative Societies Act, 1961 came to be enacted by the State Legislature by bifurcation of Bombay State in 1961 and consequent set up of Gujarat State.

13. It is submitted that prior to enactment of the Gujarat Cooperative Societies Act, 1961 there were various enactments furthering the co-operative movement in the country.

14. It is submitted that thereafter, in the year 1982, Gujarat Co-operative Societies Act, 1961 came to be amended

extensively. The said amendment made in the year 1982 was made subject matter of challenge before this Hon'ble Court by way of various writ petitions. Ultimately, the said petitions came to be disposed of by judgment and order dated 17.07.1984 in the case of Amreli District Co-operative Sale and Purchase Union Limited vs. State of Gujarat reported in (1984) 2 GLR 1244. The petitioner craves leave to refer and rely upon the said judgment at the time of hearing of the petition.

15. The petitioners submit that at the time of Act No.6 of 1981, special societies were given more importance looking to their federal

structure looking to their area of operation being more than one villages. Therefore, it was provided that election of such specified societies shall be held as per the provisions of Chapter-XIA and shall be conducted in a manner laid down in the said Chapter. It is submitted that specified Chapter-XIA was introduced for election of specified societies and Gujarat Act No.6 of 1981 was introduced to regulate the elections of managing committee of such big cooperative institutions and the Collector appointed under the land revenue code was to conduct election of such Specified societies.

16. It is submitted that vide notification dated 18.3.1982, Gujarat Specified Co-operative Societies Election to Committee Rules, 1982 were framed, whereby procedure for election of such specified societies were framed.

17. The petitioners submit that the co-operative sugar factories of which the petitioners are members and such other sugar factories were enlisted in the list of specified co-operative societies. As per the byelaws, area of operation of within the radius of 40 Kms. from their factory. Thereby all the villages situated within the radius of 40 Kms. would get included in the area of operation of the said sugar factories.

18. It is submitted that the area of operation of the sugar factories consist of more than one district, more than one taluka and hundreds of villages.

19 The petitioners submit that therefore, the area of Operation of the sugar factories is more than one District and they have thousands of members who are growing sugar cane in their respective fields.

20. The petitioners submit that therefore, the area of Operation of the respondent-sugar factories is huge and they have huge numbers of members who are affiliated to the respondent – sugar factories. Further, the yearly turnover of the sugar factories is more than Rs.100 crores."

7 Highlighting the aforesaid, the writ applicants have come before this Court with the present writ application pointing out that with a view to wriggle out of the obligation / requirement to delimit the constituency and with a view to see that one voter can caste his vote across all the constituencies, the State Government has enacted by way of a notification published in the Government Gazette, the impugned Gujarat

Cooperative Societies (Amendment) Act, 2019, by which the sub-section (1) Clause (5) in Section 74C of the Act, 1961 came to be deleted. To put it in other words, the Sugar factories have now been deleted from the list of the specified cooperative societies. It is the case of the writ applicants that the intention of delimiting the sugar factories by way of the impugned (Amendment) Act, 2019 is very clear. Since the sugar factories stand deleted from the list of the specified cooperative societies, the State Government would no longer be required to hold the elections in accordance with the provisions of the Gujarat Specified Cooperative Societies Elections to Committee Rules, 1982 (for short, "the Rules, 1982").

8 It is the case of the writ applicants that having regard to the importance of such societies, the elections were being held and conducted by the Collector under the Chapter XIA of the Act read with the Rules, 1982. However, as the sugar factories have now been deleted from the list of specified societies, the elections would be conducted by the concerned cooperative sugar factories. The independent government officer (Collector) would no longer be conducting the election and the elections may now be held as per the whims and caprice of the respective cooperative societies.

9 It is the case of the writ applicants that the impugned amendment has been introduced only with a view to nullify the effect of the judgement of the Supreme Court in the case of **Rajkot District Cooperative Bank Limited vs. State of Gujarat** reported in **AIR 2015 SC 489**. In other words, it is the case of the writ applicants that the Full Bench decision of this High Court in the case of **Narendrabhai Mahijibhai Patel vs. State of Gujarat rendered in the Special Civil Application No.12067 of 2012** and allied matters was challenged before the

Supreme Court and the Supreme Court in the judgement referred to above, while affirming the Full Bench decision of this Court held that where the area of operation of any society is in more than one village, then, in such circumstances, the constituency has to be limited and the contrary bye laws of the societies in that regard should pave way for the statutory provisions to take effect.

10 In such circumstances referred to above, the writ applicants are here before this Court with the present writ applications.

11 We have heard Mr. Mihir Thakore, the learned Senior Counsel assisted by Mr. Dhaval D. Vyas, the learned counsel appearing for the writ applicants (Special Civil Application No.5301 of 2020), Mr. Mihir Joshi, the learned Senior Counsel assisted by Mr. Dipen Desai, the learned counsel appearing for the writ applicants (Special Civil Application No.4449 of 2020) and Mr. P. K. Jani, the learned Senior Counsel assisted by Mr. Archit Jani, the learned counsel appearing for the writ applicants (Special Civil Application No.6776 of 2020).

12 The submissions canvassed by all the learned senior counsel appearing for the writ applicants may broadly be summarized as under:

> [1] The impugned (Amendment) Act, 2019 is *ultra vires* Article 14 of the Constitution of India being manifestly arbitrary. It is argued that the classification could be termed as absolutely irrational. The deletion of the sugar factories from the list of the specified cooperative societies could be said to be without any rational principles. There is no real and substantial difference between the cooperative societies falling within Section 76A of the Act. They all form one class. By deleting the sugar factories from

the list of specified cooperative societies, the public interest is not subserved. In other words, the object with which the sugar factories were included in the list of specified societies forming part of Section 74C of the Act could be said to be frustrated. No nexus is sought to be achieved with the object. The impugned (Amendment) Act, 2019 could be termed as irrational and absurd. The statement of objects and reasons of the impugned amendment itself would indicate that the same is irrational, absurd and violative of Article 14 of the Constitution of India.

[2] It has been argued that the impugned legislation is discriminatory in nature, and therefore, violative of Article 14 of the Constitution of India.

[3] There is a fine distinction between the object of the legislation and the motive of the legislature.

[4] The determination of object of the legislation is within the judicial review. The Writ Court can take assistance from the scheme, objects and reasons and the purpose for the legislation.

[5] It is a matter of exclusion. The object of Section 74C should be kept in mind. If the object fails, the classification becomes irrelevant.

[6] If it is the case of the State Government that excluding the sugar factories from the list of specified cooperative societies would save the expenditure being incurred by the State Government for the purpose of election, then such a rational could be termed as absolutely absurd and contrary to the public interest.

The need for Section 74C was remedial.

[7] The exclusion of the sugar factories from Section 74C will pollute the process of election. The person, who would be elected to the office, would hold the office for a period ranging between two years and five years. The basis of the classification has no nexus at all with the objects sought to be achieved. It is the case of pity one line wisdom.

[8] The State has failed to discharge its onus in justifying the exclusion of the sugar factories from the list of specified societies. Section 74C being remedial and inclusive, the State should have included few more societies. Section 74C is a beneficial remedial measure. It is not an exemption. This is what has been held by this Court in the case of **Amreli District Cooperative Sale and Purchase Union Limited and others vs. State of Gujarat** reported in **1984(2) GLR 1244.**

[9] Section 74C is one group of homogeneous class.

[10] The impugned amendment is just an expression of will that the State does not want the sugar factories in Section 74C of the Act, 1961. It is a colourable piece of legislation.

[11] Article 14 has two facets: (i) over classification and (ii) under classification. The writ applicants have a fundamental right to be treated equally.

[12] The doctrine of free and fair election goes with the right to vote. This Court in **Amreli District Cooperative (supra)** has

observed that there is huge element of mischief in the elections and having regard to the nature of the functions which are akin to public offices, their elections must be independent under an independent body. Therefore, the scope of Section 74C at that time was beneficial for free and fair elections in the benefit of the voters.

13 The sum and substance of the various submissions canvassed on behalf of the writ applicants may be summed up thus:

[1] In the State of Gujarat, there are in all 13 Sugar Cooperative Societies functioning as on date. The Sugar Cooperative Societies have been classified as the specified cooperative societies from the year 1981, i.e. since the time the State introduced the concept of specified cooperative societies. At present there are 343 specified cooperative societies in the State of Gujarat. Elections in these 343 specified cooperative societies are held by the Collector by virtue of the provisions contained under the Gujarat Cooperative Societies Act, 1961. The mode and manner of holding the election under the supervision of the Collector is prevailing past more than 30 years. After 30 years, the State Legislature has passed the impugned amendment dated 27th July 2019 by which the 13 Sugar Cooperative Societies are taken out of from the list of 343 specified cooperative societies. This amendment in the form of deletion of Section 74(C)(1)(v) allows these Sugar Cooperative Societies to hold and conduct the entire process of election on their own by appointing their own persons as the election officers. This amendment allows the outgoing members of the Committee / Board to carry out every stage of election as they wish, as their nominee is appointed as the Election Officer. The election officer

appointed by the existing board would prepare the voters' list. The Election Officer may include or exclude certain persons from the voter's list. Such Election Officer will accept or reject the nomination of any person at the behest of the appointing authority's will and wish. Such Election Officer would declare certain votes as valid votes and certain votes as invalid votes, thereby, completely affecting the entire process of election and consequential results of the election. What was done by the State, way back in the year 1981 to reform the election process in the Sugar Cooperative Societies and bring transparency and fairness in election has been undone by the State in 2019. The State Legislature is persuaded to do this on the grounds which are far from truth, non-existent and not supportable by any data. The impugned amendment is, therefore, unreasonable, arbitrary and discriminatory.

14 In such circumstances referred to above, it is prayed that the impugned (Amendment) Act, 2019 be held to be *ultra vires* the provisions of the Constitution of India, the provisions of the Act, 1961 and the Rules, 1982.

15 In support of the aforesaid submissions, reliance has been placed on the following case law:

Sr. No.	Party name	Citation
1	Rajkot District Cooperative Bank Ltd vs. State of Gujarat	AIR 2015 SC 489
2	Amreli District Cooperative Sale and Purchase Union Ltd vs. State of Gujarat	1984 (2) GLR 1244
3	Rajendra N. Shah vs. Union of India and another	2013(2) GLR 1698

4	Andhra Pradesh Dairy Development Corporation Federation vs. B. Narasimha Reddy and others	2011 (9) SCC 286
5	Union of India and others vs. N. S. Rathnam and Sons	2015(10) SCC 681
6	State of Uttar Pradesh and others vs. Deepak Fertilizers & Petrochemical Corporation Ltd.	2007 (10) SCC 342
7	State of Gujarat and another vs. Shri Ambica Mills Ltd., Ahmedabad and another	1974 (4) SCC 656
8	Hiral P. Harsora and others vs. Kusum Narottamdas Harsora and others	2016(10) SCC 165
9	Subramanian Swamy vs. Director, Central Bureau of Investigation and another	2014(8) SCC 682
10	Sharma Transport vs. Government of A.P. and others	2002(2) SCC 188

- **SUBMISSIONS ON BEHALF OF THE STATE GOVERNMENT:**

16 Mr. Kamal Trivedi, the learned Advocate General assisted by Mr. Vinay Vishen, the learned A.G.P. appearing for the State Government has vehemently opposed all the writ applications submitting that none of the applications merit any consideration and the challenge to the constitutional validity of the impugned (Amendment) Act should fail. The contentions canvassed by the learned Advocate General appearing for the State may be broadly summarized as under:

[1] That no legal, statutory or any of the fundamental rights of the petitioners could be said to have been abridged, infringed or violated by the respondents and therefore, the petitioners have no *locus standi* to file the present petition, challenging the vires of the impugned provisions and hence, the captioned petition deserves to be dismissed in *limine.*

[2] That the State legislature is very much competent to enact or make any amendment in the provisions of the Act of 1961, since it has got the authority in respect of the same by virtue of Entry 32 of the State List, i.e. List II of the Schedule VII to the Constitution of India and there is no bar, either by any statutory provision or constitutional provision, in this behalf as it is the prerogative of the State legislature to do so.

[3] That, there is no arbitrariness of whatsoever nature, much less manifest arbitrariness, or unreasonability, as alleged, with regard to the impugned provisions under challenge and that, therefore, there is no violation of the provisions of Article 14 or Article 19(1)(g) of the Constitution of India, or any other provision of the Constitution of India. It is submitted that the subject petition deserves to be rejected in *limine* on the aforesaid preliminary objections.

[4] The Gujarat State Federation of Co-operative Sugar Factories Ltd. was registered way back in the year 1960 to act as a facilitator of the various co-operative Sugar Factories spread over the State of Gujarat. The role specified to the said federation is to co-ordinate within the various Co-operative Sugar Factories and their other related ancillary activities. In the State of Gujarat, there are 31 Sugar Co-operative Societies, out of which at present, there are 13 functional Co-operative Sugar Factories in the State of Gujarat.

[5] Since the year 2013, the aforesaid Co-operative Sugar Factories were making representations to the Director of Sugar and those were also being forwarded to the aforesaid federation.

The Federation in continuation of such representation had submitted a representation dated 14th August 2014 to the Director of Sugar, highlighting the need to delete the Sugar Co-operative Societies from the list of Specified Societies, as provided under Section 74C(1)(v) of the Gujarat Co-operative Society Act, 1961.

[6] The Director of Sugar having examined the aforesaid representations and after due assessment and evaluation of the same, addressed a letter dated 13th June 2014 to the Agricultural and Cooperative Department, whereby the Director of Sugar had specified four reasons to justify the deletion of the Sugar Co-Operative Society from the list of Specified Societies under Section 74C(1)(v) of the Act of 1961.

[7] Similar representation was also made by the Director of Sugar vide letter dated 6th June 2019 addressed to the State Government. It was categorically stated therein that so far as the Sugar Co-operative Societies are concerned, the same are in fact autonomously operating inasmuch as each society has it's own board, consisting of Chairman, Managing Director and Members and has its own bye laws. The individual Agriculturists are the members of Sugar Co-operative Society and directly connected to the Society without any intermediary body. Thus, the administration of Sugar Co-operative Society is autonomous in nature. The Director of Sugar after having assessed on the representations so received, had given details about the expenses being incurred towards the holding of Election through the Collector.

[8] The State Government upon examining the aforesaid

proposal dated 6th June 2019, had placed the same before the Cabinet of Ministers. Upon examining the proposal, the Cabinet of Ministers approved the proposal of the Director of Sugar for deleting the Sugar Cooperative Society from the list of Specified Societies mentioned under Section 74(C)(1) of the Act of 1961.

[9] The Bill along with the statement of objects and reasons was placed for consideration before the Legislative Assembly of State of Gujarat and the bill was passed with majority. The said Bill was thereafter assented to by the Governor on 2nd August 2019 and the same was notified in the Government Gazette extraordinary published on 03.08.2019.

[10] Thereafter, in exercise of power conferred by Sub Section 2 of Section 1 of Gujarat Co-Operative Society (Amendment) Act, 2019, the Government of Gujarat declared the said Amendment Act to have come in force with effect from 05.09.2019.

[11] That Sub-section (3) of Section 74C of the Act of 1961 starts with a *non-obstante* clause and provides that notwithstanding anything contained in the bye-laws of any specified society, the committee of management shall be elected by a general body of members of the society. The constitution of managing committee of a specified co-operative society, therefore, has to be by way of election as provided in the said Act of 1961 and the Rules framed thereunder. The proviso to Sub-section (3) Section 74C of the Act of 1961 however, saves two kinds of nominations. It provides, that it shall, however, be lawful for the State Government to nominate its representative on a Committee of any such society under Section 80 or to nominate the first

Committee of management of any such society where the bye-laws of such society so provide. Under Section 80 of the Act of 1961, the State Government enjoys certain powers to appoint its nominee under certain circumstances, Under Subsection (1) of Section 80 of the Act of 1961, the State Government has power to nominate three representatives on the committee of society, where the State Government has subscribed to the share capital of a society directly or through another society or has guaranteed the repayment of the principal of and payment of interest on debentures issued or loans raised by the society. Under Sub-section (2) of Section 80 of the Act of 1961, the nomination is permissible for the State Government if it is of the opinion that having regard to the public interest involved in the operation of a society, it is necessary or expedient so to do.

[12] That upon insertion of the Amendment Act of 1981, new chapter namely chapter XI(A) which pertains to the Election of Committee and Officers of certain Society was also introduced in the statute. This includes section 145A to 145Z. In view of chapter XIA of the Act of 1961, the election of the committees of various categories of specified societies under section 74C, was done as per the Gujarat Specified Cooperative Societies Elections to Committee Rules, 1982. The said rules provide special election procedure of 45 days involving the Government machinery. In light of the aforesaid rules, the different categories of specified societies were required to frame or amend their existing bye laws in consonance with the said rules. Accordingly, the bye laws of all the specified cooperative societies have been brought in tune with the aforesaid rules.

[13] When Sections 74A, 74B and 74C were inserted in the Principal Act for the first time on the statute book way back in the year 1983, the State Government in order to promote growth of the Sugar industries, and as a part of the agrarian reform, had substantially contributed to the share capital as well as had also extended loan or subsidies under the scheme so framed. It is for such reasons, an element of "public interest" was involved at the relevant stage. Section 80(1) of the Principal Act of 1961, authorizes the State Government to nominate it's representative on the Board of a society. Thus, in the year 1981, there were cogent reasons prevailing to include the "Sugar Factories" under the list of specified under Section 74C of the Act.

[14] When the proposal dated 6th June 2019 suggesting amendment of Section 74C of the Principal Act of 1961 was submitted by the Director of Sugar, the overall assessment of the detailed suggested that gradually the contribution of the State Government towards share capital in the case of "Sugar Factories" has substantially reduced. Thus, the factor of "public interest" attached to these Sugar Cooperative Societies, at the material time came to be substantially watered down as compared to the position prevalent when the amendment was introduced way back in the year 1982.

[15] As the State Government is no longer a subscriber to the share capital or a guarantor, considering the elements of Section 80(1) of the Act or 1961, normally such society is to be governed only by the bodies elected and, in that view, it should remain autonomous. Thus, any interference by the State Government in such a case by nominating its representative would lead to

interference in its autonomy which may be, as far as possible should be avoided.

17 The sum and substance of the submissions of Mr. Trivedi, the learned Advocate General referred to above is as under:

[1] The Sugar Co-operative Societies, unlike the other Specified Societies, are not Federal Societies. In other words, there are no Co-operative Societies which are members of the Sugar Co-operative Societies. They are basically Primary Co-operative Societies and hence, there arises no question of discrimination on their exclusion from the list of Specified Societies, which would now be consisting of only the Federal Societies.

[2] The expenditure being incurred in conducting the election of their Managing Committee at the behest of the Collector towards transportation expenses, expenses towards wages, advertisements etc. being on a higher side, the Sugar Co-operative Societies were consistently representing that they should be removed out of the list.

[3] The Collector and Dy. Collector who were responsible for the conduct of election of the Managing Committees of the Sugar Co-operative Societies, are over a period of time heavily burdened with various other responsibilities. Therefore, the Sugar Co-operative Societies wanted to have their election conducted as per their bye-laws directly through their individual members, rather than the Collector.

[4] In 1981, when the Sugar Co-operative Societies were

included within the list of specified Societies, the element of public interest was in forefront before the State Government, inasmuch as, in majority of the Sugar Co-operative Societies in existence around that time, the State Government had subscribed to their share capital, which has, over a passage of time, been reduced to Nil and therefore, from that point of view, the element of public interest is now no longer present in the Sugar Co-operative Societies.

[5] The contention of Article 14 of the Constitution is fallacious.

[6] Reasonable restrictions have been removed.

[7] Someone has been excluded and therefore, Article 14 of the Constitution will have no applicability.

[8] Motive of the legislature is not relevant.

[9] The right to vote and elect is only a statutory right and is a prerogative of the legislature to modify it.

[10] The argument of the enactment being manifestly arbitrary is not sustainable in the present case. There cannot be any motive of malice in law.

[11] The averments made in sur-rejoinder filed by the State would indicate or rather demonstrate that certain societies were put in and having outlived its life are now being deleted.

[12] The Amendment Act, 2019 is based on a logical approach.

[13] Object of the enactment is not illegal and there is a nexus sought to be achieved.

18 In such circumstances referred to above, Mr. Trivedi, the learned Advocate General prays that there being no merit in any of the writ applications, those be rejected.

19 Mr. Trivedi, the learned Advocate General, in support of his submissions, placed reliance on the following case law:

Sr. No.	Party name	Citation	Relevant paras
1	**K. Nagaraj vs. State of Andhra Pradesh**	**(1985) 1 SCC 523**	8 to 11, 14, 28, 30, 31 and 36
2	**Shashikant Laxman Kale vs. Union of India**	**(19900 4 SCC 366**	1, 8, 17 to 19
3	**State of Himachal Pradesh vs. Kailash Chand Mahajan**	**1992 Supp 92) SCC 351**	82 to 90
4	**State of Karnataka vs. Mangalore University Non-Teaching Employees**	**(2002) 3 SCC 302**	10
5	**Javed vs. State of Haryana**	**(2003) 8 SCC 369**	12 to 14
6	**Sushil Kumar Sharma vs. Union of India**	**(2005) 6 SCC 281**	12 to 15
7	**M. K. Abdul Salam vs. State of Kerala**	**2018 SCC online Ker 2855**	9 to 12
8	**Shayara Banu vs. Union of Inidia**	**(2017) 9 SCC 1**	1, 2, 95, 101 & 104
9	**Valsad District Central Co-operative Bank vs. State of Gujarat**	**(2003) 2 GLH 459**	30
10	**Kalavada Dudh Utpadak vs. State of Gujarat**	**Order dated 27th March 2015 in Letters Patent Appeal No.181 of 2003 in Special Civil Application**	-

		No.2257 of 2001	
11	Pannalal Basilal Pitti vs. State of A.P.	(1996) 2 SCC 498	8 & 12
12	Satish Babubhai Patel vs. Union of India	2014 (1) GLH 483	7 to 18
13	D. R. Venkatachalam vs. Dy. Transport Commissioner	(1977) 2 SCC 273	2, 13, 29
14	Samasta Gujarat Rajya Mochi Samaj vs. Union of India	2004 (2) GLH 67	2.1, 2.2, 27, 28(vi)
15	D. S. Nakara & others vs. Union of India	(1983) 1 SCC 305	6, 8, 42, 43
16	Rattan Arya & others vs. State of Tamil Nadu	(1986) 3 SCC 385	3 and 4
17	Minor P. Rajendran vs. State of Madras	AIR 1968 SC 1012	11 and 12
18	K. Prabhakaran vs. P. Jayarajan	(2005) 1 SCC 754	18 and 60
19	Swiss Ribbons Private Limited vs. Union of India	(2019) 4 SCC 17	3, 10, 50, 51, 78
20	State of A.P. vs. Nallamilli Rami Reddi	(2001) 7 SCC 708	8
21	State of M.P. and others vs. Sanjay Nagayach and others	AIR 2013 SC 1921	
22	Tarlochan Dev Sharma vs. State of Punjab and others	AIR 2001 SC 2524	
23	Siemens Ltd. vs. State of Maharashtra and others	(2006) 12 SC 33	
24	Visabhai karmsibhai vs. State of Gujarat	2014 GLH(1) 698	
25	State of Rajashtan vs. Prakash Chand and others	AIR 1998 SC 1344	
26	Pravinbhai Mohanbhai Raiyani and others vs. State of Gujarat and others	(2007) 3 GLR 2606	
27	Oryx Fisheries Private Limited vs. Union of India (UOI) and Others	(2010) 13 SCC 427	
28	Calcutta Discount Company Limited vs. Income Tax Officer, Companies District, I and others	AIR 1961 SC 372	

- **SUBMISSIONS ON BEHALF OF THE GUJARAT STATE FEDERATION OF COOPERATIVE SUGAR FACTORIES LIMITED:**

20 Mr. S. N. Soparkar, the learned Senior Counsel assisted by Mr. Jigar Gadhavi, the learned counsel has appeared on behalf of the Federation. Mr. Soparkar has also opposed all the writ applications. The submissions of Mr. Soparkar may broadly be noted as under:

[1] Article 14 is irrelevant.

[2] The motive of the legislature including the object of the legislation cannot be looked into.

[3] The restriction has been removed. There is no classification. The case is one of de-classification.

[4] The impugned amendment is not violative of Article 14 of the Constitution as the sugar factories have been de-classified and put in the genus. The rights of the sugar factories, which were curtailed with the inclusion under Section 74C of the Act, are now restored. The rights of the voters under the election are not fundamental rights, but, those are statutory rights.

21 In such circumstances referred to above, Mr. Soparkar prays that the challenge to the constitutional validity of the impugned amendment should fail and the writ applications be rejected.

22 Mr. Soparkar, in support of his submissions, placed reliance on the following case law:

Sr. No.	Party Name	Citation
1	State of Kerala and another vs. Peoples Union for Civil Liberties	(2009) 8 SCC 46
2	Jyoti Basu vs. Debi Ghosal	(1982) 1 SCC 691
3	Kuldip Nayar vs. Union of India	(2006) 7 SCC 1
4	Union of India vs. Exide Industries Ltd	(2020) 5 SCC 274
5	Sri Sri K. C. Gajapati Narayan Deo vs. State of Orissa	1954 SCR 1
6	Collector of Customs vs. Nathella Sampathu Chetty	(1962) 3 SCR 786 : AIR 1962 SC 316
7	Heena Kansar vs. Competent Authority	(2008) 14 SCC 724
8	Javed and others vs. State of Haryana and others	(2003) 8 SCC 369
9	In Re Kerala Education Bill, 1957	1959 SCR 995 : AIR 1958 SC 956
10	State of Bombay vs. F. N. Balsara	1951 SCR 682
11	Sakhawant Ali vs. State of Orissa	(1955) 1 SCR 1004
12	Gauri Shanker vs. Union of India	(1994) 6 SCC 349
13	State of U.P. vs. Deoman Upadhyaya	(1961) 1 SCR 14
14	V. M. Salgaocar and Bros. vs. Board of Trustees of Port of Mormugao	(2005) 4 SCC 613
15	Reliance Industries Ltd. vs. State of Gujarat	2020 SCC Online Guj 694
16	Ashish Prafulbhai Patel vs. Income Tax Settlement Commission	2017 SCC Online Guj 2297
17	Bhanumati vs. State of U.P.	(2010) 12 SCC 1
18	Rehman Shagoo vs. State of A.P.	(1985) 3 SCC 198
19	T. Venkata Reddy vs. State of A.P.	(1985) 3 SCC 198
20	Lakhi Narayan Das vs. Province of Bihar	1949 SCC Online FC 29

23 We also heard Mr. V. C. Vaghela, the learned counsel appearing for the Shree Narmada Khand Udhyog Limited.

- **ANALYSIS:**

24 Having heard the learned counsel appearing for the parties and

having gone through the materials on record, the only question that falls for our consideration is whether the Gujarat Cooperative Societies (Amendment) Act, 2019 is *ultra vires* Article 14 of the Constitution of India.

- **EVENTS LEADING TO THE IMPUGNED AMENDMENTS:**

25 The Act, 1961 came to be amended by the Act No.6 of 1981 and the Act No.23 of 1982 respectively. These amendments were the outcome of the deliberations which took place at the State level Conference of cooperative and were based on the report submitted by the Gujarat State Law Commission to the then Chief Minister of the State in the year 1976. By the introduction of the two amendments in the Act, the Legislature brought about extensive changes in the Act, one of those being the classification of the co-operative societies into the "Specified cooperative societies and non-specified co-operative societies". One other significant change made by the Legislature was the appointment of Collector as the election officer in all the specified cooperative societies thereby taking away the power of the Specified cooperative societies to hold the election on their own.

26 The Statement of Objects and Reasons dated 7th January 1981 for introducing the various new provisions including the Section 74C of the Act was as under:

> *"Under the existing provisions of the Gujarat Co-operative Societies Act, 1961, a committee of a Co-operative Society is constituted in accordance with the bye-laws of such Society with the result that the constitution of a committee of every Society is different in each case. In order to introduce a uniform system of elections for the members of a committee as well as its Officers, in so far as certain categories of societies are concerned, it is considered necessary, to amend the said Act. It is also considered necessary to prohibit a person from holding more than two posts of officers in certain societies or from holding the*

post of officer for more than six years in one such society and also to provide for reservation of certain seats on committee of certain societies, for the Scheduled Casts and the Scheduled Tribes and also for marginal farmers and small farmers. As the Gujarat Legislative Assembly in not in session Ordinance is promulgated to amend the said Act to achieve aforesaid objects."

27 The Gujarat Co-operative Societies Act, 1961 came to be further amended in the year 1982 enacting the Act No. 23 of 1982.

28 The Statement of Objects and Reasons dated 27th April 1982 of the Gujarat Co-operative Societies (Amendment and Validation) Act, 1982, was as under:

"While administering the Gujarat Co-Operative Societies Act, 1961, it is found that the existing provisions therein are not adequate to meet with certain aspects of the Co-operative movement such as existence of financially not viable societies, in the same economic activity, emergence of vested interests for gaining control over cooperative societies, etc. It is, therefore, considered necessary to make adequate provisions in the Act for the purpose. As the Legislative Assembly is not in session this Ordinance is promulgated to amend the said Act to achieve the aforesaid object."

29 Section 74C of the Act 1961 is reproduced herein below:

*"**74C:** Provision for conduct of elections of committees and officers of certain societies and term of office of members of such committees.*

(1) The election of the members of the committees and of the officers by the committee, of the societies of the categories mentioned below shall be subject to the provisions of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter—...

(v) all Co-operative Sugar Factories..."

30 Few cooperative societies, including the Sugar Co-operative Societies, challenged the above referred amendments before this High Court, *inter alia*, on the ground that the amendments were violative of the fundamental rights guaranteed under Article 19 of the Constitution of India.

31 In the writ petitions filed by the Sugar Co-operative Societies, it was argued that the amending Acts were, unconstitutional; as those created unreasonable restrictions. Four writ applications were filed by the Sugar Co-operative Societies and Sugar Co-operative Federation respectively representing all the Sugar Co-operative Societies. The details of the same are as under:

(i) Shree Mahuva Pradesh Sahakari Khand Udhyog Mandali Ltd. filed Special Civil Application No.136 of 1983.

(ii) Shree Madhi Vibhag Khand Undyog Sahakari Mandali Ltd, Surat filed Special Civil Application No.216 of 1983.

(iii) Shree Chalthan Vibhag Khand Undyog Sahakari Mandali Ltd. filed Special Civil Application No.217 of 1983.

(iv) Gujarat State Cooperative Sugar Federation Ltd filed Special Civil Application No.5088 of 1982 challenging the amendments effected by two Acts.

32 While opposing the above referred writ applications, the State Government filed its affidavit-in-reply explaining the justification and the rationale for introducing the Amendment Acts of 1981 and 1982 respectively. On behalf of the State of Gujarat, the reply was duly

affirmed by one Shri D. K. Patel, Deputy Secretary, Cooperation Department, Sachivalaya, Gandhinagar. The affidavit was affirmed on 12th April 1983:

> *"It would be seen that the specified societies comprise of* ***such types of important key institutions or federations which undertake distributions production, processing of various agricultural inputs or out puts or which is engaged in the banking and credit dispensing activities on a large scale,*** *and manage sizeable funds and capital, enjoy pivotal position in the economic sphere,* ***and are financially and otherwise assisted on liberal scale by the State Government and other*** *public authorities and institutions. It is, therefore, found necessary in larger interests of these societies that their affairs are directed, controlled and managed by their managing committee members of which are elected under the system regulate by statutory rules, under the control and supervision of an independent authority like the District Collector. The provisions, therefore, ensure free and fair elections of the members these societies under independent and impartial authority."*
>
> *"7. Dealing with newly added Sections 74C, I say that as in the order amendments, recommends has been forthcoming for an impartial and independent machinery for conducting the Cooperative election and the same has also been endorsed by the State Level Conference of Cooperatives etc. The words suggested have been "impartial and independent arrangement for the election of the office-bearers of cooperative body and it has been reiterated in the deliberations that the present system of co-operative election leads to proliferation of the election dispute not only at the level of the Board of Nominees and the Tribunal but many a times, at the level of the High Court". I say that the impugned provision aims at providing an independent and impartial system of election for office bearers of cooperative body as also limit on expenditure to be incurred on election by a candidate and method and manner of conduct of elections. These provisions are more or less similar to the provision under the Maharashtra Act."*
>
> *"14. Dealing with the newly added Section 74C, I state that as in the other amendment, recommendations have been forthcoming*

for the impartial and independent machinery for conducting cooperative elections and the same has also been endorsed by the State Level Conference of cooperative, etc. The words suggested have been "impartial and independent arrangement for the election of the office bearers of cooperative bodies" and it has been reiterated in the deliberation that the present system of cooperative election leads to proliferation of election disputes not only at the level of the board of the nominee and the Tribunal but many a time at the level of the High Court. I say that the impugned provision aims at providing independent and impartial system of election for office bearers of the cooperative body. These provisions are more or less similar to the provisions under the Maharashtra Act. I say that the elections of the members of the Committee of the specified societies has been entrusted to the impartial authorities viz. the Collector. These elections are to be held in accordance with the rules and by-laws of the specified societies. It may be added here that considering the suggestion of the cooperative worker, period of the term of the Committee has been brought down from 5 years to 3 years by the impugned Amendment Act. I deny that this section in any way takes away the power of the member to elect the office bearers. I also deny that the provision of this section in any fashion impenges on the fundamental right of the association."

33 A Division Bench of this Court delivered a common judgment titled the **Amreli District Cooperative Sale and Purchase Union Ltd and others vs. State of Gujarat reported in 1984(2) GLR 1244.** The Division Bench while upholding certain other provisions of the two Amending Acts, declared certain provisions of the Amending Acts as unconstitutional. The Division Bench upheld Section 74C of the Act. The Division Bench held that Section 74C is constitutionally valid. Paragraph 66 of the Division Bench's judgment, in the case of **Amreli District Cooperative Bank Ltd (supra)** is very material which is reproduced herein below:

"66. This takes us to the challenge to Section 74-C which provides for the conduct of elections of certain specified societies in accordance with the provisions contained in Chapter-XI-A. It

should be first 19(1)(g) of the Constitution, and, if necessary, then to examine whether it offends Article 19(1)(c). At the outset, it must be emphasized that Chapter XI-A which contains detailed provisions as to how elections are to be conducted is made applicable by this provision contained in Section 74-C only to Apex societies as may be specified by the Government by a general or special order in the Official Gazette, or District Central Co-operative Banks, or Primary Land Development Banks, District and Taluka Sales and Purchase Union, Sugar Factories and Spinning Mills. ***It cannot be gainsaid that the conduct of the elections to all these offices which are almost in the nature of public offices having regard to the important functions these societies discharge, must be so conducted as to inspire confidence amongst not only the members of the societies in particular but also the members of public at large who may be the consumers or the workers or the customers of these societies. It does not require much of imagination to appreciate that many malpractices are being committed in these elections by not only the participating candidates but their supporters and sympathizers. There are black-sheep and bullies in all these public institutions who try to the elections. If, therefore, the Legislature has thought fit to make detailed provisions about the conduct of the elections, it cannot be objected to on the ground of violation of fundamental right to carry on business or trade since they are applicant reasonable restrictions in larger public interest. We must therefore, reject this challenge to this section on touch stone prescribed in Article 19(6) of the Constitution of India."***

34 What does the stance of the State Government indicate as reflected in the above referred reply filed at the relevant point of time before this Court, for the purpose of defending the amendment Acts of 1981 and 1982 respectively? What do the observations of this Court, as contained in para 66 of the above referred judgement in the case of **Amreli District Cooperative Sale and Purchase Union vs. State of Gujarat (supra),** convey? The stance of the State Government at the relevant point of time was that the specified societies comprise of important key institutions. The State Government wanted to ensure one thing i.e. the affairs of such societies are directed, controlled and managed by their

managing committee members of which are elected under the system regulated by the statutory rules under the control and supervision of an independent authority like the District Collector. The amendment Acts of 1981 and 1982 respectively were introduced to ensure free and fair elections of the members of these societies under the independent and impartial authority. This Court in **Amreli District (supra)**, while upholding the challenge to Section 74C, made itself very clear that the conduct of the elections of all these offices, which are almost in the nature of public offices, having regard to the important functions, the societies discharge, must be so conducted so as to inspire confidence among not only the members of the societies in particular, but also the members of the public at large, who may be the consumers or the workers or the customers of these societies. This Court took cognizance of the various malpractice being committed in the elections by not only the participating candidates, but also their supporters. This Court upheld the decision of the legislature to introduce Section 74C by laying down detailed provisions about the conduct of the elections. All the Societies were included as one group as a homogeneous class. The reason for the same was plain and simple. The object was free and fair elections. Section 74C is remedial.

35 Aggrieved by the above referred decision rendered by this Court titled the **Amreli District Cooperative Sale and Purchase Union vs. State of Gujarat (supra),** certain Co-operative Societies as also the respondent State filed the Special Leave Petitions before the Supreme Court of India. During the pendency of the Special Leave Petitions, the Supreme Court passed an order directing the Deputy Registrar of the High Court of Gujarat to hold the elections of the specified co-operative societies till the Special Leave Petitions were heard by the Supreme Court. Pursuant

to such order passed by the Supreme Court, during the pendency of the Special Leave Petitions, the Deputy Registrar, High Court of Gujarat had held the elections of the specified co-operative societies in the State.

36 Indisputably, when the aforesaid Special Leave Petitions came up for hearing before the Supreme Court, the State of Gujarat as also the Co-operative Societies withdrew the Special Leave Petitions.

37 It is not in dispute that from the date of the order passed by the Supreme Court till the year 2019, the elections of the specified co-operative societies were being held by the Collectors of the respective districts. As stated earlier, there are 343 specified cooperative societies in the State of Gujarat.

- **97TH AMENDMENT OF THE CONSTITUTION OF INDIA IN RELATION TO COOPERATIVE SOCIETIES:**

38 The Parliament amended the Constitution of India by introducing the 97th Amendment on 12th January 2012. By introducing the 97th amendment in the Constitution, the Parliament incorporated the "right to form co-operative societies" as a fundamental right under Article 19(1)(c) of the Constitution of India. The Parliament inserted Article 43B in the Chapter captioned as the "Directive Principles of State Policy". Article 19(1)(c) reads as under:

> *"ARTICLE 19 : Protection of certain rights regarding freedom of speech, etc : - (1) All citizens shall have the right-*
>
> *(c) to form associations or unions, co-operative societies;"*

Article 43B reads as under:

> *"ARTICLE 43B : Promotion of co-operative societies :*
>
> *The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies."*

39 In the 97th Amendment, the Parliament inserted Articles 243 ZH to 243 ZT in part-IXB of the Constitution of India under the heading of "the Co-operative". As per the provisions of the Article 243-ZT introduced by the 97th amendment all the State Legislatures were required to bring their respective Co-operative Societies Acts in consonance with the amendments made by the Parliament in the Constitution of India by way of 97th amendment.

40 It appears that the Legislature of the State of Gujarat, as per the provisions contained in the Article 243-ZT of the Constitution of India in 97th Amendment, amended the Gujarat Cooperative Societies Act, 1961 by Act No.17 of 2013 and Act No. 19 of 2013 respectively so as to bring the provisions of the Gujarat Co-operative Societies Act, 1961 in consonance with the 97th Amendment of the Constitution of India.

41 The Article 243-ZT contained in the 97th amendment of the Constitution of India (declared *ultra vires*) made provision to create a special authority for holding the elections in co-operative societies. In this connection, it may be noted that the “Specified co-operative societies were already governed by the provisions of Section 74C and Chapter XIA of the Act of 1961 by which there were provisions for holding the elections by the Collector. The State Legislature therefore

introduced Section 74CC in the Act for the purpose of creating authority for holding the elections of co operative societies other than the specified co operative societies Section 74CC reads as under:

> *"**74CC. Election of societies other than specified societies.** (1) The election of the Committee and of the office bearers of the societies other than the specified societies as referred to in section 74C shall be conducted by such authority as the State Government may, by notification in the Official Gazette, notify.*
>
> *(2) The authority appointed under sub-section (1) shall hold the election as per the rules as may be prescribed.*
>
> *(3) The election of the Managing Committee shall be conducted before the expiry of its term so as to ensure that the newly elected members of the Managing Committee assumes office immediately on the expiry of the term of office of the members of the outgoing Managing Committee."*

- **WRIT PETITION IN THE HIGH COURT CHALLENGING THE CONSTITUTIONAL VALIDITY OF THE 97TH AMENDMENT:**

42 One Rajendra N. Shah filed a writ petition before this High Court in the form of a PIL, *inter alia* contending that the 97th Amendment of the Constitution of India suffered from the vice of non-compliance of the basic procedural requirement of Article 368 of the Constitution of India. It was contended that the 'cooperative' is a State subject and since the Parliament had made provisions in relation to the State subject without taking the concurrence of the State Legislatures as required under Article 368 of the Constitution of India, the 97th amendment dealing with the subject of co-operative is liable to be struck down.

43 A Division Bench of this Court (to which one of us, J. B. Pardiwala, J. was a party) accepted such contention and declared the 97th amendment of the Constitution of India as *ultra vires*. The judgment

rendered in the case of **Rajendra N. Shah vs. Union of India dated 22nd April 2013 has been reported in 2013 (2) GLR 1698**. The Division Bench held the 97th amendment of the Constitution of India as unconstitutional barring Article 19(1)(c) and Article 43B of the Constitution of India.

44 Being aggrieved by the above referred judgement delivered by this High Court declaring Part IX-B from Article 243-ZH to Article 243-ZT as unconstitutional, the Union of India filed the Special Leave to Appeal being the Special Leave Petitions Nos.25266 of 2013 and 25267 of 2013 before the Supreme Court of India. The Supreme Court vide its order dated 22nd September 2014 was pleased to grant leave. The Special leave Petitions came to be numbered as the Civil Appeals Nos.9108 of 2014 and 9109 of 2014 respectively. The Supreme Court vide its judgement and order dated 20th July 2020 upheld the judgement of this High Court except to the extent it struck down entirety Part IX-B of the Constitution. The majority judgement declared that Part IX-B of the Constitution is operative only so far as it concerns the multi-state Cooperative Societies both within the various States and in the Union Territory of India. In such circumstances, the entire Part IX-B will have no application to any cooperative society registered under the Gujarat Cooperative Societies Act, 1961 in the entire State of Gujarat.

45 It is the case of the writ applicants that the provisions inserted by way of Section 74CC of the Gujarat Co-operative Act, 1961 mandated the State to create a separate machinery to hold the election in the cooperative societies. The State however showed no inclination to constitute a separate election authority. It is alleged that to avoid constituting a separate authority, the State took the following steps at a point of time when the State assembly was not in session.

46 The Governor of Gujarat, issued Ordinance deleting section 74CC of the Act of 1961. In view of the Ordinance issued by His Excellency, the Governor of Gujarat, section 74CC came to be deleted from the Gujarat Co-operative Societies Act, 1961. The State Legislature thereafter amended the Act and deleted Section 74CC from the Statute, thereby leaving it to the respective co-operative societies to hold the elections on their own in accordance with their bye-laws.

- **EVENTS LEADING TO THE REMOVAL OF THE SUGAR COOPERATIVE SOCIETIES FROM THE LIST OF SPECIFIED COOPERATIVE SOCIETIES UNDER SECTION 74(C) OF THE ACT:**

47 The State Government's case is that past couple of years, the sugar co-operative societies were making representation to the Director of Sugar-respondent No. 4 herein with copies thereof to its federation called the 'Gujarat State Federation of Sugar Co-operatives' to delete the sugar cooperative societies from the list of the Specified Cooperative Societies'. Lastly, two representations were made dated 21st March 2017 and 4th December 2018 respectively by 3 sugar co-operative societies. In furtherance of these 2 representations, the Director of Sugar forwarded a proposal to the State Government dated 6th June 2019. The state Government placed the proposal of the Director of Sugar before the Cabinet-Council of Ministers on 17th July 2019. The Cabinet-Council of Ministers approved the proposal of the Director of Sugar for deletion of the Sugar Co-operative Societies from the list of the Specified Cooperative Societies. On 19th July 2019, the Additional Secretary, GAD addressed a letter to the Secretary, Co-operation department about the approval granted by the Cabinet-Council of Ministers. The Bill to delete the Sugar Co-operative Societies came to be placed before the State Legislature on 25th July 2019.

48 "STATEMENT OF OBJECTS AND REASONS

The elections of the members of the committees and of the officers by the committees, of all the societies as mentioned in section 74C of the Gujarat Co-operative Societies Act, 1961 are held subject to the provisions of Chapter XI-A of the said Act.

As per section 145D of the said Act, the elections of the cooperative sugar factories are held by the Collector of the respective districts and for this purpose, certain returning officers and other officers are also appointed by the Collector. With the passage of time, the work load of the Collector has been consistently increased as the Collector is an important link between the Government and the people for implementation and administration of law and in these circumstances, he is unable to complete all the procedure for elections of such co-operative sugar factories within stipulated time. Moreover, as per the provisions of section 145E of the said Act, the expenses of the holding of such election, including the payment of travelling allowances, daily allowances and other remuneration, if any, to the persons appointed to exercise the powers and perform the duties in respect of the election, are to be borne by the cooperative sugar factories which may adversely affect the members of such societies.

It is, therefore, considered necessary to bring, all the co-operative sugar factories, outside the purview of the provisions of section 74C. Clause 2 of the Bill provides for the same.

This Bill seeks to amend the said Act of 1961 to achieve the aforesaid objects.

ISHWARSINH PATEL"

49 We were informed that the same was read 3 times in a day i.e. on 25th July 2019. That is how the Bill to delete the sugar co-operative societies from the specified co-operative societies came to be passed. His Excellency, the Governor gave the assent to this Bill on 2nd August 2019. The same was notified in the Government's Extra-ordinary Gazatte on 3rd August 2019. Thereafter by Notification dated 5th September 2019, the impugned amendment came into force, thereby excluding the sugar co-operative societies from the list of the specified co-operative societies.

- **STATUTORY PROVISIONS:**

50 We shall now look into few provisions of the Act, 1961 as well as the Rules of 1982 as our attention was drawn to those in the course of the hearing of this matter.

51 Section 2(9) of the Act, 1961 provides for the definition of "federal society". It reads as under:

"federal society" means society, not less than [ten members] of which are themselves societies;"

52 Section 6 of Chapter II of the Act, 1961 provides for the conditions of registration. Section 6 (1) and (3) reads as under:

*"**6. Conditions of registration.**- (1) No society other than a federal society shall be registered under this Act unless it consists of atleast*

then persons (each of such persons being a member of different family) who are qualified to be members under this Act and who reside in the area of operation of the society.

…

(3) No federal society shall be registered, unless it has atleast [ten societies] as its members.

…

Explanation.- For the purpose of this section the expression "member of a family" means a wife, husband, mother, grand-father, grand-mother, step-father, step-mother, son, daughter, step-son, step-daughter, grand-son, grand-daughter, brother, sister, half-brother, half-sister and wife of brother or half-brother."

53 Section 8 of the Act, 1961 is with respect to the application for registration. Section 8(2)(a) and (b) reads thus:

*"8. **Application for registration**.-*
...
(2) The application shall be signed-
(a) in the case of a society other than a federal society, by at least ten persons (each of such persons being a member of a different family) who are qualified under this Act, and

(b) in the case of a federal society, by atleast [ten societies]."

54 Section 73 falling in Chapter VII of the Act, 1961 is with respect to the management of societies. Section 73 provides for the final authority of society. The same reads thus:

*"**73. Final authority of society**.- Subject to the provisions in this Act and the rules, the final authority of every society shall vest in the general body of members in general meeting, summoned in such a manner as may be specified in the bye-laws:*

Provided that, where the bye-laws of a society provide for the election of delegates of such members, the final authority may vest in the delegates of such members elected in the prescribed manner, and assembled in general meeting."

55 Section 95 of the Act, 1961 is with respect to the constitution or recognition of federal society to supervise working of societies.

56 Section 52 falling in Chapter V of the Act, 1961 is with respect to indirect partnership of State Government in the societies. Chapter V is with respect to State aid to the societies. Section 52 reads thus:

> *"**52. Indirect partnership of State Government in societies.**- The State Government may, under appropriation made by law, provide moneys to a society for the purchase directly or indirectly, of shares in other societies with limited liability. A society to which moneys are so provided for the aforesaid purpose is hereinafter in this Act referred as an "Apex society"."*

57 We shall now look into some of the provisions in Chapter XI-A. Chapter XI-A is with respect to the elections of committee and officers of certain societies. Section 145A reads thus:

> *"145A. **Application.-** All sections of this Chapter except section [145-Z] shall apply to elections to committees of societies belonging to the categories specified in Section 74-C."*

58 Section 145C reads thus:

> *"**145C. Time when election to be held.**- Every election shall be held as far as possible one month before the date on which the term of office of the members is due to expire."*

59 Section 145D reads thus:

> *"**145D. Conduct of elections.-** (1) Save as otherwise provided, every election shall be held on such date or dates as the Collector may fix,*

and shall be conducted under his control by such Returning Officer and other Officers, as may be appointed by the Collector in this behalf.

(2) In all cases, where as society has to send a nominee as a member of the committee of the specified society, the election of such nominee shall be conducted under the control of the Collector of the District in which the registered office of the society sending the nominee is situated.

(3) The voting at every election shall be by secret ballot.

(4) No election shall be held in the case where under the bye-laws of a specified society the Government nominee or the nominee of a Financing Agency becomes a member of the committee of the society."

60 We shall now look into the Gujarat Specified Cooperative Societies Elections to Committees Rules, 1982.

61 Rule 2(ai) defines the term "**Society".** It reads thus:

*"(ia) "**Society"** means a society specified under sub-section (1) of Section 74-C;"*

62 Rule 3A is with respect to delimitation of constituencies for purpose of election. Rule 3A (8) and (9) respectively read thus:

"3A. Delimitation of constituencies for purpose of election.
…

(8) Where the area of operation of a society is in more than one village, the number of constituencies shall be equal to the total number of seats excluding two seats reserved under sub-section (1) of section 74-B.

(9) Notwithstanding anything contained in these rules and the bye-laws of the society, where the elections to the members of any Committee are scheduled to be held before the ending of the accounting year of the society, the delimitation of the constituencies shall be made by the Collector prior to the publication of the list of voters."

- **FINAL ANALYSIS:**

63 Before we proceed to undertake the final analysis, we would like to clarify that we intend to address ourselves on the following propositions of law:

[a] Is the impugned amendment discriminatory as it fails to disclose the object which could be termed as reasonable or in public interest? Is the impugned amendment manifestly arbitrary?

[b] Whether the differentiation has any nexus with the object sought to be achieved? If the object is found to be absurd or unreasonable or not in public interest, then the classification becomes irrelevant.

[c] Whether the administrative exigency or saving of money towards the expense of elections could be termed as a object of public interest or could such object be said to be reasonable for the purpose of the introduction of the amendment?

[d] Are the respondents justified in submitting that as this Court cannot look into the motive of the legislature, the object of the legislation also cannot be looked into? In other words, can a Writ Court, while examining the challenge to the constitutional validity of any enactment, look into the object of the legislation? Is the object of the legislation immune to judicial review?

[e] Do all the specified societies form one class or one homogeneous group for the purpose of its members to ensure free and fair elections under Chapter XI-A of the Act and the Rules,

1982? In other words, having regard to the object of Section 74C of the Act being remedial is there any rational principle involved in the exclusion of the Sugar factories from it on the ground that they are federal Societies? Is there any real and substantial difference between the cooperative societies or they form one class?

[f] Is Article 14 of the Constitution irrelevant to the case on hand, as according to the respondents, the case is one of exclusion? In other words, are the respondents right in asserting that as the Sugar factories are taken out of the rigor of Section 74C, it is exclusion without any classification and therefore, Article 14 will not apply?

64 Mr. Trivedi, the learned Advocate General appearing for the State and Mr. Soparkar, the learned Senior Counsel appearing for the Federation, at the outset, very forcefully submitted that this Court may not go into the issue of Article 14 of the Constitution, as sought to be heavily relied upon by the writ applicants for the reason that here is a litigation in which something has been excluded and as such there is no classification. In other words, the emphasis is on the fact that at the relevant point of time, the Sugar factories were included under Section 74C of the Act. The Sugar factories were included despite the fact of they not being Federal Societies. However, the Sugar factories were included or brought within the purview of Section 74C of the Act at the relevant point of time as the State Government had provided financial assistance to all those societies and with a view to keep a check on all such Sugar Societies, those were brought within the purview of Section 74C of the Act. It has been argued that over a period of time, the State Government realized that as the Government has no financial stake

involved in the Sugar factories and further keeping them within the purview of Section 74C would unnecessarily involve the Collector in the election process, who is otherwise a very busy revenue Head of the district, thought fit to exclude the Sugar Societies from the ambit of Section 74C of the Act. As this is a case of exclusion on the aforesaid two grounds, the principle of Article 14 of the Constitution will have no application.

65 In the aforesaid context, we may only say that we are not at all impressed by such submission canvassed on behalf of the respondents.

66 In order to test the constitutional validity of the Act, where it is alleged that the statute violates the fundamental rights, it is necessary to ascertain its true nature and character and the impact of the Act. Thus, the Courts may examine with some strictness the substance of the legislation and for that purpose, the court has to look behind the form and appearance thereof to discover the true character and nature of the legislation. Its purport and intent have to be determined.

> *"8.... In order to do so it is permissible in law to take into consideration all factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy."*

(Vide: Dwarkadas Shrinivas v. The Sholapur Spinning & Weaving Co. Ltd. & Ors., AIR 1954 SC 119; Mahant Moti Das v. S.P. Sahi, The Special Officer in charge of Hindu Religious Trust & Ors., AIR 1959 SC 942; and Hamdard Dawakhana & Anr. v. Union of India & Ors., AIR 1960 SC 554, para 8).

67 It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of *"quando aliquid*

prohibetur, prohibetur at omne per quod devenitur ad illud." An authority cannot be permitted to evade a law by "shift or contrivance". **(See: Jagir Singh v. Ranbir Singh, AIR 1979 SC 381; M.C. Mehta v. Kamal Nath & Ors., AIR 2000 SC 1997; and Sant Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. & Ors., (2010) 13 SCC 336, p. 344, Para 21).**

68 The Supreme Court in the case of **A. P. Dairy Development Corporation Federation vs. B. Narasimha Reddy and others** reported in **(2011) 9 SCC 286** was called upon to examine the legality and validity of the judgement and order delivered by the High Court of Judicature of Andhara Pradesh, by which the High Court had struck down the provisions of the Andhra Pradesh Mutually Aided Cooperative Societies (Amendment) Act, 2006 as unconstitutional. In the said case, the Government of Andhra Pradesh had introduced an integrated milk project in the State with the assistance of the UNICEF, according to which, the rural surplus milk produced in the villages was transported to the chilling centres and supplied to the consumers of Hyderabad. A milk conservation plant / milk products factory was established at Vijayawada in 1969 as a part of the project. In the meantime, the 1964 Act came into force with effect from 1st August 1964. In the year 1970-71, the Government of Andhra Pradesh set up an independent Dairy Development Department and intensive efforts were made by the Government to give a boost to the Department taking various measures. In the year 1974, the Andhra Pradesh Dairy Development Corporation Limited, a company under the Companies Act, 1956, fully owned by the State Government, was constituted and the entire infrastructure and assets of the Department of the State stood transferred to the said Corporation. The employees of the Department were absorbed in the Corporation. The Federation was registered as a cooperative society and

all the assets and dairy infrastructure were transferred to the Federation. A House Committee constituted by the legislative assembly of Andhra Pradesh opined that the 1995 Act had adverse consequences on the dairy cooperatives. The State promulgated Ordinance excluding the dairy cooperative societies from the societies covered by the 1995 Act and imported the fiction that such dairies would be deemed to have been registered under the 1995 Act. Various writ petitions were filed before the High Court by various Districts Milk Producers Cooperative Unions challenging the Ordinance on the grounds being arbitrary and violative of Article 14 of the Constitution of India.

69 The issues that fell for the consideration before the Supreme Court were whether the 2006 Act was arbitrary, discriminatory or unreasonable or had taken away the accrued rights of the milk dairy societies registered directly under the 1995 Act or got conversion of their respective registration under the 1964 Act to the 1995 Act.

70 The Supreme Court, while dismissing the Civil Appeals and affirming the judgement of the Andhra Pradesh High Court, observed in paras 29, 52, 53 and 54 as under:

> *"29. It is a settled legal proposition that Article 14 of the Constitution strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. This doctrine of arbitrariness is not restricted only to executive actions, but also applies to legislature. Thus, a party has to satisfy that the action was reasonable, not done in unreasonable manner or capriciously or at pleasure without adequate determining principle, rational, and has been done according to reason or judgment, and certainly does not depend on the will alone. However, the action of legislature, violative of Article 14 of the Constitution, should ordinarily be manifestly arbitrary. There must be a case of substantive unreasonableness in the statute itself for declaring the act ultra vires of Article 14 of the Constitution. (**Vide: Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc. AIR 1981 SC 487; Reliance Airport Developers (P) Ltd. v. Airports Authority of India & Ors., (2006) 10***

SCC 1; Bidhannagar (Salt Lake) Welfare Assn. v. Central Valuation Board & Ors. AIR 2007 SC 2276; Grand Kakatiya Sheraton Hotel and Towers Employees and Workers Union v. Srinivasa Resorts Limited & Ors. AIR 2009 SC 2337; and State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. (2011) 8 SCALE 474).

52. The impugned provisions have no nexus with the object of enforcing the 3-tier structure inasmuch as (a) the 1964 and the 1995 Acts, both permit registration of Federations; (b) the Act 1964 does not contain any express provision providing for 3-tier structure; (c) the object of having a 3-tier structure could be achieved by the Federation registering itself under the Act 1995 as decided at the meeting of cooperative milk unions convened by the Chief Secretary on 26.8.2003; and (d) even the Act 1964 does not treat Dairy Cooperatives as a separate class to be governed by a separate structure. As such from the stand point of structure and basic cooperative principles, all cooperative societies, are alike. The impugned provisions are arbitrary and violative of Article 14 as they deprived the Dairy Cooperative Societies of the benefit of the basic principles of cooperation. The amendments are contrary to the national policy on Cooperatives. They obstruct and frustrate the object of the development and growth of vibrant cooperative societies in the State.

53. After conversion into Mutually - Aided Societies under the Act 1995 with the permission of the Government as stipulated by Section 4 (3)(a), the cooperative societies originally registered under the Act 1964 cannot be treated as aided societies or societies holding the assets of the government or of the Federation. The Statement of Objects and Reasons itself shows that the government decided not to withdraw its own support suddenly. In fact, there was no aid given by the State after conversion. Chapter X of the Act 1964 which empowers the Registrar to recover dues by attachment and sale of property and execution of orders having been expressly incorporated in the Act 1995 by Section 36, thereof there was no justification at all for the impugned Amendments.

54. After the incorporation of the cooperative principles in Section 4 of the A.P. Cooperative Societies Act, 1964 read with Rule 2(a) of the A.P. Cooperative Societies Rules, 1964, by Amendment Act No. 22 of 2001, the extensive control of cooperative societies by the Registrar under the Act 1964 has become incompatible and inconsistent with the said cooperative principles which mandate ensuring democratic member control and autonomy and independence in the manner of functioning of the cooperatives. These two, namely, extensive State control and ensuring operation of cooperative principles cannot be done at the same time. Therefore, the impugned Act 2006 which by a fiction in sub-section (1A) of Section 4 of the Act 1995 declares that all the dairy/milk cooperative societies shall be deemed to have been excluded

from the provisions of the A.P. Cooperative Societies Act, 1964 is arbitrary and violative of Article 14 of the Constitution."

71 Thus, what weighed with the Supreme Court in holding the provisions to be arbitrary and violative of Article 14 was that the dairy cooperative societies were deprived of the benefit of the basic principles of cooperation. The Supreme Court noticed that the amendments were contrary to the national policy on cooperatives. The important observation of the Supreme Court is that from the standpoint of structure and basic cooperative principles, all the cooperative societies are alike. We are laying emphasis on this observation, because in the present case also, an attempt has been made to draw a distinction between federal and primary cooperative societies. Again, in para 54 of the judgement referred to above, we find an important observation wherein the Supreme Court found the exclusion of the dairy / milk cooperative societies from the provisions of the A. P. Cooperative Societies Act, 1964 as arbitrary and violative of Article 14 of the Constitution. The case before the Supreme Court was also one of exclusion.

72 Thus, taking support from the aforesaid judgement of the Supreme Court, we hold that the principal argument canvassed on behalf of the respondents as regards the Article 14 of the Constitution not applicable to the present case is rejected.

73 In the case of **Union of India vs. N. S. Rathnam and Sons** reported in **(2015) 10 SCC 681,** the challenge was to the validity of a notification issued by the Union, whereby the whole of the duty of excise was exempted in respect of the iron and steel scrap obtained by breaking the ship subject to the condition that the customs duty should have been

levied at the rate of Rs.1400 per Light Displacement Tonnage (LDT). With a stipulation of such a condition, giving the exemption of payment of excise duty only to those who had paid customs duty at Rs.1400 per LDT, another class of person who also paid the customs duty under Section 3 of the Customs Tariff Act, 1975, albeit at a lesser rate, was excluded. The respondent N. S. Rathnam belonged to the excluded category. He challenged the said notification as arbitrary and violative of Article 14 of the Constitution. The learned Single Judge of the Madras High Court rejected the writ application. However, in appeal, the plea of the respondent was accepted and the appeal Court took the view that the second category of persons would also be entitled to the benefit of the notification. The Union of India, being dissatisfied with the judgement of the appeal Court of the Madras High Court, challenged the same before the Supreme Court. The Supreme Court, while disposing of the appeal, observed as under:

> *"12 The judgment of this Court in Kasinka Trading's case, no doubt, lays down the principle that there is wide discretion available to the Government in the matter of granting, curtailing, withholding, modifying or repealing the exemptions granted by earlier Notifications. It is also correct that the Government is not bound to grant exemption to anyone to which it so desires. When the duty is payable under the provisions of the Act, grant of exemption from payment of the said duty to particular class of persons or products etc. is entirely within the discretion of the Government. This discretion rests on various factors which are to be considered by the Government as these are policy decisions. In the present case, however, the issue is not of granting or not granting the exemption. When the exemption is granted to a particular class of persons, then the benefit thereof is to be extended to all similarly situated person. The Notification has to apply to the entire class and the Government cannot create sub- classification thereby excluding one sub-category, even when both the sub- categories are of same genus. If that is done, it would be considered as violating the equality clause enshrined in Article 14 of the Constitution. Therefore, judicial review of such Notifications is permissible in order to undertake the scrutiny as to whether the Notification results in invidious discrimination between two persons though they belong to the same class. In* ***Aashirwad Films v. Union of India and Others (2007) 6 SCC***

624, this aspect has been articulated in the following manner:

> *"9. The State undoubtedly enjoys greater latitude in the matter of a taxing statute. It may impose a tax on a class of people, whereas it may not do so in respect of the other class.*
>
> *10. A taxing statute, however, as is well known, is not beyond the pale of challenge under Article 14 of the Constitution of India.*
>
> *11. In* **Chhotabhai Jethabhai Patel & Co. v. Union of India, AIR 1962 SC 1006** *it was stated: (AIR p. 1021, para 37)*
>
> > *"37. But it does not follow that every other article of Part III is inapplicable to tax laws. Leaving aside Article 31(2) that the provisions of a tax law within legislative competence could be impugned as offending Article 14 is exemplified by such decisions of this Court as* **Suraj Mall Mohta & Co. v. A.V. Vishvanatha Sastri (AIR 1954 SC 545 : (1955) 1 SCR 448)** *and* **Meenakshi Mills Ltd. v. A.V. Visvanatha Sastri (AIR 1955 SC 13 : (1955) 1 SCR 787).** *In* **K.T. Moopil Nair v. State of Kerala (AIR 1961 SC 552)** *the Kerala Land Tax Act was struck down as unconstitutional as violating the freedom guaranteed by Article 14. It also goes without saying that if the imposition of the tax was discriminatory as contrary to Article 15, the levy would be invalid."*
>
> *12. A taxing statute, however, enjoys a greater latitude. An inference in regard to contravention of Article 14 would, however, ordinarily be drawn if it seeks to impose on the same class of persons or occupations similarly situated or an instance of taxation which leads to inequality. The taxing event under the Andhra Pradesh State Entertainment Tax Act is on the entertainment of a person. Rate of entertainment tax is determined on the basis of the amount collected from the visitor of a cinema theatre in terms of the entry fee charged from a viewer by the owner thereof."*

13 It is, thus, beyond any pale of doubt that the justiciability of particular Notification can be tested on the touchstone of Article 14 of the Constitution. Article 14, which is treated as basic feature of the Constitution, ensures equality before the law or equal protection of laws. Equal protection means the right to equal treatment in similar circumstances, both in the priviliges conferred and in the liabilities imposed. Therefore, if the two persons or two sets of persons are similarly situated/placed, they have to be treated equally. At the same time, the principle of equality does not mean that every law must have

universal application for all persons who are not by nature, attainment or circumstances in the same position. It would mean that the State has the power to classify persons for legitimate purposes. The legislature is competent to exercise its discretion and make classification. Thus, every classification is in some degree likely to produce some inequality but mere production of inequality is not enough. Article 14 would be treated as violated only when equal protection is denied even when the two persons belong to same class/category. Therefore, the person challenging the act of the State as violative of Article 14 has to show that there is no reasonable basis for the differentiation between the two classes created by the State. Article 14 prohibits class legislation and not reasonable classification.

14 What follows from the above is that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question. If the government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory. In **Sube Singh v. State of Haryana (2011) 7 SCC 545***, this aspect is highlighted by the Court in the following manner:*

> *"10. In the counter and the note of submission filed on behalf of the appellants it is averred, inter alia, that the Land Acquisition Collector on considering the objections filed by the appellants had recommended to the State Government for exclusion of the properties of appellants 1 and 3 to 6 and the State Government had not accepted such recommendations only on the ground that the constructions made by the appellants were of 'B' or 'C' class and could not be easily amalgamated into the developed colony which was proposed to be built. There is no averment in the pleadings of the respondents stating the basis of classification of structures as 'A' 'B' and 'C' class, nor is it stated how the amalgamation of all 'A' class structures was feasible and possible while those of 'B' and 'C' class structures was not possible. It is not the case of the State Government and also not argued before us that there is no policy decision of the Government for excluding the lands having structures thereon from acquisition under the Act. Indeed, as noted earlier, in these cases the State Government has accepted the request of some land owners for exclusion of their properties on this very ground. It remains to be seen whether the purported classification of existing structures into 'A', 'B' and 'C' class is a reasonable classification having an intelligible differential and a rational basis germane to the*

purpose. If the State Government fails to support its action on the touchstone of the above principle then this decision has to be held as arbitrary and discriminatory. It is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes. That being the purpose of acquisition it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of 'A' class can be allowed to remain while other structures situated in close vicinity and being used for same purposes (residential or commercial) should be demolished. At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the land proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with R.C. roofing, Mozaic flooring etc. No attempt was also made from the side of the State Government to place any architectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of the appellants could not be amalgamated into the plan."

15. The question, therefore, that arises is as to whether the two categories, one mentioned in Notification No.386/86-CE dated 20.08.1986, which is given the benefit and removal of the second category, which was initially granted same benefit vide Notification No.102/87-CE dated 27.03.1987, is discriminatory. To put it otherwise, we have to see as to whether the two categories are identical or there is a reasonable classification based on intelligible differentia which has nexus with some objective that is sought to be achieved. The test in this behalf that is to be applied can again be culled out from the judgment in Aashirwad's case. It is summarized in para 14, after taking note of various earlier judgments. This para reads as under:

> *"14. It has been accepted without dispute that taxation laws must also pass the test of Article 14 of the Constitution of India. It has been laid down in a large number of decisions of this Court that a taxation statute for the reasons of functional expediency and even otherwise, can pick and choose to tax some. Importantly, there is a rider operating on this wide power to tax and even discriminate in taxation that the classification thus chosen must be reasonable. The extent of reasonability of any taxation statute lies in its efficiency to achieve the object sought to be achieved by the statute. Thus, the classification must bear a nexus with the object sought to*

> *be achieved. (**See Moopil Nair v. State of Kerala, AIR 1961 SC 552, East India Tobacco Co. v. State of A.P., AIR 1962 SC 1733, N. Venugopala Ravi Varma Rajah v. Union of India (1969) 1 SCC 681 : AIR 1969 SC 1094, Asstt. Director of Inspection Investigation v. A.B. Shanthi, (2002) 6 SCC 259 : AIR 2002 SC 2188 and Associated Cement Companies Ltd. v. Govt. of A.P., (2006) 1 SCC 597 : AIR 2006 SC 928**).""*

74 Thus, the ratio discernible from the above referred judgement of the Supreme Court and the same can be made applicable to the case on hand is that the Government cannot create sub-classification thereby excluding one sub-category, even when both the sub-categories are of the same genus. If that is done, it would be considered as violating the equality clause enshrined in Article 14 of the Constitution. The Supreme Court proceeded to observe that the judicial review of such notifications is permissible in order to undertake the scrutiny as to whether the notification results in invidious discrimination between two persons though they belong to the same class. Of course, in the case on hand, the State has tried very hard to persuade this Court to take the view that the Sugar societies are not of the same genus and have tried to distinguish between the federal and primary societies. This issue we shall deal with a little later. The Supreme Court, ultimately, held that the notification should be applied to the entire class. If the Government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory.

75 The Supreme Court has explained the phrase "similarly situated". The most relevant observation of the Supreme Court is "a reasonable classification is one which includes all person who are similarly situated

with respect to the purpose of the law". The purpose of the law so far as the present litigation is concerned is Section 74C of the Act. As observed by the Supreme Court, the purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good. This is exactly what this Court in the **Amreli District Cooperative Sale and Purchase Union (supra)** has observed.

76 In the case of **State of Uttar Pradesh and others vs. Deepak Fertilizers and Petrochemical Corporation Ltd reported in (2007) 10 SCC 342,** the challenge was to the judgement passed by a Division Bench of the High Court of Judicature of Allahabad. The challenge was on the ground that the High Court fell in error in holding that the retrospective withdrawal of the exemption granted by the notification could not have been permitted. It was a case in which a notification already in force was followed by another notification which provided for exemption to the same category of fertilizers as mentioned in the previous notification. It was argued before the Supreme Court that the notification in question was discriminatory as it exempted all kinds of phosphatic fertilizers of NPK except the NPK 23:23:0 fertilizer manufactured by the respondent company. We quote the relevant observations:

> *"11. The second grievance of the respondent in the writ petition is that the notification dated 15th May, 1995 is discriminatory as it exempts all kinds of phosphatic fertilizers of NPK except the NPK 23:23:0 fertilizer manufactured by the respondent company. The learned counsel for the respondent contended that all the fertilizers of NPK category of various combinations are treated as phosphatic fertilizers not only by the Government of India but also by the various agricultural departments of the various State Governments, the farmers, the in-trade and in-common parlance. The High Court relying on a decision of this court in the case of* ***Ayurveda Pharmacy & Anr. v. State of Tamilnadu, [(1989) 2 SCC 285]*** *held that the two items of the same category cannot be discriminated. Hence, the High Court held that merely because of composition of NPK, discrimination could not have been made against the respondent.*

12. In Ayurveda Pharmacy decision (supra), it was held that while it was open to the Legislature or the State Government to select different rates of tax for different categories, where the commodities belonged to the same class or category, it was necessary that there must be a rational basis of discrimination between one commodity and another for the purpose of imposing tax. Accordingly, the High Court went on to hold that merely because of different composition of NPK, discrimination could not have been made against NPK 23:23:0 and hence ordered the appellants not to realise tax on the sale of NPK 23:23:0 from the respondent for the period from 10th April, 1995 to 31st March, 1996.

13. From a perusal of the notifications in question, it is evident that other fertilizers of the NPK category i.e. N.P.K. 12:32:16; N.P.K. 15:15:15; N.P.K. 20:20:0; N.P.K. 14:35:14 are included in the exemption list, whereas it is a matter of fact that the NPK 23:23:0 fertilizer is also a fertilizer of the same category, but it is omitted from the list. According to the notification dated 2nd November, 1994, the intention of the State was not to tax the sale of "potassium phosphatic fertilizers" but when we go into enquiry of nomenclature of these chemical compounds, we find that the NPK 23:23:0 is a "nitro-phosphate fertilizer" which has no potassium (K) ingredient. The Notifications dated 10th April, 1995 and 15th May, 1995 clearly include NPK 20:20:0, which is also a nitro-phosphate fertilizer with zero content of potassium (K). This classification made under the notification dated 10th April, 1995 does not hold good on the rational basis and is hence subject to scrutiny. The fact remains stagnant that the notifications include a fertilizer NPK 20:20:0 which is of the same category as that of fertilizer NPK 23:23:0, because both are nitro-phosphate fertilizers. This shows that the state has not classified the two commodities on a rational basis for the purpose of imposing tax. This court in the case of Tata Motors Ltd. v. State of Maharashtra and Ors. [(2004) 5 SCC 783], has held:

> *"15...It is no doubt true that the state has enormous powers of legislation and in enacting fiscal laws. Great leverage is allowed in the matter of taxation laws because several fiscal adjustments are to be made by the government depending upon the needs of the revenue and the economic circumstances prevailing in the state. Even so an action taken by the state cannot be irrational and so arbitrary so as to one set of rules for one period and another set of rules for another period by amending the laws in such a manner as to withdraw the benefit that had been given resulting in higher burden so far as the assessee is concerned without any reason. Retrospective withdrawal of the benefit of set-off only for a particular period should be justified on some tangible and rational ground, when challenged on the ground of*

unconstitutionality." (Underlining is ours).

14. The learned counsel for the appellants could not, however, satisfy us that there was a good reason to introduce the first set of notification for one period and another set of notification for another either by amending the notification or by introducing a new notification so as to withdraw the benefit that was given earlier, resulting in higher burden on the assessee without any reason.

15. The learned counsel appearing for the State relying heavily on the case of Kerala Hotel and Restaurant Association & Ors. v. State of Kerala & Ors. [AIR 1990 SC 913], contended that the State has widest latitude where measures of economic and fiscal regulation are concerned. There is no dispute on this principle of law as enumerated in the aforesaid decision of this Court. However, this same law must not be repugnant to the Article 14 of the Constitution, i.e., it must not violate the right to equality of the people of India, and if such repugnancy prevails then, it shall stand void up to the level of such repugnancy under Article 13(2) of the Constitution of India. Therefore, every law has to pass through the test of constitutionality, which is nothing but a formal name of the test of rationality. We understand that whenever there is to be made any type of law for the purpose of levying taxes on a particular commodity or exempting some other commodity from taxation, a sought of classification is to be made. Certainly, this classification cannot be a product of a blind approach by the administrative authorities on which the responsibility of delegated legislations is vested by the constitution. In a nutshell, the notifications issued by the Trade Tax Department of the State of U.P., dated 10th April, 1995 and 15th May, 1995 lack the sense of reasonability because it is not able to strike a rational balance of classification between the items of the same category. As a result of this, NPK 23:23:0 is not given exemption from taxation where as all other NPK fertilizers of the same category like that of NPK 20:20:0 are provided with the exemption from taxation.

16. The reasonableness of this classification must be examined on the basis, that when the object of the taxing provision is not to tax the sale of certain chemical fertilizers included in the list, which clearly points out that all the fertilizers with the similar compositions must be included without excluding any other chemical fertilizer which has the same elements and compositions. Thus, there is no reasonable nexus of such classification among various chemical fertilizers of the same class by the state. This court in the case of Ayurveda Pharmacy (supra) held that two items of the same category cannot be discriminated and where such a distinction is made between items falling in the same category it should be done on a reasonable basis, in order to save such a classification being in contravention of Article 14 of the Constitution of India."

77 Thus, the principle discernible from the aforesaid is that the reasonableness of the classification must be examined on the basis that when the object of taxing is not to tax the sale of certain chemical fertilizers included in the list, which clearly points out that all the fertilizers with the similar compositions must be included without excluding any other chemical fertilizer possessing the same elements and compositions. The Supreme Court noticed that there was no reasonable nexus of such classification among the various chemical fertilizers of the same class by the State. In other words, two items of the same category cannot be discriminated and where such a distinction is made between items falling in the same category it should be done on a reasonable basis in order to save such a classification being in contravention of Article 14 of the Constitution of India.

78 In view of the aforesaid, we hold that specific exclusion can always be challenged provided a case is made out in that regard.

79 Article 14 has two clear facets which are invalid. One is over classification and the other is under classification, which is otherwise, over inclusiveness or under inclusiveness. The judicial review of over classification should be done very strictly. In the cases of under classification when the complaint is either by those who are left out or those who are in i.e. that the statute has roped him in, but a similarly situated person has been left out, it would be under inclusion. It is to say that you ought to have brought him in to make the classification reasonable. It is in such cases that the Courts have said that who should be brought in, should be left to the wisdom of the legislature because it is essentially a stage where there should be an element of practicality. Therefore, the cases of under inclusion can be reviewed in a little liberal

manner. The under inclusion argument should not very readily be accepted by the Court because the stage could be experimental. For instance, if the argument is in context with Section 74C that some other category of society has been left out, the Court would say that it is under inclusion. The legislature does not have to bring in everybody to make it reasonable. The case on hand is one of active exclusion. Had the Sugar societies been left out or the voters been excluded in Section 74C at the first instance and they came in to say that the State ought to have included us, the test would have been very strict, not that it would be impervious to review. The Court would be justified in not entertaining such complaint saying that the State should be given some freedom whom to include or whom not to include. The Sugar societies have come at the stage where they are excluded. They are saying that having treated us as one, you cannot exclude us now in an arbitrary manner. This is not exclusion or inclusion at the threshold or the first stage. This is active positive leaving out – single legislation – single category legislation – constantly eliminating where the principles do not apply of that of under inclusion.

80 The Supreme Court in the **State of Gujarat and another vs. Shri Ambica Mills Ltd reported in (1974) 4 SCC 656** has explained the concept of under-inclusive classification. We quote the relevant observation:

> *"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 sonic day bring about his downfall employed such a classification."*

81 We are of the view that the impugned legislation is discriminatory because first, it does not disclose any object which could be said to be reasonable or in public interest, and secondly, the differentiation, which is sought to be made, has no nexus with the object sought to be achieved. The object and reason for the impugned legislation, as is evident from the stance of the respondents, is to save money and administrative exigency. It goes without saying that none of the two objects could be said to be in public interest or are reasonable. Mr. Soparkar very vehemently submitted that the Court cannot look at the object of the legislation or the motive of the legislature. In other words, whether a statute is constitutional or not is always a question of power, and that the Courts are not at liberty to inquire into the proper exercise of power. If the legislature was authorized to enact a particular statute under certain conditions, the Courts are required to "assume that the legislative discretion has been properly exercised" and cannot "form an issue to try by what motive the legislature was governed in the enactment of a law". What is submitted by Mr. Soparkar may hold good as a proposition of law so far as the motive of the legislature is concerned, but not the object. There is a fine and essential distinction between the object of the legislation and the motive of the legislature. As

stated above, the Court should not go into the motive of the legislature, but the Court can always look into the object of the legislation. When the law says that the Court cannot look at the motive, it never says that the motive should be equated with the object of the enactment. Therefore, in our opinion, it is imperative to look at the object of the legislation. It is entirely a constitutional exercise to be undertaken by the Constitutional Court. To say or to argue that there is no judicial review available is not only fallacious, but against the basic tenet and structure apart from being contrary to many judgements of the Supreme Court which we shall discuss at a later stage. The determination of the object of the legislation is a judicial exercise, which needs to be undertaken at times for various purpose, more particularly, for understanding the classification. We are at one with all the learned counsel appearing for the writ applicants that the object of the legislation is not only petty, but the same is not in public interest nor reasonable.

82 We should look into the object of the impugned legislation from the scheme of Section 74C as well as the other materials on record in the form of affidavit-in-reply, etc, filed by the respondents. What is the purpose sought to be achieved by the legislation with the enactment of the impugned amendment? Should the Government save money or ease itself with the administrative burden at the cost of free and fair election? The saving of money and the administrative burden are nowhere close to the public interest or are reasonable. The case on hand is one of exclusion from an existing list, and therefore, the object and reason of the amendment should be seen in the backdrop of the introduction of Section 74C at the relevant point of time. So far as the introduction of Section 74C is concerned, we have given more than a fair idea in the earlier part of the judgement by referring to the decision of this High Court in the case of **Amreli District Cooperative Sale and Purchase Union**

(supra). There is no nexus between the object now disclosed before us and the object of bringing in certain specified societies for free and fair election. If the object fails, the classification would be irrelevant. All the decisions, upon which reliance has been placed by Mr. Soparkar, the question was one of motive of the legislature and not with respect to the judicial review by a writ Court of the object of the legislation. At the cost of repetition, we state that there need not be any debate with the proposition that motive *per se* is not a subject matter of judicial review. Even the learned counsel appearing for the writ applicants have made themselves very clear in this regard.

83 In the aforesaid context, we may refer to and rely upon a decision of the Supreme Court in the case of **Hiral P. Harsora and others vs. Kusum Narottamdas Harsora and others** reported in **(2016) 10 SCC 165**. Hiral Harsora was a case which decided an important question as to the constitutional validity of Section 2(q) of the Protection of Women from Domestic Violence Act, 2005. The appeal before the Supreme Court raised an important question concerning the area of protection of the female sex generally. The Supreme Court first tried to ascertain the object which was sought to be achieved by the 2005 Act. In doing so, the Court looked into the Statement of objects and reasons, the preamble and the provisions of the 2005 Act as a whole. In doing so, the Supreme Court followed the law as discussed in paras 13 and 14. It reads thus:

> *"13. In **Shashikant Laxman Kale v. Union of India, (1990) 2 SCR 441,** this Court was faced with the constitutional validity of an exemption section contained in the Indian Income Tax Act, 1961. After referring in detail to **Re: Special Courts Bill, 1979 2 SCR 476** and the propositions laid down therein on Article 14 generally and a few other judgments, this Court held:-*
>
> > *"15. It is first necessary to discern the true purpose or object of the impugned enactment because it is only with reference to the true object of the enactment that the existence of a rational*

nexus of the differentia on which the classification is based, with the object sought to be achieved by the enactment, can be examined to test the validity of the classification. In Francis Bennion's Statutory Interpretation, (1984 edn.), the distinction between the legislative intention and the purpose or object of the legislation has been succinctly summarised at p. 237 as under:

> *"The distinction between the purpose or object of an enactment and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment."*

16. There is thus a clear distinction between the two. While the purpose or object of the legislation is to provide a remedy for the malady, the legislative intention relates to the meaning or exposition of the remedy as enacted. While dealing with the validity of a classification, the rational nexus of the differentia on which the classification is based has to exist with the purpose or object of the legislation, so determined. The question next is of the manner in which the purpose or object of the enactment has to be determined and the material which can be used for this exercise.

17. For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. In ***A. Thangal Kunju Musaliar v. M. Venkitachalam Potti [(1955) 2 SCR 1196 : AIR 1956 SC 246 : (1956) 29 ITR 349]*** *, the Statement of Objects and Reasons was used for judging the reasonableness of a classification made in an enactment to see if it infringed or was contrary to the Constitution. In that decision for determining the question, even affidavit on behalf of the State of "the circumstances which prevailed at the time when the law there under consideration had been passed and which necessitated the passing of that law"*

was relied on. It was reiterated in ***State of West Bengal v. Union of India [(1964) 1 SCR 371 : AIR 1963 SC 1241] t****hat the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, can be used for*

'the limited purpose of understanding the background and the

antecedent state of affairs leading up to the legislation'.

Similarly, in ***Pannalal Binjraj v. Union of India [1957 SCR 233 : AIR 1957 SC 397 : (1957) 31 ITR 565]*** *a challenge to the validity of classification was repelled placing reliance on an affidavit filed on behalf of the Central Board of Revenue disclosing the true object of enacting the impugned provision in the Income Tax Act."*

14. To similar effect, this Court held in ***Harbilas Rai Bansal v. State of Punjab, (1996) 1 SCC 1,*** *as follows:*

> *"8. The scope of Article 14 has been authoritatively laid down by this Court in innumerable decisions including Budhan Choudhry v. State of Bihar [(1955) 1 SCR 1045 : AIR 1955 SC 191] , Ram Krishna Dalmia v. Justice S.R. Tendolkar [1959 SCR 279 : AIR 1958 SC 538 , Western U.P. Electric Power and Supply Co. Ltd. v. State of U.P. [(1969) 1 SCC 817] and Mohd. Hanif Quareshi v. State of Bihar [1959 SCR 629 : AIR 1958 SC 731]. To be permissible under Article 14 of the Constitution a classification must satisfy two conditions namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis, but what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.*
>
> *9. The statement of objects and reasons of the Act is as under:*
>
> *"Statement of Objects and Reasons of the East Punjab Urban Rent Restriction Act, 1949 (Act 3 of 1949).— Under Article 6 of the India (Provisional Constitution) Order, 1947, any law made by the Governor of the Punjab by virtue of Section 93 of the Government of India Act, 1935, which was in force immediately before 15-8-1947, is to remain in force for two years from the date on which the Proclamation ceased to have effect, viz., 14-8-1947. A Governor's Act will, therefore, cease to have effect on 14-8-1949. It is desired that the Punjab Urban Rent Restriction Act, 1947 (Punjab Act No. VI of 1947), being a Governor's Act, be re-enacted as a permanent measure, as the need for restricting the increase of rents of certain premises situated within the limits of urban areas and the protection of tenants against mala fide attempts by their landlords to procure their eviction would be there even after 14-8-1949.*
>
> *In order to achieve the above object, a new Act incorporating the*

provisions of the Punjab Urban Rent Restriction Act, 1947 with necessary modification is being enacted."

It is obvious from the objects and reasons quoted above that the primary purpose for legislating the Act was to protect the tenants against the mala fide attempts by their landlords to procure their eviction. Bona fide requirement of a landlord was, therefore, provided in the Act — as originally enacted — a ground to evict the tenant from the premises whether residential or non-residential.

13. The provisions of the Act, prior to the amendment, were uniformly applicable to the residential and non-residential buildings. The amendment, in the year 1956, created the impugned classification. The objects and reasons of the Act indicate that it was enacted with a view to restrict the increase of rents and to safeguard against the mala fide eviction of tenants. The Act, therefore, initially provided — conforming to its objects and reasons — bona fide requirement of the premises by the landlord, whether residential or non-residential, as a ground of eviction of the tenant. The classification created by the amendment has no nexus with the object sought to be achieved by the Act. To vacate a premises for the bona fide requirement of the landlord would not cause any hardship to the tenant. Statutory protection to a tenant cannot be extended to such an extent that the landlord is precluded from evicting the tenant for the rest of his life even when he bona fide requires the premises for his personal use and occupation. It is not the tenants but the landlords who are suffering great hardships because of the amendment. A landlord may genuinely like to let out a shop till the time he bona fide needs the same. Visualise a case of a shopkeeper (owner) dying young. There may not be a member in the family to continue the business and the widow may not need the shop for quite some time. She may like to let out the shop till the time her children grow up and need the premises for their personal use. It would be wholly arbitrary — in a situation like this — to deny her the right to evict the tenant. The amendment has created a situation where a tenant can continue in possession of a non-residential premises for life and even after the tenant's death his heirs may continue the tenancy. We have no doubt in our mind that the objects, reasons and the scheme of the Act could not have envisaged the type of situation created by the amendment which is patently harsh and grossly unjust for the landlord of a non- residential premises.""

84 The Supreme Court in **Subramanian Swamy's case (supra)** had observed in paras 49, 58, 68 and 70 as under:

"49. Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognized by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognized and these are (i) discrimination, based on an impermissible or invalid classification and (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders – if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is.

58. The Constitution permits the State to determine, by the process of classification, what should be regarded as a class for purposes of legislation and in relation to law enacted on a particular subject. There is bound to be some degree of inequality when there is segregation of one class from the other. However, such segregation must be rational and not artificial or evasive. In other words, the classification must not only be based on some qualities or characteristics, which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. Differentia which is the basis of classification must be sound and must have reasonable relation to the object of the legislation. If the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial.

68. Can it be said that the classification is based on intelligible differentia when one set of bureaucrats of Joint Secretary level and above who are working with the Central Government are offered protection under Section 6-A while the same level of officers who are working in the States do not get protection though both classes of these officers are accused of an offence under PC Act, 1988 and inquiry / investigation into such allegations is to be carried out. Our answer is in

the negative. The provision in Section 6-A, thus, impedes tracking down the corrupt senior bureaucrats as without previous approval of the Central Government, the CBI cannot even hold preliminary inquiry much less an investigation into the allegations. The protection in Section 6-A has propensity of shielding the corrupt. The object of Section 6-A, that senior public servants of the level of Joint Secretary and above who take policy decision must not be put to any harassment, side-tracks the fundamental objective of the PC Act, 1988 to deal with corruption and act against senior public servants. The CBI is not able to proceed even to collect the material to unearth prima facie substance into the merits of allegations. Thus, the object of Section 6-A itself is discriminatory. That being the position, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

70. Undoubtedly, every differentiation is not a discrimination but at the same time, differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. A simple physical grouping which separates one category from the other without any rational basis is not a sound or intelligible differentia. The separation or segregation must have a systematic relation and rational basis and the object of such segregation must not be discriminatory. Every public servant against whom there is reasonable suspicion of commission of crime or there are allegations of an offence under the PC Act, 1988 has to be treated equally and similarly under the law. Any distinction made between them on the basis of their status or position in service for the purposes of inquiry / investigation is nothing but an artificial one and offends Article 14."

85 The constitutional principle of equality is inherent in the rule of law. The rule of law is satisfied when laws are applied or enforced equally, that is, even handedly, free of bias and without irrational distinction. The concept of equality allows differential treatment but it prevents distinctions that are not properly justified. Justification requires each case to be decided on a case-to case basis. In **Subramanian Swamy's case (supra),** one set of bureaucrats of the level of Joint Secretary and above working with the Central Government were offered the protection under Section 6-A while the same level of officers who were working in the States were not afforded with the same protection though both the classes of those officers were accused of an offence under the Act, 1988

and inquiry / investigation into such allegations were to be carried out. The issue before the Supreme Court was whether the classification was based on intelligible differentia. The Supreme Court took the view that the classification could not be said to be based on intelligible differentia because the provisions in Section 6-A of the Act, 1988 impeded tracking down the corrupt senior bureaucrats as without previous approval of the Central Government, the CBI could not have even conducted a preliminary inquiry much less an investigation into the allegations. The Supreme Court took notice of the fact that the protection in Section 6-A had the propensity of shielding the corrupt. The Supreme Court held that the object of Section 6-A itself was discriminatory and such discrimination could not have been justified on the ground that there was a reasonable classification because it had rational relation to the object sought to be achieved. Ultimately, the Supreme Court held that although every differentiation may not be a discrimination, yet the differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. In the case on hand, we have explained how the differentiation amounts to discrimination and why the differentiation could be said to be irrelevant and artificial.

86 In **Budhan Choudhry's case (supra)**, the Supreme Court in para 5 had observed as under:

> *"(5) It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely,*
>
> *(i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and*
>
> *(ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be*

founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

87 In **Ram Krishna Dalmia (supra)**, the Constitution Bench of five Judges' further culled out the following principles enunciated in the above cases:

"11...(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

88 In **Ram Krishna Dalmia (supra)**, it was emphasized that:

> *"11...the above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of laws."*

Having culled out the above principles, the Constitution Bench in **Ram Krishna Dalmia (supra),** further observed that the statute which may come up for consideration on the question of its validity under Article 14 of the Constitution may be placed in one or the other of the following five classes:

> *"12....(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law.*
>
> *(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination.*
>
> *(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection*

or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the court will strike down both the law as well as the executive action taken under such law.

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification.

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, then in such a case the executive action but not the statute should be condemned as unconstitutional."

89 The constitutionality of Special Courts Bill, 1978 came up for consideration in *Special Courts Bill, 1978,* In *re* as the President of India made a reference to the Supreme Court under Article 143(1) of the Constitution for consideration of the question whether the "Special Courts Bill" or any of its provisions, if enacted would be constitutionally invalid. The seven-Judge Constitution Bench dealt with the scope of Article 14 of the Constitution. The Constitution Bench noticed its earlier decisions in **Budhan Choudhry (supra), Ram Krishna Dalmia (supra) and Shri Ambica Mills Ltd (supra).** In the majority judgment, the then Chief Justice Y. V. Chandrachud, *inter alia,* exposited the following

propositions relating to Article 14:

*"(1) * * *

(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well- defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is*

to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

(8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

(9) If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject- matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the Legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

(10) Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

(11) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of

inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

(12) Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

(13) A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination."

90 It is now well established that the classification must be founded on an intelligible differentia, which distinguishes persons or things that are grouped together from others left out of the group and that the differentia must have a rational relation to the object sought to be achieved by the statute. In other words, what is necessary is that there must be nexus between the basis of classification and the object of the Act. The argument canvassed on behalf of the State as well as the Federation about the federal societies or primary societies or finance or administrative convenience has no nexus to the object which is sought to be achieved. In fact, the argument of the State leads to a conflict between the object and differentia. The same is not permissible. The object cannot be their distinction between the federal societies or primary societies. The object and the differential are two different things and should be compared. We are not at all impressed by the stance of the State that as the Sugar factories are not federal, they have been now kept out of the purview of Section 74C of the Act.

91 The object of the impugned amendment is clearly to save money and overcome the administrative difficulties. This is what the State has said in so many words. The State says that it does not want to spend

money behind the election of the Sugar Cooperative and also does not want the administrative staff to be tied up in the election. For this, the emphasis on the part of the State is federal and primary. If we accept what has been stated by Mr. Trivedi, then, it means that the object was to remove the federal society. We find the stance of the State to be mutually destructive. If the stance of the State is that it wanted to remove the Sugar factories because they are primary, as opposed to other being federal, then in that case, the object is the same as the classification. The State cannot say that it does not want the Sugar factories and therefore, they are excluded. This cannot be a determining principle. All the learned counsel are right in their submission that either it is only the expense and administrative exigency in which case the object should be said to be absolutely unreasonable without any element of public interest or the classification between the the primary and federal. If the Government wants to save money and administrative time, then it should consider doing away with Section 74C itself. Why save time and expense in respect of just the Sugar factories? How much expense and time goes in these 13 Sugar societies, as opposed to the remaining which continue to be within the purview of Section 74C? The aforesaid makes the stance of the Government entirely artificial.

92 In **Vithal Rao's case (supra),** the Court observed:

> *"26...State can make a reasonable classification for the purpose of legislation and that the classification in order to be reasonable must satisfy two tests:*
>
> *(i) the classification must be founded on intelligible differentia and*
>
> *(ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question."*

The Court emphasized as aforesaid that the object itself should be lawful and it cannot be discriminatory. If the object is to discriminate against one section of the minority, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

93 The need to include the Sugar factories for Section 74C was remedial. Section 74C was a beneficial remedial measure. This Court in **Amreli District Cooperative Sale and Purchase Union (supra)** took cognizance of the huge element of mischief in the election of the societies, which have the nature of the function akin to public offices, and held that their elections must be under the control and supervision of an independent body. The scope of Section 74C at the relevant time was beneficial i.e. for free and fair elections to the benefit of the voters. In that context, the so-called object of saving money and time cannot be said to be reasonable or in the public interest.

94 We are at one with all the learned counsel appearing for the writ applicants that if the State wants to save money and administrative time, then it should do away with Section 74C itself. Why save time and expense in respect of just the Sugar societies? How is removing one going to serve the purpose? How much expense and time the Sugar factories are going to consume as opposed to the remaining. The drawing of distinction between federal and primary has nothing to do with the importance of free and fair election or the expense. It is not in dispute that they are primary societies having huge turnover of crores of rupees. Therefore, the classification itself is invalid.

95 Having regard to the object with which the federal and primary societies were clubbed and put as one class under Section 74C, the onus

would shift on the State to show how they are different in relation to the object sought to be achieved. We are of the view that the State has failed to discharge such onus. As on date, all the specified societies form one class for the purpose of its members with a view to having free and fair election under Chapter XI and the Rules. All the learned Senior Counsel are right in their submission that any member / voter of the society has a right to seek that the elections are conducted in a fair and transparent manner and in accordance with the proviso. It is now being sought to be excluded and left to the society. The fact whether the society may hold the election in a free and fair manner or transparent manner is not relevant because of the salutary provision brought in public interest. On the contrary, Section 74C should have been made more inclusive. It is a remedial measure for the voters. The voters are now being told by the State that they would be left with what the society decides. Why because yours is not a federal society. Even at the relevant point of time, the Sugar societies were not federal. So, how would that be relevant for the purpose of exclusion? In other words, if the Sugar societies were included despite the fact of not being federal, then how is it relevant for the purpose of exclusion?

- **IS THE IMPUGNED AMENDMENT MANIFESTLY ARBITRARY:**

96 In order to strike down a delegated legislation as arbitrary, it has to be established that the same is manifestly arbitrary. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression “arbitrarily” means in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone. Any act founded on prejudice or preference, rather than on reasons or facts, is arbitrary. Whenever both,

the decision making process and the decisions are based on irrelevant facts, while ignoring relevant consideration, such actions reflect "arbitrariness". Arbitrariness can be defined as the quality of being arbitrary or uncontrolled in exercise of will. The legislative enactment must be based on discernible principles and the impugned act must be reasonable in order to satisfy the test of "arbitrariness". At this stage, we should once again remind ourselves of the public interest element involved in the impugned amendment, as sought to be highlighted by the State i.e. saving time of the Government and few lakhs of the society, as opposed to the public interest of free and fair election of thousands of members of the societies. While trying to understand whether the impugned amendment could be termed as manifestly arbitrary or not, the first question that we must consider is whether the Sugar society has been excluded from Section 74C of the Act on any sound legal principle. If the so-called sound legal principle is money and time, then definitely it is not reasonable in the context of Section 74C. There is no sound legal principle which is reasonable or constitutional or subserve the constitutional goal. As held by the Supreme Court in **Sharma Transport (supra),** the Court should judge manifest arbitrariness from a common man's perspective. According to the Supreme Court, "the common man" is the best assistant for a High Court Judge. For a common man to say that the cooperative societies which were considered important enough to have independent machinery for election, now since the amount is repaid, the State cannot afford to spend money to ensure that the elections are held under the aegis of the representatives, is something which does not appeal to reason. When the State says that it does not want the Sugar societies, it is just an expression of will, and therefore, manifestly arbitrary. At this stage, we once again come back to the argument of Mr. Soparkar that invoking of Article 14, at the instance of the writ applicants, in the present case, is misconceived and the earlier

judgement of this Court in the case of **Amreli District Cooperative Sale and Purchase Union (supra)** was on the basis of Article 19(1)(c) of the Constitution and the concept of homogeneity. We have no hesitation in saying that such argument is thoroughly misconceived. In our opinion, Article 14 is the only provision, which is applicable. The society may have a right to say that its freedom of undertaking certain activity has been restricted. In other words, the society has a right to say that the provisions like Section 74C curtail its right to do business. However, the right of a member to be treated as a class along with the members of the other societies is protected by Article 14. The right to do business would be Article 19(1)(c) or 19(1)(g) of the Constitution. As on date, the members of the Sugar societies say that 20 societies were covered under Section 74C. The free and fair elections were essentially protecting the right of the members to vote. The doctrine of free and fair election is important so as to make the right to vote effective and meaningful. The right to vote is exercised by the members. As a class of voters of the Sugar societies, they could be said to be in the same category as the class of voters of other similar societies. The free and fair elections are guaranteed under the Chapter XI-A of the Act. The major difference over here is that those were guaranteed even to the members of the Sugar societies. They are not seeking inclusion. They are challenging exclusion and the exclusion, in our opinion, is manifestly arbitrary.

97 In **E. P. Royappa v. State of Tamil Nadu (1974) 4 SCC 3**, the validity of state action was made subject to the test of arbitrariness:

> *"Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is*

implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art.14…"

98 Four decades later, the test has been refined in **Shayara Bano v. Union of India (2017) 9 SCC 1**:

"The expression 'arbitrarily' means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

99 In **Navtej Singh Johar (supra)**, Justice Nariman, in his judgement, in paras 353 and 409 observed as under:

"353. Insofar as Article 14 is concerned, this Court in ***Shayara Bano v. Union of India, (2017) 9 SCC 1,*** *has stated, in paragraph 101, that a statutory provision can be struck down on the ground of manifest arbitrariness, when the provision is capricious, irrational and/or without adequate determining principle, as also if it is excessive or disproportionate. We find that Section 377, in penalizing consensual gay sex, is manifestly arbitrary. Given modern psychiatric studies and legislation which recognizes that gay persons and transgenders are not persons suffering from mental disorder and cannot therefore be penalized, the Section must be held to be a provision which is capricious and irrational. Also, roping in such persons with sentences going upto life imprisonment is clearly excessive and disproportionate, as a result of which, when applied to such persons, Articles 14 and 21 of the Constitution would clearly be violated. The object sought to be achieved by the provision, namely to enforce Victorian mores upon the citizenry of India, would be out of tune with the march of constitutional events that has since taken place, rendering the said object itself discriminatory when it seeks to single out same-sex couples and transgenders for punishment."*

"409. Equating the content of equality with the reasonableness of a classification on which a law is based advances the cause of legal formalism. The problem with the classification test is that what constitutes a reasonable classification is reduced to a mere formula: the quest for an intelligible differentia and the rational nexus to the object sought to be achieved. In doing so, the test of classification risks elevating form over substance. The danger inherent in legal formalism

lies in its inability to lay threadbare the values which guide the process of judging constitutional rights. Legal formalism buries the life-giving forces of the Constitution under a mere mantra. What it ignores is that Article 14 contains a powerful statement of values – of the substance of equality before the law and the equal protection of laws. To reduce it to a formal exercise of classification may miss the true value of equality as a safeguard against arbitrariness in state action. As our constitutional jurisprudence has evolved towards recognizing the substantive content of liberty and equality, the core of Article 14 has emerged out of the shadows of classification. Article 14 has a substantive content on which, together with liberty and dignity, the edifice of the Constitution is built. Simply put, in that avatar, it reflects the quest for ensuring fair treatment of the individual in every aspect of human endeavor and in every facet of human existence."

100 Following the aforesaid principle of law, as explained by the Supreme Court, we have no hesitation in arriving at the conclusion that the impugned amendment in the case on hand is manifestly arbitrary. As observed by the Supreme Court, the classification test should not be reduced to a mere formula. To reduce it to a formal exercise of classification may cause violence to the value of equality as a safeguard against arbitrariness in state action. The entire edifice of the Constitution is built on liberty and dignity upon which Article 14 of the Constitution stands.

101 The judicial innovation with regard to the test of 'arbitrariness' was followed by attempts to provide content to the new doctrine. In **Maneka Gandhi (supra),** Bhagwati J very clearly read the principle of reasonableness in Article 14. His Lordship said: "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."

Again, in **R. D. Shetty v. International Airport Authority (1979) 3**

SCC 489 case, he held thus:

> *"The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law."*

Pasayat, J., in **Sharma Transport v. Government of A.P. (2002) 2 SCC 188** has observed as follows:

> *"The expression 'arbitrarily' means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."*

Comparative unreasonableness

It is thus clear that the principle of 'arbitrariness' is the underlying concern in any form of 'equality' analysis under Article 14. The doctrine therefore lies at the heart of both (1) 'reasonable classification' test as well as (2) the general test of unreasonableness. While the former constitutes comparative unreasonableness, the latter takes into account the cases where no standard for comparative evaluation is available.

The aforesaid view is subscribed by P. K. Tripathi, in his book *"The Fiasco of overruling A K. Gopalan"* who argues that the arbitrariness prohibited by Article 14 concerns the 'distributive aspect' of the state action. He has stated thus:

> *"The arbitrariness inhibited by Article 14 is the arbitrariness or unreasonableness in discriminating between one person and another; if there is no discrimination there is no arbitrariness in the sense of Article 14."*

The locus classicus on the point is the case of Ajay Hasia where it has been observed (1981) 1 SCC 722:

> *"If the classification is not reasonable and does not satisfy the two conditions referred to above [(i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action], the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached.*
>
> *Nevertheless, it has been pointed out that "arbitrariness doctrine's unique contribution is to bring non-comparative unreasonableness within the ambit of Article 14."*

102 In **Shayara Bano (supra),** the Supreme Court in paras 95-97 and 100-01 laid down as under:

> *"95. On a reading of this judgment in Natural Resources Allocation case [Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1], it is clear that this Court did not read McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] as being an authority for the proposition that legislation can never be struck down as being arbitrary. Indeed the Court, after referring to all the earlier judgments, and* ***Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258]*** *in particular, which stated that legislation can be struck down on the ground that it is —arbitrary under Article 14, went on to conclude that —arbitrariness when applied to legislation cannot be used loosely. Instead, it broad based the test, stating that if a constitutional infirmity is found, Article 14 will interdict such infirmity. And a constitutional infirmity is found in Article 14 itself whenever legislation is —manifestly arbitrary i.e. when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favouritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc.*
>
> *96. Another Constitution Bench decision in* ***Subramanian Swamy v. CBI [Subramanian Swamy v. CBI, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36]*** *dealt with a challenge to Section 6-A of the Delhi Special Police Establishment Act, 1946. This section was*

ultimately struck down as being discriminatory and hence violative of Article 14. A specific reference had been made to the Constitution Bench by the reference order in ***Subramanian Swamy v. CBI [Subramanian Swamy v. CBI, (2005) 2 SCC 317 : 2005 SCC (L&S) 241]*** *and after referring to several judgments including* ***Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258], Mardia Chemicals [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311], Malpe Vishwanath Acharya [Malpe Vishwanath Acharya v. State of Maharashtra, (1998) 2 SCC 1] and McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709],*** *the reference, inter alia, was as to whether arbitrariness and unreasonableness, being facets of Article 14, are or are not available as grounds to invalidate a legislation.*

97. After referring to the submissions of the counsel, and several judgments on the discrimination aspect of Article 14, this Court held: ***(Subramanian Swamy case [Subramanian Swamy v. CBI, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36] , SCC pp. 721-22, paras 48-49) —***

> *48. In* ***E.P. Royappa [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165]*** *, it has been held by this Court that the basic principle which informs both Articles 14 and 16 are equality and inhibition against discrimination. This Court observed in para 85 as under: (SCC p. 38)*
>
> > *85. … From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.*

Court's approach

> *49. Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognised by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being*

unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognised and these are: (i) discrimination, based on an impermissible or invalid classification, and (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders—if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is.

* * *

100. To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore, violative of Article 14 of the Constitution. In ***Cellular Operators Assn. of India v. TRAI [Cellular Operators Assn. of India v. TRAI, (2016) 7 SCC 703],*** *this Court referred to earlier precedents, and held: (SCC pp. 736-37, paras 42-44)*

Violation of fundamental rights

*42. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. [****See Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] , SCC at p. 689, para 75.]***

43. The test of —manifest arbitrariness is well explained in two judgments of this Court. In ***Khoday Distilleries Ltd. v. State of Karnataka [Khoday Distilleries Ltd. v. State of Karnataka, (1996) 10 SCC 304],*** *this Court held: (SCC p. 314, para 13)*

13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be

available to the appellants, the Rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In ***Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121],*** *this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; "unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, —Parliament never intended the authority to make such rules; they are unreasonable and ultra vires. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.'*

44. Also, in ***Sharma Transport v. State of A.P. [Sharma Transport v. State of A.P., (2002) 2 SCC 188],*** *this Court held: (SCC pp. 203-04, para 25)*

25. … The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression arbitrarily means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.' (emphasis in original)

101. It will be noticed that a Constitution Bench of this Court in ***Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121]*** *stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.*

This judgment has since been followed in ***Gopal Jha v. The Hon'ble Supreme Court of India, Writ Petition (Civil) No. 745/2018 [decided on 25.10.2018]*** *(at paragraph 27);* ***Indian Young Lawyers Associations and Ors. v. State of Kerala and Ors., Writ Petition (Civil) No. 373/2006 [decided on 28.09.2018]; Joseph Shine v. Union of India, Writ Petition (Criminal) No. 194/2017 [decided on 27.09.2018] (at paragraphs 110, 195, 197); K.S. Puttaswamy v. Union of India, Writ Petition (Civil) No. 494/2012 [decided on 26.09.2018] (at paragraphs 77, 78, 416, 724, 725, 1160); Navtej Singh Johar and Ors. v. Union of India, (2018) 10 SCC 1 (at paragraphs 253, 353, 411, 637.9); Lok Prahari v. State of Uttar Pradesh and Ors., (2018) 6 SCC 1 (at paragraph 35); and Nikesh Tarachand Shah v. Union of India and Ors., (2018) 11 SCC 1 (at paragraph 23)****."*

103 In **Swiss Ribbons (P) Ltd (supra),** the Supreme Court was called upon to consider whether the classification between financial creditor and operational creditor was discriminatory, arbitrary and violative of Article 14 of the Constitution of India. The Supreme Court laid down the following in para 37:

"37. The tests for violation of Article 14 of the Constitution of India, when legislation is challenged as being violative of the principle of equality, have been settled by this Court time and again. Since equality is only among equals, no discrimination results if the Court can be shown that there is an intelligible differentia which separates two kinds of creditors so long as there is some rational relation between the

creditors so differentiated, with the object sought to be achieved by the legislation. This aspect of Article 14 has been laid down in judgments too numerous to cite, from the very inception."

- **CONCEPT OF CONSTITUENCY WISE REPRESENTATION:**

104 In the case of **Narendrabhai Mahijibhai Patel vs. State of Gujarat (2013) JX (Guj) 304**, the Full Bench of this Court held that the scheme of the Rules, 1982 do permit the specified societies having single constituency (provided the area of operation is limited to one village) to provide more than one seat under the bye laws for one constituency. It further held that the Collector has the power to pass an order for the delimitation of the constituency. The delimitation of the constituency under Rule 3-A can also be territory wise. The delimitation of the constituency can be based in accordance with the objects and activities of the societies for the classes of individual members since each electorate is to represent the respective members of a particular area or a particular class, as the case may be. The Full Bench decision of this Court was challenged before the Supreme Court in the case of **Rajkot District Cooperative Bank Limited vs. State of Gujarat (2015) 13 SCC 401.** The Supreme Court, while upholding the Full Bench judgement of this Court referred to above, observed as under:

"17. On a careful examination of Rule 3-A (8) of the Rules by us, it is made clear that the said provision is aimed at geographical i.e. territory or zone wise bifurcation or division. A salient feature of the Rule 3-A is the delimitation of the constituencies which includes all specified cooperative societies. Once the area of operation of any society is more than one village, Sub rule (8) would come into play and the requirement of the number of constituencies would be equal to the total number of seats, excluding two seats reserved for the categories as provided under section 74 B of the Act.

18. Further, the language of sub rule (9) of Rule 3-A, makes it clear that the Rule Making Authority has graced the Collector with the power to delimit the constituency/constituencies prior to the publication of the

voters list. The delimitation of the constituency/constituencies should be prior to the preparation of the voters' list and/or in any case simultaneous with the preparation of voters' list but the voters list has to be as per the delimitation of the constituencies. The same is the case when the delimitation of the constituency is required to be made by the Collector prior to the publication of the list of voters.

19. Thus, when sub-rule (8) is read along with sub-rule (9) of Rule 3-A, where the society has the area of operation exceeding one village, even if the bye laws provide for single constituency, the seats provided by the bye laws has to be equal to the number of constituency/constituencies and therefore, for each seat, a separate constituency would be required to be delimited and if not so delimited by the society, of its own, it would be required for the Collector to exercise his power under sub rule (9) of Rule 3-A of the Rules for the delimitation of the constituency in accordance with the mandate of sub rule (8) of Rule 3-A and thereafter, the process for publication of the voters' list is to be given effect to.

20. The power conferred with the Collector for the delimitation of the constituency under sub rule (9) is independent and separate and only applicable in the case when the election of the members of any Management Committee of specified society is scheduled to be held. Further, as specified in the sub rule (9) of Rule 3-A, such powers are to be exercised by the Collector, notwithstanding anything contained in the bye laws of such society. The Collector has to exercise the power for delimitation of the constituencies prior to the publication of the list of voters. Further, as rightly stated by the High Court in the impugned judgment that when a specific power is conferred in a specific contingency to a different authority, such power has to be read in addition to the general power for the amendment in the bye-laws. Thus, the bye laws of any society have to be in conformity with the provisions of the Act and the Rules.

21. It is obligatory on the part of any specified society to bring about the amendment in its registered bye-laws in conformity with the provisions of the Rules and more particularly Rule 3-A (8) and (9). But if the society/societies have not amended their bye laws, the same has to be in conformity with the said Rules by getting suitably amended; the effect of the Rule would not stand nullified or inoperable. For this purpose sub rule (9) gives the power to the Collector to delimit the constituency/constituencies of a society. Thus, once the area of operation of any society exceeds more than one village as per sub rule (8), the number of constituencies is required to be bifurcated by the Collector in exercise of his power, so as to make it equal to the total number of seats to see that effective representation is given to the members of the society for giving fair representation to its members to elect their true representatives to participate in the affairs of the Society as part of the Managing Committee Members, as the society must be

represented by its elected representatives in a democratic process to effectively represent in the Managing Committee which is an indispensible parameter for the democratic institutions to achieve the laudable object of Co-operative movement in the country, which is the constitutional philosophy as enshrined in Chapter XI A of the Constitution, which has been inserted by way of constitutional amendment.

22. Thus, the bye laws of any specified society under the provisions of the Co-operative Societies Act cannot be permitted to prevail over the statutory Rule 3-A (8) & (9) of the Rules. The moment the area of operation of any specified society exceeds one village, sub rule (8) would come into play, irrespective of the fact that whether members of such society constitute homogenous group or heterogeneous group.

23. Further, the elections to either the Managing Committee or Board must be held democratically by giving representation to all its members, as stated in the preamble of our Constitution, which is held to be the basic feature of the Constitution by the constitutional Bench of this Court in the cases of ***Kesavananda Bharati Sripadagalvaru v. State of Kerala[(1973) 4 SCC 225] and Kuldip Nayar v. Union of India [(2006) 7 SCC 1]****. Under Article 13 (2) of the Constitution of India, Rules are also regarded as laws. However, the Rules and laws framed by the State Legislatures and the appropriate government cannot run parallel with the principles of the Constitution and the statutory objects of the Co-operative Societies Act cannot be disregard as it would defeat the purpose of Section 243ZK of the Constitution of India (Ninety-Seventh Amendment) Act 2011, inserted as per the 97th Constitutional Amendment, which provides for election of the members of the Managing Committee or Board. If the rules provide that not more than 7 representatives can be elected from a specified Co- operative Society to the Board or Management Committee, then it is the duty of the societies to adhere to it and not exceed the specified number. Thus, the bye laws of a Co-operative Society, in order to achieve the constitutional object, must be brought at par with the laws and statutory provisions of the Societies Act. They cannot override the provisions of State or Central laws.*

24. In ***Kuldip Nayar's case (supra) (2006) 7 SCC 1****, this Court after referring to various Constitutional Bench judgments and other judgments of this Court for the purpose of interpretation made by this Court in relation to phrases used in the Preamble of the Constitution of India such as "sovereign democratic republic" and "Parliamentary democracy" as the basic feature of the Constitution of India, held as under:-*

> *“101. In the same case (Indira Nehru Gandhi case, reported in 1975 Supp SCC 1), Chandrachud, J. in para 691 of his separate*

judgment ruled as under: (SCC pp. 261-62) "

> *"691...Ordinary laws have to answer two tests for their validity: (1) The law must be within the legislative competence of the legislature as defined and specified in Chapter I, Part XI of the Constitution, and (2) it must not offend against the provisions of Articles 13(1) and (2) of the Constitution. 'Basic structure', by the majority judgment, is not a part of the fundamental rights nor indeed a provision of the Constitution. The theory of basic structure is woven out of the conspectus of the Constitution and the amending power is subjected to it because it is a constituent power. 'The power to amend the fundamental instrument cannot carry with it the power to destroy its essential features'-this, in brief, is the arch of the theory of basic structure. It is wholly out of place in matters relating to the validity of ordinary laws made under the Constitution."*

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142. Article 80(4) prescribes the manner of voting and election of the representatives of States for the Council of States in the following terms: "

> *80. (4) The representatives of each State in the Council of States shall be elected by the elected Members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote."*

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336. In the words of Jaganmohan Reddy, J.(Kesavananda Bharati case reported in (1973) 4 SCC 225) in his separate judgment, the 1"elements of the basic structure are indicated in the Preamble and translated in the various provisions of the Constitution" and the "edifice of our Constitution is built upon and stands on several props" which, if removed would result in the Constitution collapsing and which include the principles of "sovereign democratic republic" and "parliamentary democracy", a polity which is "based on a representative system in which people holding opposing view to one another can be candidates and invite the electorate to vote for them" (SCC p. 638, para 1159).

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341. Some of the important holdings were set down in para 92 of the aforementioned (Mohinder Singh Gill v. Chief Election Commr. reported in (1978) 1 SCC 405) judgment "for convenience" and to "synopsise the formulations". The holdings included the following: (SCC p. 452) [pic]

> *92. (2)(a) The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.*
>
> *(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice insofar as conformance to such canons can reasonably and realistically be required of it as fairplay-in-action in a most important area of the constitutional order viz. elections. Fairness does import an obligation to see that no wrongdoer candidate benefits by his own wrong. To put the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full panoply but in flexible practicability. Whether it has been complied with is left open for the Tribunal's adjudication."*

343. The case ***Kihoto Hollohan v. Zachillhu (reported in (1992 Supp (2) SCC 651)*** *also resulted in similar views being reiterated by this Court in the following words: (SCC p. 741, para 179)*

> *"179. Democracy is a part of the basic structure of our Constitution; and rule of law, and free and fair elections are basic features of democracy. One of the postulates of free and fair elections is provision for resolution of election disputes as also adjudication of disputes relating to subsequent disqualifications by an independent authority." (emphasis laid by this Court)"*

25. In ***Rameshwar Prasad (VI) v. Union of India[(2006) 2 SCC 1],*** *this Court has held as under:-*

> *"229. Lord Greene said in 1948 in the famous Wednesbury case (reported in (1948) 1 KB 223) that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken.....*

257. Therefore, the well-recognised position in law is that purity in the electoral process and the conduct of the elected representatives cannot be isolated from the constitutional requirements. "Democracy" and "free and fair election" are inseparable twins. There is almost an inseverable umbilical cord joining them. In a democracy the little man-voter has overwhelming [pic]importance and cannot be hijacked from the course of free and fair elections.....". (emphasis laid by this Court)

26. In ***Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405],*** *this Court has held as under:-*

> *"2. Every significant case has an unwritten legend and indelible lesson. This appeal is no exception, whatever its formal result. The message, as we will see at the end of the decision, relates to the pervasive philosophy of democratic elections which Sir Winston Churchill vivified in matchless, words:*
>
> *"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper - no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point."*
>
> *23. Democracy is government by the people. It is a continual participative operation, not a cataclysmic, periodic exercise. The little man, in his multitude, marking his vote at the poll does a social audit of his Parliament plus political choice of this proxy. Although the full flower of participative Government rarely blossoms, the minimum credential of popular Government is appeal to the people after every term for a renewal of confidence. So we have adult franchise and general elections as constitutional compulsions. "The right of election is the very essence of the constitution" (Junius). It needs little argument to hold that the heart of the Parliamentary system is free and fair elections periodically held, based on adult franchise, although social and economic democracy may demand much more.*

46. It is an interesting sidelight that in America it has been held to be but fundamental fairness that the right to an administrative hearing is given. Natural justice is being given access to the United Nations. It is notable that Mathew, J. observed in Indira Gandhi (p. 513, see p. 128, para 303)(reported in 1975 Supp SCC 1):

> *"If the amending body really exercised judicial power, that power was exercised in violation of the principles of natural justice of audi alteram partem. Even if a power is given to a body without specifying that the rules of natural justice should be observed in exercising it, the nature of the power would call for its observance....."*
> *(emphasis laid by this Court)*

27. In view of the law laid down by this Court in the aforesaid cases, we have to hold that the sub rules (8) & (9) of Rule 3-A are applicable to the appellant society/Societies as the area of operation is more than one village and therefore the orders passed by the Collector for the delimitation of the constituency/constituencies cannot be said to be illegal. Further, we hold that there will be no proper representation of the voters to their respective specified societies for electing representatives of their area which would materially affect the result of the election and the impugned provisions and Rules are legally justifiable.

28. For the reasons stated supra, no relief can be granted in favour of the appellant-societies by setting aside the election notification and the prayer for setting aside the impugned judgement and orders. Hence, they deserve to be dismissed. The respondents are directed to hold the election to the specified societies as per sub rule (8) and (9) of Rule 3-A of the Rules as are applicable to them under the Gujarat Co-operative Societies Act after the delimitation of the constituency/constituencies of such societies are made by the Collector as stated under sub-rule (9) of Rule 3- A of the Rules.

29. For the reasons stated supra, we do not find any reasons whatsoever to interfere with the impugned judgment and orders of the High Court. It is needless to make observation that the State government and its officers could not give effect to the provisions of the Co-operative Societies Act and Rules for some time on account of which some of the societies have challenged the impugned provisions and Rules before the High Court, even after litigation was concluded by the Division Bench at one stage, the State and its officers have not implemented the impugned provisions and Rules without any valid reasons. The members of the specified societies in the State have a right to elect their true representatives to represent them as Managing Committee or Board members of the District Co-operative Societies and other allied

societies after de-limitation of the constituency/ constituencies and therefore, we direct them to see that the impugned provisions and Rules must be implemented forthwith without further delay and submit compliance report within 8 weeks from the date of report of the copy of this order."

105 We take notice of the fact that many cooperative Sugar factories have amended their respective bye laws so as to make the same in consonance with the Specified Societies Rules of 1982 and such amendment has been approved by the Registrar. So far as the cooperative Sugar societies are concerned, the last elections were held in 2015 in consonance with the Full Bench judgement of this Court as affirmed by the Supreme Court. The term of the said Sugar factories expired in the year 2020. Fresh elections are now due. In view of the impugned amendment, it is now not obligatory for the Sugar factories to delimit the constituency and one voter will be brought across all the constituencies. Thus, the very object of Rule 3(A)(A) of the Rules, 1982 has been frustrated. The concept of one voter can only be allowed to vote in his constituency and that the voter cannot have more than one vote is now diluted. The delimitation of the constituency have to be made in a manner so as to ensure that one voter would be entitled for one vote and only one seat and not more than that.

- **DISCUSSION OF THE CASE LAW:**

106 We shall now look into the case law relied upon by Mr. Trivedi, the learned Advocate General appearing for the State. We may clarify that it is not necessary for us to discuss all the judgements upon which reliance has been placed, however, we shall look into some of the judgements on which strong reliance has been placed.

107 In **Samasta Gujarat Rajya Mochi Samaj (supra)**, the challenge before a Division Bench of this High Court was to the validity

of the Constitution (Scheduled Castes) Orders (Second Amendment) Act, 2002, to the extent that it excluded the 'Mochis outside the Dangs district and Umargaon Taluka of Valsad district in the State of Gujarat from the Schedule 1 to the Constitution (Scheduled Castes) Order, 1950, on the ground that the provisions excluding them were violative of the Articles 14, 16, 19 and 341 respectively of the Constitution of India. A declaration was sought that the Entry 4 in Part IV relating to Gujarat of the Schedule to the Constitution (Scheduled Castes) Order, 1950, as amended by the Constitution (Scheduled Castes) Orders (Second Amendment) Act, 2002, is unconstitutional, null and void to the extent the said Entry 4 derecognised and de-specified the 'Mochis' outside of the Dangs district and Umargaon Taluka of Valsad district from the notified list of Scheduled Castes. The writ application was filed by a public trust registered under the provisions of the Bombay Public Trust Act, 1950, said to be representing the entire Mochi community of Gujarat. This Court held that the classification of the Mochi caste of the Dangs district and Umargaon Taluka of Valsad district and the Mochi caste of the other areas of Gujarat on the ground of former being treated as "untouchables" and the latter not, was a valid classification having a reasonable nexus with the object which was sought to be achieved by the impugned legislation. The impugned provision of the Act, 2002 and the Constitution Order, 1950, as varied by it, imposing area restriction for recognition of the Mochi community was held neither to be discriminatory nor arbitrary or violative of any fundamental right of the writ applicant therein.

108 The aforesaid decision of this High Court has been strongly relied upon by the learned Advocate General to make good his case that **Samast Gujarat Rajya Mochi Samaj (supra)** was also a case of exclusion. The context of Mochis of the Dangs district and Umargaon Taluka of

Valsad district by virtue of there being treated as untouchables was held by this Court, according to Mr. Trivedi, was sufficient to classify them as the Scheduled Castes while the other members of the Mochi community in the other parts of Gujarat who though backward but were not treated as untouchable in the other parts of the State and were classified as the O.B.C., were held to be not eligible to claim to be falling in the same class of those who were treated as untouchables. The emphasis, as placed upon by Mr. Trivedi, is on the finding recorded by this Court that such classification could be said to be reasonable having sufficient nexus with the object sought to be achieved by the law dealing with the claims of the Scheduled Castes persons.

109 The learned Advocate General would argue that the exclusion from a homoneous category or a non-homogenous category was upheld.

110 The aforesaid decision, in our opinion, is of no avail to the respondents for the simple reason that there was evidence to show or indicate that the Mochis settled in different parts of the State were never considered as untouchables, and therefore, were wrongly brought in. In other words, were wrongly included. The Mochi caste was specified as the Scheduled Castes through out the State of Bombay, except Gujarat. Thus, the “Mochis” of Gujarat were not recognised as the Scheduled Castes and were specifically excluded. The context of “Mochis” of the Dangs district and Umargaon Taluka by virtue of there being treated as untouchables was sufficient to classify them as the “Scheduled Castes” while the other members of the “Mochi” community in other parts of the Gujarat, who though backward, but were not treated similar to those admissible to the Scheduled Castes, etc, even otherwise, could not have claimed to be falling in the same class of those who were treated

untouchables. Such classification definitely is reasonable and could be said to be having sufficient nexus with the object sought to be achieved by the law dealing with the claims of the Scheduled Castes persons. In the said case, the provisions entirely restricted the caste to the regional basis. By a notification, the restriction of region was removed and all of them came to be included. Later, it was amended and they were again excluded. At that point of time, this Court said that you'll wrongly included at the first stage itself because the law is to abolish the practice of untouchability. In other words, the Court recorded a definite finding that the Mochis of the area other than the Dangs district and Umargaon Taluka were wrongly included and the amendment was held to be rational keeping in mind the object. The "Mochis" who belonged to the specified area alone, were to be treated as the Scheduled Castes and not all "Mochis".

111 In the aforesaid context, we have explained in details the object of Section 74C and the remedial measures and why all the societies at the relevant point of time were included in Section 74C. It is true that every differentiation is not a discrimination as held in the aforesaid decision, but at the same time, differentiation must be founded on pertinent and real differences distinguished from irrelevant and artificial ones like the case on hand.

112 In the case of **Nallamilli Rami Reddi (supra),** the challenge was to the constitutional validity of Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institution and Endowments Act, 1987. The challenge was on the ground that the same was arbitrary and *ultra vires* Articles 14 and 21 of the Constitution to the extent that the lessees who were marginal or small farmers, were not excluded from its effect. In that context, while dismissing the Civil Appeals filed by the State of

Andhra Pradesh, the Supreme Court observed in para 8 as under:

> *"What Article 14 of the Constitution prohibits is class legislation and not classification for purpose of legislation. If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is two fold : (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstance arising out of peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment. In substance, the differentia required is that it must be real and substantial, bearing some just and reasonable relation to the object of the legislation."*

113 There need not be any debate on the above referred principle of law. We do not say for a moment that Article 14 insists for a classification which could be said to be scientifically perfect or logical complete. A classification would not be justified if it is found to be patently arbitrary. In case on hand, we have explained why the amendment could be termed as manifestly arbitrary.

114 In the case of **Satish Babubhai Patel (supra)**, to which one of us (J. B. Pardiwala, J.) was a party, the challenge was to the constitutional validity of Sections 126 and 127 respectively of the Electricity Act, 2003 substantially on the ground that the scheme of the provisions was arbitrary and unreasonable as the Assessing Officer, who worked for the company, themselves would act in a bias manner. In other words, the argument proceeded on the footing of abuse of power. Such argument was not accepted by this Court on the ground that mere

abuse of power by the public officials would not be sufficient to declare otherwise a valid piece of legislation as unconstitutional being arbitrary or discriminatory. In other words, the mere possibility of any discriminatory treatment would not necessarily invalid the legislation and where there is an abuse of such power, the parties aggrieved are not without ample remedies under the law. What would be struck down in such a case would not be the provision which invests the authorities with such power but the abuse of the power itself. This decision is being relied upon to fortify the submission that the apprehension on the part of the writ applicant that the elections of the Sugar societies would not be conducted in a free and fair manner cannot be a ground to strike down the amendment. In other words, once the Sugar societies are excluded from Section 74C, the elections to such societies would not be governed by the 1982 Rules. The 1982 Rules provide protection to the rights of the members of the societies to have free and fair elections. This decision also, in our opinion, is of no avail to the State having regard to the fact that the classification in the present case itself is hit by Article 14 of the Constitution.

115 In **Valsad District Central Cooperative Bank Ltd (supra)**, the questions involved were regarding the amendment in the bye-laws of the Valsad District Central Cooperative Bank Ltd and its effect upon the election of the members of the Managing Committee of the Bank. In that regard, the learned Single Judge observed in para 30 as under:

> *"The aforesaid Section speaks for exercising the rights as the member, which may also include the voting right. However, it cannot be said that the member of the society has only to exercise the voting right and there are no other rights with the members of the society. As the member of the society, one may have the right of attending the general body meeting, right to apply for loan, right to stand as a guarantor, right to participate in the discussions of various issues at the time of*

general body meeting, right to vote at the election and also to contest at the election. Section 28 of the Act provides for different mode and method of regulating the voting rights. Sub-section 8 provides for special regulation of the voting rights of individual members in a federal society. Therefore, it is clear that Section 28 provides the different mode of regulating the voting rights. Various sub-sections of Section 28, inter alia, provide for different manner and method of regulating the voting rights of different categories of members and, therefore, it cannot be said that the method and manner provided for regulating the voting rights under Section 28 are exhaustive in nature, nor can it be said that the society has no authority to regulate the manner and method of voting rights of certain categories of members, which are neither provided, nor stipulated under Section 28. Therefore, under these circumstances it can be said that on conjoint reading of Section 27 with Section 28 of the Act it appears that a member of a society has various rights to be exercised as member and voting right or voting power is one of such rights to be exercised by such member. The voting right of members of the Society are regulated in the manner provided under Section 28, but such method and manner of regulating voting rights are not exhaustive and the society can also provide additional criteria and also can have manner and method for regulating such voting rights."

116 The aforesaid observations are sought to be relied upon to fortify the argument that even if the election of the Sugar societies are not to be conducted by the Collector and the societies on their own would conduct the elections, the societies can provide the manner and method for regulating the voting rights and to ensure free and fair elections. This principle also is of no avail to the State.

117 We shall now look into some of the case law relied upon by Mr. Soparkar, the learned Senior Counsel appearing for the Federation.

118 The case of **Jyoti Basu (supra)** has been relied upon to fortify the submission that a right to elect, fundamental though it is to democracy, is neither a fundamental right nor a common law right, but the same is purely a statutory right. So is the right to be elected. Outside of statute, there is no right to elect, no right to be elected and no right to

dispute an election. This principle is sought to be relied upon to make good the submission that none of fundamental rights of the writ applicants who are none other than the members of the Sugar societies could be said to have been violated so as to maintain the challenge to the constitutional validity of the impugned amendment. There need not be any debate on such principle of law. But, in the case on hand, the issue is altogether different. The issue is whether the Sugar societies could have been excluded from Section 74C without any rational or any meaningful object having regard to the history of the Sugar societies being included in Section 74C of the Act at the relevant point of time.

119 In **Kuldip Nayar (supra)**, the Supreme Court held that the legislative amendment cannot be struck down on the ground that a different or better view is possible. It was held therein that a challenge to legislation cannot be decided on the basis of there being another view which may be more reasonable or acceptable. A matter within the legislative competence of the legislature has to be left to the discretion and wisdom of the latter so long as it does not infringe any constitutional provision or violate the fundamental rights.

120 The aforesaid principle is of no avail to the case on hand as we have explained in details how the impugned amendment infringes Article 14 of the Constitution. The wisdom of the legislature is in every act. Every enactment is brought in due to the wisdom of the legislature. The observations of the Supreme Court referred to above does not make the wisdom absolute. This wisdom is not a “Mantra” to make it impugn from challenge. The question is whether the impugned amendment infringes para 111 of the Constitution or any other constitutional provision. In such circumstances, the wisdom of the legislature is of no consequence once we hold that the impugned amendment suffers from

the vice of discrimination and is manifestly arbitrary. Notwithstanding the wisdom of the legislature, the Court would strike it down.

121 In **Exide Industries Ltd (supra)**, the Supreme Court observed in para 40 as under:

> *We have noted that the High Court has characterised clause (f) as "arbitrary" and "unconscionable" while imputing it with unconstitutionality. It is pertinent to note that the High Court reaches this conclusion without undertaking an actual examination of clause (f). Instead, the declaration is preceded by an enquiry into the circumstances leading upto the enactment. As discussed above, the constitutional power of judicial review contemplates a review of the provision, as it stands, and not a review of the circumstances in which the enactment was made. Be it noted that merely holding an enacted provision as unconscionable or arbitrary is not sufficient to hold it as unconstitutional unless such infirmities are sufficiently shown to exist in the form, substance or functioning of the impugned provision. No such infirmity has been exhibited and adverted to in the impugned judgment."*

122 The aforesaid principle is of no avail as we have explained that the infirmities exist in the form, substance or functioning of the impugned amendment.

123 In **K. C. Gajapati Narayan Deo (supra),** a Constitution Bench of the Supreme Court observed in para 9 as under:

> *"It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the, question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power. A distinction, however, exists between a legislature which is legally omnipotent like the British Parliament and the laws promulgated*

by which could not be challenged on the ground of incompetency, and a legislature which enjoys only a limited or a qualified jurisdiction. If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject- matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression "colorable legislation" has been applied in certain Judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere presence or disguise. As was said by Duff J. in Attorney-General for ***Ontario v. Reciprocal Insurers and Others, 1924 AC 328:***

> *"Where the law making authority is of a limited or qualified character it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what is that the legislature is really doing."*

In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter in substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The legislature cannot violate the constitutional prohibitions by employing an indirect method. In cases like these, the enquiry must always be as to the true nature and character of the challenged legislation and it is the result of such investigation and not the form alone that will determine as to whether or not it relates to a subject which is within the power of the legislative authority. For the purpose of this investigation the court could certainly examine the effect of the legislation and take into consideration its object, purpose or design. But these are only relevant for the purpose of ascertaining the true character and substance of the enactment and the class of subjects of legislation to which it really belongs and not for finding out the motives which induced the legislature to exercise its powers. It is said by Lefroy in his well known work on Canadian Constitution that even if the legislature avow on the face of an Act that it intends thereby to legislate in reference to a subject over which it has no jurisdiction, yet if the enacting clauses of the Act bring the legislation within its powers, the Act cannot be considered ultra vires."

124 We have explained that the Court may not go into the question of motive, but the Court can always look into the object of the legislation. Therefore, the aforesaid principle is also of no avail in the present case.

125 In **V. M. Salgaocar (supra),** the Supreme Court observed in para 40 as under:

> *"A provision of the Act providing for a shorter period of limitation cannot be declared to be unconstitutional simply because in some of the Statutes a longer period of limitation has been prescribed for the redressal of the litigants grievances. The legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those covered by the legislature are left out would not render the legislation of any law being discriminatory and violative of the fundamental rights guaranteed under Article 14 and 19(1)(g) of the Constitution.*

126 There need not be any debate on the aforesaid principle, but such principle was made applicable by the Supreme Court in the facts of that case.

127 Thus, none of the above discussed judgements is helpful to the respondents in getting the writ applications rejected.

128 Our final conclusion may be summarized as under:

[1] The impugned amendment is discriminatory as it fails to disclose the object which could be termed as reasonable or in public interest. The impugned amendment is also manifestly arbitrary.

[2] The differentiation pointed out by the State has no nexus

with the object sought to be achieved. The classification in the present case between the federal and primary societies on the ground of administrative exigency and saving money could be termed as absurd, unreasonable and not in public interest. In view of the same, the classification itself has become irrelevant.

[3] The Court may not look into the motive of the legislature, but, definitely, the object of the legislation can be looked into.

[4] All the specified societies form one class / one homogeneous group for the purpose of its members to ensure free and fair elections under Chapter XI-A of the Act and the Rules, 1982.

129 In view of the aforesaid, all the writ applications succeed and are hereby allowed. The Gujarat Cooperative Societies (Amendment) Act, 2019 is declared as *ultra vires* Article 14 of the Constitution of India.

130 Consequently, all the connected Civil Applications also stand disposed of.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

CHANDRESH