DHARAM DUTT AND ORS. A

v.

UNION OF INDIA AND ORS.

NOVEMBER 24, 2003

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.] B

Indian Council of World Affairs Act, 2001—Constitutional validity of—Held : Act not violative of Articles 14, 19(1)(c) and (a)—Parliament had legislative competence to pass the Act in exercise of powers under Article 245 read with entries 62 and 63 of List I of Seventh Schedule— There is no violation of doctrine of separation of powers—Also legislation not vitiated by the malafides*—Hence, Act constitutionally valid—Constitution of India, 1950—Articles 14, 19(1(c), 19(1)(a), 245, 246 and List I Seventh Schedule, Entries 62 and 63.* C

Constitution of India, 1950 : D

Article 19—Fundamental rights under—Conferred only on citizens of India—Rights do not stand on common pedestal but have varying dimensions and underlying philosophies—Nature of reasonable restrictions imposed— Discussed. E

Article 19—Constitutional validity of Legislative enactment—Held : Test of reasonableness is to be satisfied—Also substance of the legislation is to be kept in view—Further, in a challenge laid to the constitutional validity the onus of proof is on going shifting process. F

Article 19(1)(c)—Right to form associations or unions—Does not carry with it fulfillment of every object of an association for which it was formed—It would be contrary to the scheme of rights guaranteed by part III and those conferred by Article 19(1)(a) to (g)—However, rights flowing from the fundamental rights are sought to be included and qualifications G *are not merely those in Article 19(4)—Further right to form an association is tested by reference to Article 19(1)(c), validity of restriction by Article 19(4), and once individual citizens form an association and carry on activity, validity of restriction is tested by reference to Article 19(1)(g) read with Article 19(6).* H

A *Articles 245 and 246—Seventh Schedule, List I—Entries 62 and 63—Indian Council of World Affairs—Institution of national importance—Hence, enactment protected by Entries 62 and 63 of List I of Seventh Schedule—Indian Council of World Affairs Act, 2001.*

B *Articles 245 and 246—Doctrine of Colourable Legislation—Scope of—Held : Deals with the question of legislative competence to enact a law—If legislature is competent the motives,* bonafides *or* malafides *are not relevant.*

Articles 245, 246, 13, 50 and 226—Indian Council of World Affairs
C *Act, 2001—Act incorporating same provisions as contained in Ordinance declared invalid by High Court—Effect of the judgment of High Court on the legislation—Held : Judgment of High Court being rendered erroneous, overruling of which is specifically recorded, the constitutional validity of subsequent legislation is not to be decided on basis of the judgment of High*
D *Court—Further before error could be corrected in appeal, Ordinance lapsed rendering appeal infructuous—Also by the impugned Act Parliament not overruling the judgment of High Court nor declaring the same law to be valid which was pronounced to be void by the Court—Hence, Act not violative of doctrine of separation of powers.*

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In 1943, an organisation named India Council of World Affairs was formed. The Association was registered as a society. The principal object of the Society was to promote the study of Indian and international questions so as to develop a body of informed opinion on world affairs
F **and Indian relation thereto through study, research, discussion, lectures, exchange of ideas and information etc., with other bodies in India and abroad engaged in similar activities. The Government of India gave land on lease to the society. The Society was housed in a building constructed on the land. It had a library, an auditorium, conference room and other office accommodation. The Society was receiving**
G **grants from the Government from 1974 until 1987, whereafter it was discontinued. There was serious mal-administration and mismanagement committed by the society. On 30.6.1990, the President of India promulgated an Ordinance whereby a statutory body known as the Indian Council of World Affairs was constituted, having**
H **perpetual succession and a common seal, with power to hold and**

dispose of both movable and immovable properties. The constitutional validity of the Ordinance was challenged. Single Judge of High Court held the Ordinance as *ultra vires* the Constitution, violating Articles 14, 19(1)(a) and 19(1)(c) thereof and also beyond the legislative competence of Parliament. Union of India filed a letters patent appeal against the judgment. As the Bill seeking to replace the Ordinance by an Act of Parliament could not be passed, the Ordinance lapsed. Division Bench held that the appeal had become infructuous and dismissed the same. The President promulgated Ordinance No. 3 of 2000, on similar and identical terms of the 1990 Ordinance. However, the Ordinance lapsed. Ordinance No. 1 of 2001 was then promulgated seeking to revive Ordinance No. 3 of 2000, however, this Ordinance also lapsed. Thereafter, Indian Council of World Affairs Ordinance No. 3 of 2001 was promulgated. Writ petition (C) No. 276 of 2001 was filed challenging the constitutional validity of the Ordinance, 2001. During pendency of this petition, Ordinance came to be replaced by an Act of Parliament- Indian Council of World Affairs Act, 2001. Writ petition (C) No. 543 of 2001 was filed challenging the constitutional validity of the Act.

Writ petitioners contended that by promulgating the impugned Ordinance and by enacting the impugned Act, the Central Government has taken over the Society as also its movable and immovable properties resulting in violation of petitioners' right to freedom of speech and expression and to form associations or unions as conferred on citizens by Article 19(1)(a) and (c); that the provisions of the Societies Registration Act, 1860 were effective enough which, if invoked, could have taken care of the alleged grievances; that by passing the legislation, ICWA institution was singled out though there were several other institutions run by societies or other organizations which committed more serious mismanagement and mal-administration; that the impugned Act is violative of Article 300A as it deprives the petitioners of the property vesting in the society; that the impugned Ordinance and the Act are malicious being motivated by political considerations; that the identically worded Ordinance having held to be unconstitutional and the judgment of High Court holding so having achieved a finality, the Parliament could not have re-enacted the contents of the vitiated Ordinance into an Act; and that the impugned Ordinance and the Act

A are violative of the doctrine of Separation of Powers.

Respondent-Union of India contended that the earlier Ordinances have mere academic relevance in view of the Parliament having ultimately enacted the Act; that as the India Council of World Affairs B is an institution of national importance, the impugned enactment is protected by Entries 62 and 63 of List I of the Seventh Schedule; that the Society has not been touched, it continues to survive as before and, therefore, there is no violation of fundamental right within the meaning of Article 19(1)(a) and (c); that the building and the library having built out of Government funds, subventions and some donations, the C Society does not have any right in any of the properties; that the impugned Ordinance and Legislation were not politically motivated; that the decision of the Single Judge of High Court with respect to the identically worded Ordinance was incorrect; and that appeal filed was disposed of without any adjudication on merits since the High Court D held that the appeal was rendered academic in view of the Ordinance having lapsed.

Disposing of W.P. (C) No. 276 of 2001 and dismissing W.P. (C) No. 543 of 2001, the Court

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HELD : 1. The challenge to the constitutional validity of the Indian Council of World Affairs Act, 2001 fails. [199-G]

2.1. At one time, the institution-ICWA was receiving financial aid from the Government of India. ICWA has been declared to be an F 'institution of national importance' by the Act of Parliament, thus the Parliament is competent to make any law governing the management, administration and affairs of such an institution. It is not the case of the petitioners that in enacting other provisions of the impugned Act, the Parliament has encroached upon any field of legislation not G available to it. The legislation is clearly covered by Entries 62 and 63 of List I Schedule 7 of the Constiution. [199-H, 200-A, B, C]

2.2. The various Entries in the three Lists of the Seventh Schedule are legislative heads defining the fields of legislation. A large and H liberal interpretation should be given to the scope of the Entries. Not

only the main matter but also any in incidental and ancillary matters A
are to be included within the field of the entry. The settled rules of interpretation governing the Entries do not countenance any narrow and pedantic interpretation. [200-C-E]

Navinchandra Mafatlal v. *CIT Bombay City,* [1955] 1 SCR 829 and B
Sri Ram Ram Narain Medhi v. *The State of Bombay,* [1959] Supp. 1 SCR 989, relied on.

British Coal Corporation v. *The King,* AIR (1935) PC 158 and *United Provinces* v. *Atiqa Begum,* AIR (1941) FC 16, referred to.

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3.1. The Court, confronted with a challenge to the constitutional validity of any legislative enactment by reference to Article 19 would first ask what is the sweep of the fundamental right guaranteed to the citizens by the relevant sub-clause out of sub-clauses (a) to (g) of clause (1); if the right canvassed falls within the sweep and expanse of any D
of the sub-clauses of clause (1), then whether the impugned law imposes a reasonable restriction falling with the scope of clauses (2) to (6) respectively. However, if the right sought to be canvassed does not fall within the sweep of the fundamental rights but is a mere concomitant or adjunct or expansion or incidence of that right, then the validity thereof is not to be tested by reference to clauses (2) to (6). E
The test which it would be required to satisfy for its constitutional validity is one of reasonableness, or if it comes into conflict with any other provision of the Constitution. This has to be decided by keeping in view the substance of the legislation and not being beguiled by the mere appearance of the legislation. [181-B-D; 187-F] F

The State of Madras v. *V.G. Row,* [1952] SCR 597, followed.

H.C. Narayanappa & Ors. v. *State of Mysore & Ors.,* [1960] 3 SCR 742, relied on.

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State of West Bengal v. *Subodh Gopal Bose & Ors.,* [1954] SCR 587, referred to.

3.2. In spite of there being a general presumption in favour of the constitutionality of the legislation, in a challenge laid to the validity of H

A any legislation allegedly violating any right or freedom guaranteed by clause (1) of Article 19 of the Constitution, on a *prima facie* case of such violation having been made out, the onus would shift upon the respondent-State to show that the legislation comes within the permissible limits of the most relevant out of clauses (2) to (6) of Article B 19 of the Constitution, and that the restriction is reasonable. The Court would expect the State to place before it sufficient material justifying the restriction and its reasonability. On the State succeeding in bringing the restriction within the scope of any of the permissible restrictions, such as, the sovereignty and integrity of India or public C order, decency or morality etc., the onus of showing that restriction is unreasonable would shift back to the petitioner. Where the restriction on its face appears to be unreasonable, nothing more would be required to substantiate the plea of unreasonability. Thus the onus of proof in such cases is an on-going shifting process to be consciously D observed by the court. [187-B-E]

Charanjit Lal Chowdhury v. *The Union of India & Ors.*, [1950] SCR 869; *Board of Trustees, Ayurvedic and Unani Tibia College, Delhi* v. *State of Delhi (Now Delhi Administration) & Anr.*, [1962] Supp. 1 SCR 156, relied on.
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3.3. A right to form associations or unions guaranteed under Article 19(1)(c) does not include within its ken as a fundamental right a right to form associations or unions for achieving a particular object or running a particular institution, the same being a concomitant or F concomitant to a concomitant of a fundamental right, but not the fundamental right itself. The associations or unions of citizens cannot further claim as a fundamental right that it must also be able to achieve the purpose for which it has come into existence so that any interference with such achievement by law shall be unconstitutional, unless the G same could be justified under Article 19(4) as being a restriction imposed in the interest of public order or morality. It would be contradictory to the scheme underlying the text and the frame of the several fundamental rights guaranteed by Part III and the scheme of the guarantees conferred by sub-clauses (a) to (g) of clause (1) of H Article 19. [173-E-H]

3.4. Even a very liberal interpretation cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. The right to strike or the right to declare a lock-out may be controlled or restricted by appropriate industrial legislation, and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of Article 19 but by totally different considerations. A right guaranteed by Article 19(1)(c) on a literal reading thereof can be subjected to those restrictions which satisfy the test of clause (4) of Article 19. The rights not included in the literal meaning of Article 19(1)(c) but which are sought to be included therein as flowing therefrom *i.e.* every right which is necessary in order that the association, brought into existence, fulfills every object for which it is formed, the qualifications therefor would not merely be those in clause (4) of Article 19 but would be more numerous and very different. Restrictions which bore upon and took into account the several fields in which associations or unions of citizens might legitimately engage themselves, would also become relevant. [175-D-H]

3.5. A perusal of Article 19 with certain other Articles like 26, 29 and 30 shows that while Article 19 grants rights to the citizens as such, the associations can lay claim to the fundamental rights guaranteed by Article 19 solely on the basis of there being an aggregation of citizens, *i.e.*, the rights of the citizens composing the body. As the stream can rise no higher than the source, associations of citizens cannot lay claim to rights not open to citizen or claim freedom from restrictions to which the citizens composing it are subject. While right to form an association is to be tested by reference to Article 19(1)(c) and the validity of restriction thereon by reference to Article 19(4), once the individual citizens have formed an association and carry on some activity, the validity of legislation restricting the activities of the association shall have to be judged by reference to Article 19(1)(g) read with 19(6). A restriction on the activities of the association is not a restriction on the activities of the individual citizens forming membership of the association. [174-B-C, 174-A-B]

Smt. Damyanti Naranga & Anr. v. *The Union of India and Ors.*, [1971] 3 SCR 840 and *Asom Rashtrabhasha Prachar Samiti, Hedayatpur-*

A *Gauhati-3 and Anr.* **v.** *State of Assam and Ors.*, **[1989] Supp. SCR 160, distinguished.**

Smt. Maneka Gandhi **v.** *Union of India & Anr.*; **[1978] 1 SCC 248;** *All India Bank Employees' Association* **v.** *National Industrial Tribunal,* **[1962] 3 SCR 269;** *M/s. Raghubar Dayal Jai Parkash & Anr.* **v.** *Union* B *of India & Anr.*, **[1962] 3 SCR 547;** *Azeez Basha* **v.** *Union of India,* **[1968] 1 SCR 833;** *D.A.V. College Jullundur etc.*, **v.** *The State of Punjab and Ors.*, **[1971] 2 SCC 269;** *Sethapathi Nageswara Rao & Ors.* **v.** *The Government of A.P. & Ors.*, **AIR (1978) A.P. 121 (F.B.);** *Harakh Bhagat and Anr.* **v.** *Assistant Registrar, Co-operative Societies, Barh, and Ors.*, **AIR (1968)** C **Patna 211;** *S.P. Motta* **v.** *Union of India & Ors.*, **[1983] 1 SCC 51 and** *L.N. Mishra Institute of Economic Development and Social Change, Patna* **v.** *State of Bihar & Ors.*, **[1988] 2 SCC 433, referred to.**

3.6. As soon as citizens form a company, the rights are guaranteed D **to them by Article 19(1)(c). Once a company or a corporation is formed, the business carried on by the said company or corporation is the business of the company or corporation, and is not the business of the citizens who get the company or corporation formed or incorporated, and the rights of the incorporated body must be judged** E **on that footing alone and cannot be judged on the assumption that they are the rights attributable to the business of individual citizens. The same principle would apply to a society registered under the Societies Registration Act, 1860. [177-D-F]**

Tata Engineering and Locomotive Co. Ltd. & Anr. **v.** *The State and* F *Ors.*, **[1964] 6 SCR 885, relied on.**

3.7. The pith and substance of the impugned legislation is to take over an institution of national importance. As the formation of the society, which is a voluntary association, is not adversely affected and G **the members of the society are free to continue with such association, the validity of the impugned legislation cannot be tested by reference to sub-clauses (a) and (c) of clause (1) of Article 19. The activity of the society which was being conducted through the institution ICWA has been adversely affected and to that extent the validity of the legislation** H **shall have to be tested by reference to sub-clause (g) of clause (1) of**

Article 19. The activity was of the society and the society cannot claim a fundamental right. Even otherwise the impugned legislation is a reasonable legislation enacted in the interest of the general public and to govern an institution of national importance. It is valid. It does not offend the right guaranteed by Article 19(1)(c). It also does not in any manner deprive the members of the Society of their freedom of speech and expression under Article 19(1)(a). [184-G-H, A-B; 187-G]

4.1. No other institution in the grip of more serious mismanagement and mal-administration is named or particularized so as to be comparable with ICWA and there can be a legislation in respect of a single institution as is clear from the language itself of Entries 62 and 63 of List I. A single institution is capable of being treated as a class by itself for the purpose of legislation if there are special circumstances or reasons which are applicable to that institution and such legislation would not incur the wrath of Article 14. [192-G-H; 193-A]

4.2. Merely because an alternative action under the Societies Registration Act, 1860 could have served the purpose, a case cannot be and is not made out for finding fault with another legislation if the same be within the legislative competence of the Parliament. The Parliament had legislative competence to pass the legislation in exercise of its legislative power under Article 245 of the Constitution read with Entries 62 and 63 of List I. The legislation cannot be said to be arbitrary or violative of Article 14. [192-B-C]

S.P. Mittal v. *Union of India & Ors.*, [1983] 1 SCC 51; *Ram Krishna Dalmia* v. *Justice S.R. Tendolkar*, [1959] SCR 279; *Raja Birakishore* v. *State of Orissa*, [1964] 7 SCR 32 and *Chiranjit Lal Chowdhuri* v. *Union of India*, [1950] SCR 869, referred to.

5. The exercise of testing the vires of the impugned legislation by reference to Article 300A of the Constitution is uncalled for in the instant petition since the right to property has ceased to be a fundamental right, and it is doubtful if it could be enforced by a petition under Article 32 of the Constitution; that a case of violation of Article 300A the way it is canvassed is not taken up in the writ petition; that the petition raises disputed questions of facts; that the Union of India has

A taken over the institution by enacting a law which is within the legislative competence of the Parliament; and that there is not one document of title produced by the petitioners in support of their claim to the property. [191-D; 190-H; 191-A-C]

B 6. The whole doctrine of Colourable legislation resolves itself into the question of the competency of a particular legislature to enact a particular law. It does not involve any question of *bona fides* or *mala fides* on the part of the legislature. If the legislature is competent to pass a particular law, motives which impelled it to act are irrelevant and if incompetent, the question of motive does not arise at all. In the C instant case, the Parliament has the requisite competence to enact the impugned Act, the enquiry into the motive which persuaded the Parliament into passing the Act are not relevant. [168-E-G]

K.C. Gajapati Narayan Deo & Ors. v. *State of Orissa,* [1954] SCR D 1 and *Board of Trustees, Ayurvedic and Unani Tibia College, Delhi* v. *State of Delhi (Now Delhi Administration) & Anr.,* [1962] Supp. 1 SCC 156, referred to.

7.1. Filing of an appeal destroys the finality of the judgment under appeal. Upon the lapsing of the earlier Ordinance pending an appeal E before a Division Bench, appeal being rendered infructuous, the judgment of Single Judge about the illegality of the earlier Ordinance, cannot any longer bar this Court from deciding about the validity of a fresh law on its own merits, even if the fresh law contains similar provisions. [198-F; 199-A-B]

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7.2. The judgment of High Court is not correct and the overruling of the same is specifically recorded. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the constitutional validity of the subsequent legislation is not available to be decided on the basis of the previous judgment. [195-D]

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7.3. A legislation which on an independent scrutiny is held to be within the legislative competence of the enacting legislature cannot be struck down merely because the legislature has re-enacted the same legal provisions into an Act which, ten years before, were incorporated H in an Ordinance and were found to be unconstitutional in an erroneous

judgment of the High Court and before the error could be corrected in appeal the Ordinance itself lapsed. By the impugned Act the Parliament has not overruled the judgment of the High Court nor has it declared the same law to be valid which has been pronounced to be void by the court. It would have been better if before passing the Bill into an Act the attention of the Parliament was specifically invited to the factum of an earlier *pari materia* Ordinance having been annulled by the High Court. The impugned Act is not liable to be annulled on the ground of violation of the doctrine of Separation of Powers. [199-C-G]

Shri Prithvi Cotton Mills Ltd. & Anr. **v.** *Broach Borough Municipality & Ors.*, **[1969] 2 SCC 283;** *M/s. Misrilal Jain* **v.** *State of Orissa & Anr.*, **[1977] 3 SCC 212;** *Madan Mohan Pathak & Anr.* **v.** *Union of India & Ors.*, **[1978] 2 SCC 50;** *Union of India & Anr.* **v.** *Raghubir Singh (Dead) by Lrs. etc.*, **[1989] 2 SCC 754;** *Indian Aluminium Co. & Ors.* **v.** *State of Kerala & Ors.*, **[1996] 7 SCC 637;** *Welfare Association A. R.P. Maharashtra & Anr.* **v.** *Ranjit P. Gohil & Ors.*, **JT (2003) 2 SC 335;** *People's Union for Civil Liberties (PUCL) & Anr.* **v.** *Union of India & Anr.*, **[2003] 4 SCC 399 and** *Smt. Indira Nehru Gandhi* **v.** *Shri Raj Narain & Anr.*, **[1975] Supp. SCC 1, referred to.**

A Judge on Judging : The Role of a Supreme Court in Democracy— By President Aharon Barak, Supreme Court of Israel, Harvard Law Review, **Vol. 116, No. 1, November 2002, p. 135, referred to.**

8. All the grounds taken in writ petition challenging the Indian Council of World Affairs Ordinance, 2001 have been reiterated and reurged in the writ petition challenging the Indian Council of World Affairs Act 2001. As the merits of the pleas raised on behalf of the writ petitioners are available to be considered in the latter writ petition, the writ petition challenging the Ordinance is rendered infructuous and is disposed of without any adjudication on merits. The Ordinance having ceased to operate, the factum of promulgation of such Ordinance remains only a part of the narration of events. Further no such action was taken thereunder the legality whereof may survive for adjudication. [168-A-C]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 276 of 2001.

Under Article 32 of the Constitution of India.

A WITH

W.P. (C) No. 543 of 2001.

Ashok Nigam, P.P. Rao, Sunil Kumar, Sushender Kumar Chauhan, Ms. Ritu Puri, Ms. Naresh Bakshi, D.K. Gupta, B.S. Baloria, Dinesh Kumar
B Garg, Devinder Verma and R.P. Gupta for the Petitioners.

Raju Ramachandaran, Additional Solicitor General, Altaf Ahmad, Additional Solicitor General (NP), D.N. Ray, Tufail A. Khan, Ashok Kumar Pandey, B.V. Balram Dass, D.S. Mahra, Y.P. Mahajan, M.K.
C Michael and Shreekant N. Terdol for the Respondents.

The Judgment of the Court was delivered by

R.C. LAHOTI, J.

D 1. W.P. (C) No. 276/2001 filed on June 22, 2002, lays challenge to the constitutional validity of the Indian Council of World Affairs Ordinance, 2001 (No.3 of 2001), promulgated by the President of India on May 8, 2001, in exercise of the powers conferred by clause (1) of Article 123 of the Constitution of India. During the pendency of this petition the Ordinance came to be replaced by an Act of Parliament, namely, the Indian
E Council of World Affairs Act, 2001(Act No.29 of 2001), which came into force w.e.f. September 1, 2000. On 19.10.2001 W.P.(C) No.543/2001 was filed laying challenge to the constitutional validity of this Act. Both the petitions have been filed under Article 32 of the Constitution of India and respectively allege the Ordinance and the Act to be violative of Articles
F 14, 19(1)(a), 19(1)(c) and 300A of the Constitution.

Factual backdrop:

2. In the year 1943, the Indian Council of World Affairs was formed by about 50 distinguished eminent public personalities as a non-official,
G non-political and non-profit organization. On March 31, 1945, the Association was registered as a society under the Societies Registration Act, 1860. The principal object of the Society, as set out in the Memorandum of Association, was to promote the study of Indian and international questions so as to develop a body of informed opinion on
H world affairs and Indian relation thereto through study, research, discussion,

lectures, exchange of ideas and information etc., with other bodies in India and abroad engaged in similar activities. The activities of the Society were housed in a building known as Sapru House. Sapru House has come up on a land of about 2 acres situated at No.1, Barakhamba Road, New Delhi, given on lease by the Government of India some time in the year 1950-51. Sapru House has a library with a collection of books mainly on international affairs, an auditorium for holding seminars and discussions, a conference room and other office accommodation. The Society was receiving grants from the Government of India from 1974 until the year 1987, whereafter the grant has been discontinued.

3. On June 30, 1990, the President of India promulgated an Ordinance whereby a statutory body known as the Indian Council of World Affairs was constituted, having perpetual succession and a common seal, with power to hold and dispose of property both movable and immovable. The constitutional validity of this Ordinance was put in issue by filing a writ petition before the High Court of Punjab and Haryana at Chandigarh, registered as Civil Writ Petition No.9120 of 1990. A learned single Judge of the High Court vide judgment dated September 10, 1990, allowed the writ petition, holding the Ordinance to be *ultra vires* of the Constitution of India, violating Articles 14, 19(1)(a) and 19(1)(c) thereof and also beyond the legislative competence of the Parliament. The Union of India filed a letters patent appeal against this judgment of the learned single Judge. The letters patent appeal came up for hearing before a Division Bench of the High Court on October 22, 1990. It was brought to the notice of the Division Bench that the Ordinance promulgated on June 30, 1990 had lapsed on September 19, 1990, as the Bill seeking to replace the Ordinance by an Act of Parliament could not be passed. The Division Bench formed an opinion that the letters patent appeal had become infructuous and directed the same to be dismissed without any adjudication on merits.

4. In December 1999, the Ministry of Urban Development, Government of India, cancelled the perpetual lease of the land of the Indian Council of World Affairs. The cancellation of lease was followed by an order of re-entry. A writ petition was filed in the Delhi High Court, laying challenge to the said action of the Central Government. The learned single Judge before whom the writ petition came up for hearing refused to grant any

A interim relief to the writ petitioner, and so a Letters Patent Appeal No. 577/99 came to be filed before the Division Bench of the Delhi High Court. On December 24, 1999, the High Court directed further proceedings before the Estate Officer under the Public Premises Act to remain stayed. It seems that there was some controversy about the breach of the interim order B granted by the High Court, which led to the filing of two contempt petitions in the High Court of Delhi, which are still pending.

5. On September 1, 2000, the President of India promulgated Ordinance No. 3 of 2000, the terms whereof were more or less similar and identical with those of the Ordinance of 1990. The constitutional validity C of this Ordinance was challenged by filing C.W.P. No. 5174 of 2000 in the High Court of Delhi. A Bill proposing to replace the Ordinance was moved in the Parliament which was passed by the Lok Sabha and was pending in the Rajya Sabha, but the Rajya Sabha was adjourned and, therefore, the Ordinance lapsed on December 31, 2000.

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6. On January 5, 2001, Ordinance No.1 of 2001 was promulgated seeking to revive Ordinance No.3 of 2000; however, this Ordinance too lapsed on April 3, 2001.

7. On May 8, 2001, Ordinance No. 3 of 2001 was promulgated and E replaced by an Act of Parliament, which received the assent of the President of India on September 3, 2001.

8. The facts stated hereinabove are almost undisputed. We say so because the chronology of events is not at all in dispute; there is a minor F variation in the manner of narration of the events and the background leading to the promulgation of the Ordinances and the passing of the Act, which are not very material and hence have been overlooked. We may now broadly state the facts which are disputed and which form the subject matter of the controversy arising for decision in the writ petitions.

G *The Controversy*

9. According to the writ petitioners, Sapru House is a building constructed by the Society. The building, the library and all other movables in Sapru House are owned by the Society. By promulgating the H impugned Ordinance and by enacting the impugned Act, the Central

Government has taken over the Society as also its movable and immovable properties. This has resulted in violating the right of the writ petitioners to the freedom of speech and expression and to form associations or unions as conferred on citizens by sub-clauses (a) and (c) of clause (1) of Article 19 of the Constitution of India. The Society has been deprived of its property without any authority of law which is violative of Article 300A of the Constitution of India. The impugned Ordinance and the Act are malicious inasmuch as they are motivated by political considerations. It is also alleged that the impugned Ordinance and the Act are violative of the doctrine of Separation of Powers. The High Court of Punjab and Haryana had struck down an Ordinance which contained similar provisions and the said judgment dated September 10, 1990, has achieved a finality in view of the challenge to the legality of the judgment having been given up by the Union of Indian by not pressing the letters patent appeal. A subsequent legislation which is in defiance of the judgment of the High Court deserves to be struck down solely on this ground.

10. According to the counter-affidavit filed by the Union of India, the Indian Council of World Affairs ('ICWA', for short) had attained an international stature in connection with world affairs and the foreign policies of India *vis-à-vis* other countries. However, the activities of the Society, *i.e.* running the Institution, were being complained against by several persons all over the country on account of the sub-standard level of the programmes and the activities being conducted, as also about the standard of the maintenance of stock of books, periodicals, etc. in the library. The image and reputation of the Institution drew adverse publicity in the Press. In the counter-affidavit several such instances have been highlighted under the title "Glaring Instances of Maladministration" as revealed in the Audit conducted by the Comptroller and Auditor General of India. These instances highlight irregular and incomplete maintenance of accounts, misuse and diversion of funds, and deficits and losses accumulating year by year on account of mismanagement and mal-administration. Photographs have been filed with the counter affidavit showing the state of disrepair of the building and its furniture. Serious irregularities were found to have been committed in the conduct of elections of the Executive Committee, resulting in the complete breakdown of the democratic functioning of the Institution. The electoral roll *consisted* of members who had discontinued their membership. Fruit and vegetable

A vendors were enrolled as members of the Indian Council of World Affairs, so as to pack the membership with defunct members only to ensure the continuance in office of a certain set of people. Membership fees of all such multiple members were being deposited by a single cheque.

B 11. On the affidavit of the Joint Secretary in the Ministry of External Affairs, Government of India, New Delhi, it has been stated that financial assistance was regularly granted to ICWA by the MEA and Deptt. of Culture (Ministry of Education). Grants have been given after 1986 by organizations like ICSSR. Adhoc grants had been given by the Deptt. of Culture between 1974-1975 till 1988-1989. The last grant of Rs. 5 lakh C from MEA was in 1985-1986. In 1996-1997, the ICWA management wrote off the Capital Reserve of Rs.19,38,302 against an accumulated deficit of Rs.31,06,897. The deficit of the erstwhile ICWA continued to increase till the takeover by the newly incorporated body on 2nd September, 2000. The report of the Special Audit of ICWA by CAG, which commenced D on 11.8.2000, highlights unaccounted for liabilities to the extent of Rs. 132.84 lacs, contravention of the provisions of the perpetual lease, non-adjustment of cash drawn for day to day expenses amounting to Rs. 22,48,399.65, and possible misappropriation of funds to the tune of Rs. 1,39,086.10 by inflating the total amount of the salary bills.

E 12. According to the respondents, the property - Sapru House, is situated on land which belongs to the Government of India (Land & Development Office). Large subventions and grants have been given from time to time by the Government of India to the Society wherefrom the building was constructed. The lease of the land was terminated for non-F payment of dues as well as for various breaches amounting to misuse committed by the Society. The dues as per the claim of the L&DO worked out to more than Rs. 9 crores. Eviction orders were passed by the Estate Officer, which have been stayed by the High Court. However, having acquired management and control over the Institution and the building and G other properties in the year 1990, pursuant to the Ordinance, the Government of India had spent about Rs. 2 crores so as to restore Sapru House to its original condition and make it fit for habitation and use. The Union of India has vehemently denied the allegation of the petitioners that the impugned Ordinance and Legislation were politically motivated. It is H submitted that Governments have changed from time to time with different

political leanings. However, three Parliamentary Standing Committees appointed at different points of time have recommended the taking over of Sapru House, lamenting the decline in the standard of the Institution. Earlier Ordinances are a matter of history and of mere academic relevance in view of the Parliament having ultimately enacted the Act. As to the impugned Act being in violation of the doctrine of Separation of Powers and in defiance of the decision of the Punjab and Haryana High Court, the respondents have submitted that the decision of the learned single Judge was incorrect. It was put in issue by filing a letters patent appeal, which appeal was disposed of without any adjudication on merits due to the High Court having formed an opinion that the adjudication of the appeal was rendered academic in view of the Ordinance having lapsed. The respondents could not have pressed for decision of the letters patent appeal on merits nor could they have taken the matter further because the High Court or this Court would not have entered into the examination of an issue which was rendered of academic interest only.

13. The Union of India has vehemently submitted that the Society has not been touched. It continues to survive as before and, therefore, the question of any fundamental right within the meaning of sub-clauses (a) and (c) of clause (1) of Article 19 of the Constitution of India having been breached, does not arise. As the Institution, the Indian Council of World Affairs, is an institution of national importance, the impugned enactment is protected by Entries 62 and 63 of List I of the Seventh Schedule to the Constitution of India.

14. In the submission of the Union of India the building and the library have been built out of Government of India funds and subventions, and some donations received from persons of the eminence of former Prime Ministers and the President of India and other dignitaries. The Society does not have any right in any of the properties, as is being claimed by the petitioners.

Challenge to Ordinance infructuous [W.P.(C) No.276 of 2001]

15. Before we enter into examining the merits of the attack laid on the impugned Act, we would like to summarily dispose of W.P.(C) No. 276 of 2001 wherein the challenge has been laid to the validity of the Ordinance only. The Ordinance has been replaced by an Act of Parliament. A fresh

A petition has been filed laying challenge to the constitutional validity of the Act. All the grounds taken in W.P.(C) No. 276/2001 have been reiterated and reurged in W.P.(C) No.543/2001. As the merits of the pleas raised on behalf of the writ petitioners are available to be considered in the latter civil writ petition, W.P.(C) No.276/2001 is rendered infructuous and we direct B it to be treated as disposed of without any adjudication on merits. The Ordinance impugned therein having ceased to operate, the factum of promulgation of such Ordinance remains only a part of the narration of events. No such action was taken thereunder the legality whereof may survive for adjudication in spite of the lapse of the Ordinance. We will, therefore, confine ourselves to dealing with the validity of the impugned C Act.

Whether the impugned enactment is vitiated by malafides? :

16. Though the petition alleges the impugned Act (with the history of D preceding Ordinances) to be the outcome of political malice, no particulars thereof have been given by the writ petitoner. However, that aspect need not be deliberated upon any further in view of two Constitution Bench decisions of this Court. It has been held in *K.C. Gajapati Narayan Deo & Ors.* v. *State of Orissa,* [1954] SCR 1, and in *Board of Trustees, Ayurvedic and Unani Tibia College, Delhi* v. *State of Delhi (Now Delhi Administration)* E *& Anr.,* [1962] Supp. (1) SCR 156, 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 the competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled F it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. We will, therefore, concentrate on the legislative competence of Parliament to enact the impugned legislation. If the Parliament has the requisite competence to enact the impugned Act, the enquiry into the motive which persuaded the Parliament G into passing the Act would be of no use at all.

Gist of the impugned Act

17. The Preamble to the Act, that is, the Indian Council of World Affairs Act, 2001 (Act No. 29 of 2001) reads - "An Act to declare the H Indian Council of World Affairs to be an institution of national importance

and to provide for its incorporation and matters connected therewith." Section 2 declares I.C.W.A. as an institution of national importance. Section 4 incorporates a statutory council by the name of the Indian Council of World Affairs as a body corporate, which shall have perpetual succession and a common seal with power to hold property, movable and immovable, and to contract and to sue and be sued in its name. Section 5 transfers all properties and assets, debts, obligations and liabilities and contracts of the existing council to the new body corporate. The new council consists of the Vice-President of India as its *ex-officio* President and the Prime Minister of India, the Speaker of the Lok Sabha, the Leader of the House, Rajya Sabha, the Leaders of the Opposition in both the Lok Sabha and Rajya Sabha to be its members, with a provision for future expansion so as to include in the council certain specified and nominated members of the Central Government. Provisions are made for the staff, the functions of the council, budgeting, accounts and audit, and so on. The Central Government is vested with the power to make Rules to carry out the provisions of the Act. The council may make regulations consistent with the Act and the Rules. Without entering into further details it would suffice for our purpose to sum up the gist of the Act by stating that :- (1) a new body corporate known as the Indian Council of World Affairs has come into existence; (2) the institution, 'Indian Council of World Affairs' has been declared to be an institution of national importance; (3) the institution has been taken over by the Central Government and entrusted to the new Council — a statutory corporate body; (4) the society named the Indian Council of World Affairs has not been touched at all; its membership and organization have been left intact, untampered with and untouched.

18. According to the respondents, the impugned Act falls within the purview of Entries 62 and 63 of List I of the Seventh Schedule, which Entries read as under:-

> "62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.

A 63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of Article 371-E; and any other institution declared by Parliament by law to be an institution
B of national importance."

19. With this much of an introductory statement, we proceed to deal with the several grounds of attack urged by the petitioners.

C *Impugned Act if violative of Article 19(1)(a) & (c)*

20. Article 19(1)(a) and (c) and clauses (2) and (4) of Article 19, relevant for our purpose, provide as under :-

"19. Protection of certain rights regarding freedom of speech,
D etc.–

(1) All citizens shall have the right.-

(a) to freedom of speech and expression;

E

(b) xxx xxx

(c) to form associations or unions;

(d) to (g) xxx xxx

F

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the
G interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

H (3) xxx xxx xxx

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) xxx xxx xxx

(6) xxx xxx xxx"

21. The Constitution Bench in *The State of Madras* v. *V.G. Row*, [1952] SCR 597, laid down twin tests on which the constitutional validity of a legislation under Article 19 is to be tested. The first test is the test of reasonableness which is common to all the clauses under Article 19(1); and the second test is to ask for the answer to the question, whether the restriction sought to be imposed on the fundamental right, falls within sub-articles (2) to (6) respectively *qua* the clauses (a) to (g) of Article 19(1). The test of reasonableness, according to the Constitution Bench, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint, and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable. Under the second test, the Constitution Bench, called upon to deal with the legislation impugned before it by reference to Articles 19(1)(c) and 19(4) of the Constitution,

A held the impugned legislation to be unconstitutional and void because it curtailed the fundamental right to form associations or unions and fell outside the limits of authorized restrictions under clause (4) of Article 19.

22. Article 19(1) of the Constitution came up for the consideration B of a Seven-Judges Bench of this Court in *Smt. Maneka Gandhi* v. *Union of India & Anr.*, [1978] 1 SCC 248. Dealing with the scope and purport of Article 19(1) the Bench held:-

> "Even if a right is not specifically named in Article 19(1), it may still be a fundamental right covered by some clause of that Article C if it is an integral part of a named fundamental right or partakes of the same basic nature and character as that fundamental right. It is not enough that a right claimed by the petitioner flows or emanates from a named fundamental right or that its existence is necessary in order to make the exercise of the named fundamental D right meaningful and effective. *Every activity which facilitates the exercise of a named fundamental right is not necessarily comprehended in that fundamental right nor can it be regarded as such merely because it may not be possible otherwise to effectively exercise that fundamental right* What is necessary to E be seen is, and that is *the test* which must be applied is, *whether the right claimed by the petitioner is an integral part of a named fundamental right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of the named fundamental right.* If this be the correct F test, the right to go abroad cannot in all circumstances be regarded as included in freedom of speech and expression."
>
> *(emphasis supplied)*

G 23. Their Lordships referred to *All India Bank Employees' Association* v. *National Industrial Tribunal,* [1962] 3 SCR 269 wherein the plea raised was that the right to form associations protected under Article 19(1) (c) carried with it a guarantee that the association shall effectively achieve the purpose for which it was formed, without interference by law, except on H grounds relevant to the preservation of public order or morality as set out

in Article 19(4). The plea so raised was rejected. The Court negatived the argument that the freedom to form unions carried with it the concomitant right that such unions should be able to fulfill the object for which they were formed. The scope of the fundamental right conferred by Article 19(1)(a) cannot be expanded on the theory of peripheral or concomitant right. Their Lordships held that such a theory having been firmly rejected in the *All India Bank Employees Association's* case (supra), any attempt to revive it cannot be countenanced as that would completely upset the scheme of Article 19(1). The words of Rajagopala Ayyanger, J. were quoted with approval, as saying "by a series of ever expanding concentric circles in the shape of rights concomitant to concomitant rights and so on, lead to an almost grotesque result". In *Maneka Gandhi's* case (supra) the right to go abroad was clearly held not to be a guaranteed right under Article 19(1) and an imposition by law of restrictions on the right to go abroad was held to be not offending Article 19(1)(a) or (g), as its direct and inevitable impact is only on the right to go abroad and not on the right of free speech and expression or the right to carry on any trade, business, profession or calling.

24. From a reading of the two decisions, namely, *Smt. Maneka Gandhi's* case (supra), (seven-Judges Bench) and *All India Bank Employees Association's* case (supra), (five-Judges Bench), the following principles emerge : (i) a right to form associations or unions does not include within its ken as a fundamental right a right to form associations or unions *for achieving a particular object or running a particular institution,* the same being a concomitant or concomitant to a concomitant of a fundamental right, but not the fundamental right itself. The associations or unions of citizens cannot further claim as a fundamental right that it must also be able to achieve the purpose for which it has come into existence so that any interference with such achievement by law shall be unconstitutional, unless the same could be justified under Article 19(4) as being a restriction imposed in the interest of public order or morality; (ii) A right to form associations guaranteed under Article 19 (1)(c) does not imply the fulfillment of every object of an association as it would be contradictory to the scheme underlying the text and the frame of the several fundamental rights guaranteed by Part III and particularly by the scheme of the guarantees conferred by sub-clauses (a) to (g) of clause (1) of Article 19; (iii) While

A right to form an association is to be tested by reference to Article 19(1)(c) and the validity of restriction thereon by reference to Article 19(4), once the individual citizens have formed an association and carry on some activity, the validity of legislation restricting the activities of the association shall have to be judged by reference to Article 19(1)(g) read with 19(6). B A restriction on the activities of the association is not a restriction on the activities of the individual citizens forming membership of the association; and (iv) A perusal of Article 19 with certain other Articles like 26, 29 and 30 shows that while Article 19 grants rights to the citizens as such, the associations can lay claim to the fundamental rights guaranteed by Article C 19 solely on the basis of there being an aggregation of citizens, *i.e.*, the rights of the citizens composing the body. As the stream can rise no higher than the source, associations of citizens cannot lay claim to rights not open to citizens or claim freedom from restrictions to which the citizens composing it are subject.

D

25. The Constitution Bench in *All India Bank Employees' Association's* case (supra) gave a precise illustration thus — "If an association were formed for the purpose of carrying on business, the right to form it would be guaranteed by sub-clause (c) of clause (1) of Article 19, subject to any law restricting that right conforming to clause (4) of Article 19. As regards E its business activities, however, and the achievement of the objects for which it was brought into existence, its rights would be those guaranteed by sub-clause (g) of clause (1) of Article 19, subject to any relevant law on the matter conforming to clause (6) of Article 19; while the property which the association acquires or possesses would be protected by sub- F clause (f) of clause (1) of Article 19 subject to legislation within the limits laid down by clause (5) of Article 19."

26. Giving exposition to the law by reference to the labour union, the Constitution Bench held — "While the right to form a union is guaranteed G by sub-clause (c), the right of the members of the association to meet would be guaranteed by sub-clause (b), their right to move from place to place within India by sub-clause (d), their right to discuss their problems and to propagate their views by sub-clause (a), their right to hold property would be that guaranteed by sub-clause (f) and so on — each of these freedoms H being subject to such restrictions as might properly be imposed by clauses

(2) to (6) of Article 19 as might be appropriate in the context. It is one thing to interpret each of the freedoms guaranteed by the several Articles in Part III in a fair and liberal sense; it is quite another to read each guaranteed right as involving or including concomitant rights necessary to achieve the object which might be supposed to underlie the grant of each of those rights." A B

27. The Constitution Bench further held that the framing and structure of part III of the Constitution by the founding fathers calls for the guarantees embodied in it to be interpreted in a liberal way, so as to subserve the purpose for which the constitution-makers intended them, and not in any pedantic or narrow sense. This, however, does not imply that the Court is at liberty to give an unnatural and artificial meaning to the expressions used based on ideological considerations. C

28. A right to form unions guaranteed by Article 19(1)(c) does not carry with it a fundamental right in the union so formed to achieve every object for which it was formed with the legal consequence that any legislation not falling within clause (4) of Article 19 which might in any way hamper the fulfillment of those objects, should be declared unconstitutional and void. Even a very liberal interpretation cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. The right to strike or the right to declare a lock-out may be controlled or restricted by appropriate industrial legislation, and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of Article 19 but by totally different considerations. A right guaranteed by Article 19(1)(c) on a literal reading thereof can be subjected to those restrictions which satisfy the test of clause (4) of Article 19. The rights not included in the literal meaning of Article 19(1)(c) but which are sought to be included therein as flowing therefrom *i.e.* every right which is necessary in order that the association, brought into existence, fulfills every object for which it is formed, the qualifications therefor would not merely be those in clause (4) of Article 19 but would be more numerous and very different. Restrictions which bore upon and took into account the several fields in which associations or unions of citizens might legitimately engage themselves, would also become relevant. D E F G H

29. The law so settled, as has been stated hereinabove, has not changed its course in the flow of subsequent judicial pronouncements. We may selectively refer to a few of them. In *M/s. Raghubar Dayal Jai Parkash & Anr.* v. *The Union of India & Anr.*, [1962] 3 SCR 547, the issue related to the Forward Contracts (Regulation) Act, 1952, which imposed restrictions on the recognition of associations by the Government. Provisions were made for certain enquiries to be held and for the satisfaction of certain criteria whereupon the association could be recognized. The challenge to the constitutional validity of the provision was founded on the submission that the provisions infringed upon the freedom to form associations under Article 19(1)(c). It was urged that the constitutional guarantee to every citizen to the right to form an association could be limited only by an imposition on the right which might legally fall within clause (4) of Article 19 *viz.* bye laws which place restrictions based on either public order or morality. It was further urged that where the object of the association is lawful, the citizens, through that association, and the association itself, are entitled by virtue of the guaranteed right to freedom from legislative interference in the achievement of its object, except on grounds germane to public order or morality. In other words, the freedom guaranteed should be read as extending not merely to the formation of the association as such, but to the effective functioning of the association so as to enable it to achieve its lawful objectives. Unless Article 19(1)(c) were so read, the freedom guaranteed would be illusory and the Court should, in construing a freedom guaranteed to the citizen, give him an effective right. In short, the submission was that the right guaranteed under sub-clause (c) of clause (1) of Article 19 was not merely, as its text would indicate, the right to form an association, but would include the functioning of the association without any restraints not dictated by the need for preserving order or the interests of morality. The Constitution Bench discarded the argument as without force and held — "the restriction imposed by Section 6 of the Act is for the purpose of recognition and no association is compelled to apply to the Government for recognition under that Act. An application for the recognition of the association for the purpose of functioning under the enactment is a voluntary act on the part of the association and if the statute imposes conditions subject to which alone recognition could be accorded or continued, it is a little difficult to see how the freedom to form the association is affected unless, of course, that freedom implies or involves a guaranteed right to recognition also."

30. The applicability of Article 19 of the Constitution came to be examined from yet another angle in *The Tata Engineering and Locomotive Co. Ltd. & Anr.* v. *The State and Ors.*, [1964] 6 SCR 885. Corporations and companies moved the Supreme Court alleging violation of their fundamental right under Article 19 of the Constitution. Articles 19(1)(c) and 19(1)(g) came up for consideration. Their Lordships held that Article 19 applies to 'citizens' and not to 'persons' as Article 14 does. The effect of confining Article 19 to citizens as distinguished from persons, is that protection under Article 19 can be claimed only by citizens and not by corporations or companies. The attempt of the petitioners to claim the benefit of Article 19 by placing reliance on the doctrine of lifting the corporate veil and submitting that the corporation or the company consists of its members and what is adversely affected is their fundamental right, was rejected by the Court. The Constitution Bench held that the fundamental right to form an association cannot be coupled with the fundamental right to carry on any trade or business. As soon as citizens form a company, the right guaranteed to them by Article 19(1)(c) has been exercised and no restraint has been placed on that right and no infringement of that right is made. Once a company or a corporation is formed, the business which is carried on by the said company or corporation is the business of the company or corporation, and is not the business of the citizens who get the company or corporation formed or incorporated, and the rights of the incorporated body must be judged on that footing alone and cannot be judged on the assumption that they are the rights attributable to the business of individual citizens. In our opinion, the same principle as has been applied to companies and corporations would apply to a society registered under the Societies Registration Act, 1860.

31. In *Azeez Basha* v. *Union of India,* [1968] 1 SCR 833, this Court has held that Article 19(1)(c) does not give any right to any citizen to manage any particular educational institution and it only gives the right to a citizen to form associations or unions.

32. In *D.A.V. College, Jullundur etc.* v. *The State of Punjab and Ors.*, [1971] 2 SCC 269, the impugned legislation provided for compulsory affiliation of religious or linguistic minority institutions to the University. It was contended that the compulsory affiliation of the petitioners to the University affects their fundamental 'right of freedom of association' as

A guaranteed under Article 19(1)(c). It was held that the Notification providing for compulsory affiliation of the educational institution with the University did not in any manner interfere or attempt to interfere with the petitioners' right to form an association under Article 19(1)(c).

B 33. A Full Bench (five-Judges) decision by the Andhra Pradesh High Court in *Seethapathi Nageswara Rao & Ors.* v. *The Government of A.P. & Ors.*, AIR (1978) A.P. 121 (F.B.), is relevant and we are inclined to make a reference to the same. The statutory provision impugned therein was one which provided for merger, amalgamation or liquidation of co-operative societies. The non-viable societies could be merged or amalgamated with C the viable societies. It was urged that the forcible dumping of the members of the non-viable societies where such societies are merged with viable societies, violates the rights of the members of the viable societies. It was submitted that a viable society is one voluntarily formed by the members of that society and it is for them to decide whether they would admit other D members of non-viable societies or not. The members of a non-viable society cannot be forced upon them against their will. It was also submitted that when a non-viable society is merged with a viable society, the share value in a viable society would drop down and this would adversely affect their fundamental rights under sub-clauses (f) and (g) of clause (1) of E Article 19 and Article 31 of the Constitution. The Full Bench rejected the argument as one of absolutely no merit and held that merger does not affect the right to form an association. The effect of merger is regulating the business activity of the society and not the right of the members to form an association. The merger or liquidation is a reasonable restriction imposed on the business activity of the co-operative society by regulating F its trade or business activity which would be protected by clause (6) of Article 19. The High Court drew a distinction between the right of a person to form an association and the right of such association to carry a business activity.

G 34. Before the Full Bench of the Andhra Pradesh High Court, a Division Bench decision of the High Court of Patna in *Harakh Bhagat and Anr.* v. *Assistant Registrar, Co-operative Societies, Barh, and Ors.*, AIR (1968) Patna 211, was cited and it was followed. Following the law laid down by the Constitution Bench of this Court in the case of *The Tata* H *Engineering and Locomotive Co.Ltd.* (supra) the Division Bench upheld

the validity of a legislative provision providing for compulsory amalgamation of co-operative societies in certain situations, and held that the provision did not violate the fundamental right of the members of the Societies under Article 19(1)(c) of the Constitution.

35. The scheme of Article 19 shows that a group of rights are listed as clauses (a) to (g) and are recognized as fundamental rights conferred on citizens. All the rights do not stand on a common pedestal but have varying dimensions and underlying philosophies. This is clear from the drafting of clauses (2) to (6) of Article 19. The framers of the Constitution could have made a common draft of restrictions which were permissible to be imposed on the operation of the fundamental rights listed in clause (1), but that has not been done. The common thread that runs throughout sub-clauses (2) to (6) is that the operation of any existing law or the enactment by the State of any law which imposes reasonable restrictions to achieve certain objects, is saved; however, the quality and content of such law would be different by reference to each of the sub-clauses (a) to (g) of clause (1) of Article 19 as can be tabulated hereunder :

Article 19

Clause (1) *Nature of Right*	Clauses (2) to (6) *Permissible Restrictions* By existing law or by law made by State imposing reasonable restrictions, in the interests of
(a) Freedom of speech and expression	(i) the sovereignty and integrity of India (ii) the security of the State (iii) friendly relations with Foreign States (iv) public order, decency or morality (v) in relation to contempt of court, defamation or incitement to an offence
(b) right to assemble peaceably and without arms	(i) the sovereignty and integrity of India (ii) public order
(c) right of form associations or unions	(i) the sovereignty and integrity of India (ii) public order or morality

(d) & (e) right to move freely and/or to reside and settle through out the territory of India	(i) the general public (ii) the protection of the interests of Scheduled Tribe
(g) right to practise any profession, or to carry on any occupation, trade of business	The general public and *in particular* any law relating to (i) the professional or technical qualifications necessary for practising of any profession or carrying on any occupation, trade or business (ii) the carrying on by the state, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

36. Article 19 confers fundamental rights on citizens. The rights conferred by Article 19(1) are not available to and cannot be claimed by any person who is not and cannot be a citizen of India. A statutory right — as distinguished from a fundamental right — conferred on persons or citizens is capable of being deprived of or taken away by legislation. The fundamental rights cannot be taken away by any legislation; a legislation can only impose reasonable restrictions on the exercise of the right. Out of the several rights enumerated in clause (1) of Article 19, the right at sub-clause (a) is not merely a right of speech and expression but a right to freedom of speech and expression. The enumeration of other rights is not by reference to freedom. In the words of the then Chief Justice Patanjali Sastri (In *State of West Bengal* v. *Subodh Gopal Bose & Ors.*, [1954] SCR 587) these rights are great and basic rights which are recognized and guaranteed as the natural rights, inherent in the status of a citizen of a free country. Yet, there cannot be any liberty absolute in nature and uncontrolled in operation so as to confer a right wholly free from any restraint. Had there been no restraints, the rights and freedoms may tend to become the synonyms of anarchy and disorder. The founding fathers of the Constitution, therefore, conditioned the enumerated rights and freedoms reasonably and such reasonable restrictions are found to be enumerated in clauses (2) to

(6) of Article 19 excepting for sub-clauses (i) and (ii) of clause (6), the laws falling within which descriptions are immune from attack on the exercise of legislative power within their ambit (See: *H.C. Narayanappa & Ors.* v. *State of Mysore & Ors.*, [1960] 3 SCR 742). A

37. The Court, confronted with a challenge to the constitutional validity of any legislative enactment by reference to Article 19 of the Constitution, shall first ask what is the sweep of the fundamental right guaranteed by the relevant sub-clause out of sub-clauses (a) to (g) of clause (1). If the right canvassed falls within the sweep and expanse of any of the sub-clauses of clause (1), then the next question to be asked would be, whether the impugned law imposes a reasonable restriction falling with the scope of clauses (2) to (6) respectively. However, if the right sought to be canvassed does not fall within the sweep of the fundamental rights but is a mere concomitant or adjunct or expansion or incidence of that right, then the validity thereof is not to be tested by reference to clauses (2) to (6). The test which it would be required to satisfy for its constitutional validity is one of reasonableness, as propounded in the case of *V.G. Row* (supra) or if it comes into conflict with any other provision of the Constitution. B C D

38. The learned Additional Solicitor General, Shri Raju Ramachandran, placed implicit reliance on the decision of this Court in *L.N. Mishra Institute of Economic Development and Social Change, Patna* v. *State of Bihar & Ors.*, [1988] 2 SCC 433, and submitted that the said case has a close resemblance to the facts of the present case and provides a complete answer to the plea raised on behalf of the petitioners. E

39. In *L.N. Mishra's* case (supra) the Institute – Lalit Narain Mishra Institute of Economic Development and Social Change, Patna, was started by a Society. The name of the Institute and the name of the Society were the same. On April 19, 1986, the State Government of Bihar promulgated Ordinance No.15 of 1986, whereby the possession of the Institute was taken over by the State Government on that very day. The constitutional validity of the Ordinance was challenged alleging that it was promulgated and the Institute was taken over at the instance of the then Chief Minister, actuated by *mala fides*. The Ordinance was later replaced by an Act, the constitutional validity whereof was also challenged on identical grounds. The preamble to the Act stated the need to nationalize private education F G H

A relating to business management in view of a very good possibility of a rapid industrial and economic development of the State of Bihar. The nationalization was proposed to be resolved in phases. The first phase related to the taking over of the Institute. The challenge was founded on violation of Article 19(1)(c) of the Constitution, submitting that the B fundamental right to form an association was infringed. The management of the Society was totally displaced and its composition changed. All assets and properties were vested in the State Government and the Commissioner was deemed to have taken charge of the Institute. As all incidence of ownership and management were taken over by the State, what was left C to the Society was paper ownership and management. Turning down the challenge, this Court held that the impugned Ordinance and the Act merely took over the Institute. Although, the name of the Society and of the Institute are the same, they were two different entities. The impugned legislations took over the Institute and not the Society. No restriction whatsoever was imposed on the functioning of the Society. The provisions D of the Act referred to the Institute. The Institute constituted one of the activities of the Society. The petitioner-Society had constituted itself into an association in exercise of the fundamental right conferred by Article 19(1)(c). That right of that Society remains unimpaired and uninterfered with by the impugned Act and Ordinance.

E

40. The Court further held that—"There can be no doubt that the Institute has been taken over by the provisions of the Ordinance and the Act. It is true that with the taking over of the Institute, the Society lost its right of management and control of the Institute, but that is the F consequence of all acquisitions. When a property is acquired, the owner loses all control, interest and ownership of the property. Similarly the Society, which was the owner of the Institute, has lost all control and ownership of the Institute. It may be equally true that the Institute was the only activity of the Society, but we are concerned with the right of the Society to form an association. So long as there is no interference with G the Society, its constitution or composition, it is difficult to say that because of the taking over or acquisition of the Institute, which was the only property or activity of the Society, the fundamental right of the Society to form an association has been infringed." The Court clarified— "the composition of the Society has not been touched at all. All that has been H done is to nationalize the Institute of the Society by the acquisition of the

assets and properties relating to the Institute. The Society may constitute its governing body in accordance with its rules without any interference by the government." A

41. The Court also tested the validity of the submission that the right of citizens to form associations or unions within the meaning of Article 19 (1)(c) of the Constitution should be given the widest operation and any law which infringes upon the wide sweep of the right must satisfy the test of Article 19(4), which saves only such laws which impose in the interests of the sovereignty and integrity of India or public order or morality the reasonable restrictions on the exercise of the right conferred by Section 19(1)(c). Reliance was placed on *All India Bank Employees' Association* v. *National Industrial Tribunal,* [1962] 3 SCR 269 and the Court concluded that the fundamental right guaranteed under Article 19(1)(c) does not carry with it a further guarantee that the objects or purposes or activities of an association so formed shall not be interfered with by law except on grounds as mentioned in Article 19(4). In sum, the Court rejected the contention on behalf of the society that because of the acquisition of the institute the society lost its right of management over the institute, and as the institute was the main or the only activity of the society, the impugned legislations interfered with the right of the society to form and continue the association and are as such unconstitutional and void. B C D E

42. In *S.P. Mittal* v. *Union of India & Ors.,* [1983] 1 SCC 51, the disciples and devoted followers of Sri Aurobindo formed the Aurobindo Society in Calcutta and got it registered as a Society with the object of preaching and propagating the ideals and teachings of Sri Aurobindo and the Mother. The Society for its Auroville project received grants and subventions from UNESCO and also from the Government of India. However, after the death of the Mother, complaints started pouring in with the Central Government which, on enquiry, revealed mismanagement of the affairs of the Society, misuse of the funds thereof and diversion of the funds meant for Auroville to other purposes. There was in-fighting between the groups of members and the situation went out of control. The Auroville (Emergency Provisions) Ordinance, 1980, was promulgated followed by an Act, whereby the management of Auroville was taken over, though for a limited period. The constitutional validity of the Act was challenged on the ground that Articles 25, 26, 29 and 30 and also Article 14 were infringed; and that the Parliament had no legislative competence F G H

A to enact the said Act. Turning down the challenge on all the grounds, the Constitution Bench held, *inter alia*, that assuming but not holding that the Society or Auroville were a religious denomination, the impugned Act was not hit by Article 25 or 26. It does not curtail the freedom of conscience and the right to freely profess, practise and propagate one's own religion. B "The right of management in matters of religion of a religious denomination" under Article 26(b) was not taken away; what was taken away was the right of management of the property of Auroville which was a secular matter. So also the Act did not curtail the right of any section of citizens to conserve its own language, script or culture conferred by Article 29. An activity, secular in nature, though assumed to be of the Society or the C organization to be of religious denomination, did not adversely affect the freedom of conscience and the right to freely profess, practise and propagate one's own religion. The Constitution Bench has drawn a distinction between such activities of the institution which would necessarily fall within the purview of Article 25, 26 or 29 and an individual activity D which would fall outside the purview of these Articles.

43. The Preamble to the Act declares the Indian Council of World Affairs (ICWA) to be an institution of national importance and to provide for its incorporation. The same declaration is contained in the body of the E Act vide Section 2. The pre-existing society— ICWA and the new body corporate, also given the name of ICWA, bear a similarity of names. Yet, it is clear that the impugned Act only deals with ICWA the pre-existing body and ICWA the body corporate under the impugned Act. The new body takes over the activities of the pre-existing society by running the institution which too is known as ICWA. So far as the society ICWA is F concerned, it has been left intact, untouched and un-interfered with. There is no tampering with the membership or the governing body of the society. The society is still free to carry on its other activities. No membership of the old society has been dropped. No new member has been forced or thrust upon the society. The impugned legislation nominates members who G will be members of the council, the new body corporate, different from the society. The pith and substance of the impugned legislation is to take over an institution of national importance. As the formation of the society, which is a voluntary association, is not adversely affected and the members of the society are free to continue with such association, the validity of the H impugned legislation cannot be tested by reference to Sub-Clauses (a) and

(c) of Clause (1) of Article 19. The activity of the society which was being conducted through the institution ICWA has been adversely affected and to that extent the validity of the legislation shall have to be tested by reference to sub-Clause (g) of Clause (1) of Article 19. The activity was of the society and the Society cannot claim a fundamental right. Even otherwise the impugned legislation is a reasonable legislation enacted in the interest of the general public and to govern an institution of national importance. It is valid.

44. Sarva Shri P.P. Rao and Ashok Nigam, the learned senior counsel for the petitioners have placed strong reliance on two decisions of this Court, namely, *Smt. Damyanti Naranga & Anr.* v. *The Union of India and Ors.*, [1971] (3) SCR 840 and *Asom Rashtrabhasha Prachar Samiti, Hedayatpur-Gauhati-3 and Anr.* v. *State of Assam and Ors.*, [1989] (Supp.) SCR 160. In *Smt. Damyanti Naranga's* case (Supra) the Constitution Bench ruled that the right to form an association includes not only a right of forming an association to begin with, but also the right to continue to be associated with only those whom they voluntarily admit in the association. Once the citizens have formed any association voluntarily then without any option being given to the members, neither can their membership be taken away nor can they be compelled to associate themselves with members with whom they do not want to associate. The constitutional validity of the Hindi Sahitya Sammelan Act, 1962, was successfully challenged. A perusal of the judgment shows that the impugned legislation created a statutory body called 'The Hindi Sahitya Sammelan'. The existence of the original Sammelan was terminated, which resulted in violating the right of members of the original Sammelan to form an association as guaranteed by Article 19(1)(c), and this was the main thrust of attack which dominated the Court's opinion. All the existing members of the original Sammelan were made members of the new Sammelan and many outsiders were also made members thereof by the Act. The new members which were enrolled or could be enrolled, were entitled to be admitted without the consent of the original members of the Sammelan. Thus, the members of the old Sammelan came under compulsion to associate and unite involuntarily with such persons as they did not wish to do. The property of the original Sammelan was taken away and vested in the new Sammelan. The case is, therefore, distinguishable and not applicable to the facts of the present case, where the original society has

A been left intact and untouched. These distinguishing features were noted also by the Constitution Bench in the case of *D.A.V. College, Jullundur,* (supra) and the ratio of *Smt. Damyanti Naranga's* case (supra) was held inapplicable.

B 45. However, even in *Smt. Damyanti Naranga's* case (supra), the Constitution Bench has held that after an association has been formed and the right under Article 19(1)(c) has been exercised by the members forming it, they have no right to claim that its activities must also be permitted to be carried on in the manner they desire.

C 46. In the case of *Asom Rastrabhasa Prachar Samiti* (supra), the impugned Act was enacted to meet a temporary contingency for taking over of the management of the Prachar Samiti temporarily. However, it failed to make any provision for the restoration of the elected body in due course. Not only were new members introduced into the Samiti, no norms D were laid down for nominating the government nominees (who could be any one), and the elected members were kept away from the control of the Samiti. On the peculiar facts of the case and the implications of the provisions contained in the impugned enactment the Court concluded that the right of association was virtually taken away and in the name of E temporary control and management on the affairs of the society, what was done was a permanent deprivation. In response to a query raised by the Court it was stated by the State before the Court that the State had no desire to restore the Samiti. The impugned legislative provision was, therefore, struck down as violative of Article 19(1)(c) of the Constitution. *Asom* F *Rashtrabhasha Prachar Samiti's* case (supra) is a three-Judge Bench decision and the only decision referred to therein is the case of *Smt. Damyanti Naranga's* case (supra). Though Article 14 has not been referred to in the judgment by specifically mentioning it, it is clear from the judgment that this Court has also formed an opinion that the action of the State was arbitrary and unreasonable, and so was liable to be struck down. G

47. Both the decisions relied on by the learned senior counsel for the petitioners are distinguishable and do not apply to the present case.

48. It is well-settled that while dealing with a challenge to the H constitutional validity of any legislation, the court should *prima facie* lean

in favour of constitutionality and should support the legislation, if it is possible to do so, on any reasonable ground and it is for the party who attacks the validity of the legislation to place all materials before the Court which would make out a case for invalidating the legislation. [see : *Charanjit Lal Chowdhury* v. *The Union of India & Ors.*, 1950 SCR 869 and *Ayurvedic and Unani Tibia College, Delhi* (supra)]. A B

49. In spite of there being a general presumption in favour of the constitutionality of the legislation, in a challenge laid to the validity of any legislation allegedly violating any right or freedom guaranteed by Clause (1) of Article 19 of the Constitution, on a *prima facie* case of such violation having been made out, the onus would shift upon the respondent State to show that the legislation comes within the permissible limits of the most relevant out of Clauses (2) to (6) of Article 19 of the Constitution, and that the restriction is reasonable. The Constitutional Court would expect the State to place before it sufficient material justifying the restriction and its reasonability. On the State succeeding in bringing the restriction within the scope of any of the permissible restrictions, such as, the sovereignty and integrity of India or public order, decency or morality etc., the onus of showing that restriction is unreasonable would shift back to the petitioner. Where the restriction on its face appears to be unreasonable, nothing more would be required to substantiate the plea of unreasonability. Thus the onus of proof in such like cases is an on-going shifting process to be consciously observed by the court called upon to decide the constitutional validity of a legislation by reference to Article 19 of the Constitution. The questions: (i) Whether the right claimed is a fundamental right, (ii) whether the restriction is one contemplated by any of the Clauses (2) to (6) of Article 19, and (iii) whether the restriction is reasonable or unreasonable, are all questions which shall have to be decided by keeping in view the substance of the legislation and not being beguiled by the mere appearance of the legislation. C D E F

50. The impugned Act does not offend the right guaranteed by Article 19(1)(c). It also does not in any manner deprive the members of the Society of their freedom of speech and expression under Article 19(1)(a). G

Scrutiny by reference to Article 300A

51. It was submitted that the impugned legislation is violative of H

A Article 300A of the Constitution inasmuch as it unreasonably deprives the petitioners of the property vesting in the society. In this context, a reference to a Constitution Bench decision of this Court would be apposite which deals with the right to acquire, hold and dispose of property under Article 19(1)(f) (since repealed) though not on all the fours with the facts
B of this case. *Board of Trustees, Ayurvedic and Unani Tibia College, Delhi* v. *State of Delhi (Now Delhi Administration) & Anr.*, [1962] Supp. (1) SCR 156, projects principles which would be relevant for our purpose. An individual founded a pharmaceutical institute known as 'Hindustani Dawakhana'. He also established a medical college known as 'The Tibbia
C College'. He then formed a society with a few members along with himself and registered the same under the Societies Registration Act, 1860. The Society was known as the Board of Trustees, Ayurvedic and Unani Tibbia College, Delhi, ('the Board' for short). The Board was operating the Tibbia College, an attached hostel and a pharmaceutical institute. Disputes arose within the trustees which led to filing of civil suits. The Court appointed
D receivers who took possession of the Dawakhana and the College. The Delhi State Legislature passed an Act called 'The Tibbia College Act, 1952' which came into force on October 10, 1952. The old Board stood dissolved and all property, movable and immovable, and all rights, powers and privileges of the Board came to vest in a new Board constituted under
E the Act. This new Board was called the Tibbia College Board. The civil suits were withdrawn and the Court directed the possession over the properties and institutions to be handed over to the new Board. The old Board filed a civil revision in the High Court of Punjab and thereafter a petition under Article 32 of the Constitution in this Court, impugning the
F constitutional validity of the Act mainly on two grounds, namely, that the Delhi State Legislature had no legislative power or competence to enact the impugned Act and that, assuming that the Delhi State Legislature had the legislative competence, the Act was still bad as being violative of Articles 14, 19 and 31 of the Constitution. Incidentally, it was also contended that the Act passed by the Delhi State Legislature could not
G override the provisions of the Societies Registration Act, 1860, which is a Central legislation. According to the State of Delhi, the field of legislation was covered by List II (State List) Item 32 which reads as under:

> "32. Incorporation, regulation and winding up of corporations,
H other than those specified in List I, and universities; un-incorporated

trading, literary, scientific, religious and other societies and associations; co-operative societies." A

52. The Constitution Bench held that a society could not be equated with a corporation as a society cannot be said to be 'incorporated' as a corporation is. Under Section 5 of the Societies Registration Act, 1860, B the property belonging to the society, if not vested in trustees, shall be deemed to be vested in the governing body of the society and in all proceedings, civil and criminal, the property will be described as being the property of the governing body. The expression "property belonging to the Society" does not give the Society a corporate status in the matter of C holding and acquiring property; it merely describes the property which vests in the trustees or governing body for the time being.

53. It was held that the impugned legislation while creating the new Board has given it a corporate status, confining its powers and duties to the college, pharmaceutical institute and laboratory in Delhi. It fell within D the purview of Entry 32 of List II. Dealing with the submission based on Article 31(2) of the Constitution (as it then stood), the Court held that the impugned legislation does not relate to nor does it provide for compulsory acquisition of property for a public purpose. The impugned legislation provides for the transfer of the management of the Ayurvedic and Unani E Tibbia College, Delhi, from the old Board to a new Board, and for that purpose the old Board was dissolved and a new Board was created with certain rights, powers and privileges to be applied for the exercise of powers and the performance of duties as laid down in the Act. Such legislation could not be tested under Article 31(2) or the tests emerging F therefrom.

54. Dealing with the submission made by reference to the repealed Article 19(1)(f), the fundamental right to acquire, hold and dispose of property, the Court held that

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"During the subsistence of the society, the right of the members was to ensure that the property was utilized for the charitable objects set out in the memorandum and these did not include any beneficial enjoyment. Nor did the members of the society acquire any beneficial interest on the dissolution of the society; for Section H

A 14 of the Act, quoted earlier, expressly negatived the right of the members to any distribution of the assets of the dissolved body. In such an event the property had to be given over to some other society, *i.e.*, for being managed by some other charitable organization and to be utilized for like purposes, and the only right B of the members was to determine the society to whom the funds or property might be transferred and this had to be done by not less than three-fifths of the members present at the meeting for the purpose and, in default of such determination, by the civil court. The effect of the impugned legislation is to vary or affect this privilege of the members and to vest the property in a new C body created by it enjoined to administer it so as to serve the same purposes as the dissolved society. The only question is whether the right to determine the body which shall administer the funds or property of the dissolved society which they had under the pre-existing law is a right to 'acquire, hold and dispose of property' D within the meaning of Article 19(1)(f), and if so whether the legislation is not saved by Article 19(5). We are clearly of the opinion that that right is not a right of property within the meaning of Article 19(1)(f). In the context in which the words 'to dispose of' occur in Article 19(1)(f), they denote that kind of property E which a citizen has a right to hold. Where however the citizen has no right to hold the property, for on the terms of Section 14 of the Societies Registration Act the members have no right to 'hold' the property of the dissolved society, there is, in our opinion, no infringement of any right to property within the F meaning of Article 19(1)(f). In this view the question as to whether the impugned enactment satisfies the requirements of Article 19(5) does not fall to be determined.

The Court concluded by holding that the Delhi State Legislature did not transgress any of the limitations placed on it, by Article 19(5) when it G enacted the impugned legislation.

55. The protection of Article 300A is available to any person, including a legal or jurisdic person and is not confined only to a citizen. For more than one reason, we are not inclined to entertain this plea. Firstly, H with the Forty-Fourth Amendment, w.e.f. June 20, 1979, Right to Property

having ceased to be a fundamental right, we have grave doubts if the same can be sought to be enforced by a petition under Article 32 of the Constitution. Secondly, we find that a case of violation of Article 300A in the dimension in which it was sought to be canvassed is not taken up in the writ petition. The Union of India has taken over the institution by enacting a law which we have held to be within the legislative competence of the Parliament. Thirdly and lastly, the petition in that regard raises disputed questions of facts. The Union of India do not admit title of the petitioner either in the land or in the building or in any other property claimed to be owned by the petitioners. There is not one document of title produced by the petitioners in support of their claim to the property. Such highly disputed questions of fact which cannot be determined except on evidence are not fit to be taken up for adjudication in the exercise of writ jurisdiction. The exercise of testing the vires of the impugned legislation by reference to Article 300A of the Constitution is uncalled for in the present petition.

Is the impugned Act arbitrary and violative of Article 14?

56. Article 14 of the Constitution prohibits class legislation and not reasonable classification for the purpose of legislation. The requirements of the validity of legislation by reference to Article 14 of the Constitution are : that the subject matter of legislation should be a well defined class founded on an intelligible differentia which distinguishes that subject matter from others left out, and such differentia must have a rational relation with the object sought to be achieved by the legislation. The laying down of intelligible differentia does not, however, mean that the legislative classification should be scientifically perfect or logically complete.

57. We have already pointed out in an earlier part of this judgment that in the present case successive parliamentary committees found substance in the complaints received that an institution of national importance was suffering from mismanagement and mal-administration. The Central Government acted on such findings. Circumstances warranting an emergent action satisfied the President of India, resulting in his promulgating ordinances which earlier could not culminate into legislative enactments on account of fortuitous circumstances. At the end the Parliament exercised its legislative power under Article 245 of the Constitution read with Entries

62 and 63 of List I. The legislation cannot be said to be arbitrary or unreasonable.

58. It was further submitted that the provisions of the Societies Registration Act, 1860 were effective enough which, if invoked, could have taken care of the alleged grievances. If there was any truth or substance therein the same could have been found on enquiries being held. In our opinion, in a given set of facts and circumstances, merely because an alternative action under the Societies Registration Act, 1860 could have served the purpose, a case cannot be and is not made out for finding fault with another legislation if the same be within the legislative competence of the Parliament, which it is, as will be seen hereinafter.

59. A similar submission was made and repelled in *S.P. Mittal's* case (supra). The contention there was that provisions in the Societies Registration Act were available to meet the situation in Auroville and that the law and order situation could be controlled by resorting to provisions of the Code of Criminal Procedure. The Constitution Bench held — "Whether the remedies provided under the Societies Registration Act were sufficient to meet the exigencies of the situation is not for the Court but for the Government to decide, and if the Government thought that the conditions prevailing in Auroville and the Society can be ameliorated not by resorting to the provisions of the Societies Registration Act but by a special enactment, that is an area of the exercise of the discretion of the Government and not of the Court." The Constitution Bench also observed that assuming the facts brought to the notice of the legislature were wrong, it will not be open to the Court to hold the Act to be bad on that account.

60. It was then submitted that the institution ICWA was singled out and though there were several other institutions run by societies or other organizations which were in the grip of more serious mismanagement and mal-administration, they were not even touched and the Parliament chose to legislate as to one institution only. This submission too holds no merit. Firstly, no other institution is named or particularized so as to be comparable with ICWA. Secondly, there can be a legislation in respect of a single institution as is clear from the language itself of Entries 62 and 63 of List I. A single institution is capable of being treated as a class by itself for the purpose of legislation if there are special circumstances or

reasons which are applicable to that institution and such legislation would not incur the wrath of Article 14. In *S.P. Mittal* (supra), the impugned legislation brought with the object and purpose of taking away the management of Auroville from the Aurobindo Society and to bring it under the management of the Central Government under the provisions of the impugned Act was held to be valid. The exercise of legislative power by Parliament was sought to be justified as falling within the field of Entry 63 of List I. Their Lordships referred to several decisions wherein the constitutional validity of similar legislations was upheld. In *Ram Krishna Dalmia* v. *Justice S.R. Tendolkar,* [1959] SCR 279, legislation relating to a single 'individual', in *Raja Birakishore* v. *State of Orissa,* [1964] 7 SCR 32, legislation in respect of a single 'temple' and in *Chiranjit Lal Chowdhuri* v. *Union of India,* [1950] SCR 869, a separate law enacted for one company were held not to offend Article 14 of the Constitution on the ground that there were special reasons for passing such legislation.

Effect of the previous judgment of High Court on the impugned legislation

61. Having held that the impugned Act does not suffer from any constitutional infirmity and does not violate Article 19(1)(a) and (c) or Article 300A of the Constitution, we may now proceed to examine by reference to the doctrine of Separation of Powers what is the effect on the impugned Act, of the judgment dated 10.9.1990 delivered by a learned single Judge of the Punjab & Haryana High Court, annulling the 1990 Ordinance as constitutionally invalid. The submission of the learned counsel for the petitioners is short and simple. It is submitted that an "identically worded" Ordinance having been held to be unconstitutional and the decision of the High Court holding so having achieved a finality, the Parliament could not have re-enacted the contents of the vitiated Ordinance into an Act of Parliament. It was forcefully submitted that such an enactment is violative of the doctrine of Separation of Powers and so is liable to be annulled on this very ground.

62. The facts of this case are unusual. No precedent, parallel on facts, has been brought to our notice at the Bar though a host of decisions laying down constitutional principles were cited, some of which we shall refer to hereinafter.

63. Let us first state a few general principles relevant for upholding

A validity of enactments. In *Shri Prithvi Cotton Mills Ltd. & Anr.* v. *Broach Borough Municipality & Ors.*, [1969] 2 SCC 283, the imposition of a tax was held to be invalid because the power to tax was wanting. A validation Act was passed and its constitutionality was put in issue once again. The Constitution Bench spoke a few words about validating statutes in general,
B as under:-

> "When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before
C validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in
D exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because
E the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax is thus made legal. Sometimes this is done
F by providing for jurisdiction where jurisdiction had not been properly vested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning
G and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law.
H Whichever method is adopted it must be within the competence

of the legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating Law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the Validating Law for a valid imposition of the tax."

64. The law, so laid down, was reiterated and approved by a Seven Judges Bench in *M/s Misrilal Jain* v. *State of Orissa & Anr.*, [1977] 3 SCC 212. In *Madan Mohan Pathak & Anr.* v. *Union of India & Ors.*, [1978] 2 SCC 50 too *Shri Prithvi Cotton Mills Ltd.* case (supra) was cited and considered. The law laid down by the seven Judges Bench leads one to hold that if by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the constitutional validity of the subsequent legislation is not available to be decided on the basis of the previous judgment. The Constitution Bench in *Union of India & Anr.* v. *Raghubir Singh (Dead) by Lrs. etc.*, [1989] 2 SCC 754, observed that the range of judicial review recognized in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law and then cautioned—"With the impressive expanse of judicial power vested in them it is only right that the superior courts in India should be conscious of their enormous responsibility". The Constitution Bench summed up the effect of declaring an Act of legislation—in the case before us an Ordinance— on the revival of such Act, by stating that where a statute is declared invalid in India it cannot be reinstated unless constitutional sanction is obtained therefor by a constitutional amendment or an appropriately modified version of the statute is enacted which accords with constitutional prescription. A two Judges Bench of this Court in *Indian Aluminium Co. & Ors.* v. *State of Kerala & Ors.*, [1996] 7 SCC 637, made an exhaustive review of the available judicial opinion and summed up the essence thereof in nine points, three of which are relevant for our purpose, which we set out as under:-

(1) In order that rule of law permeates to fulfil constitutional

A objectives of establishing an egalitarian social order, the respective sovereign functionaries need free play in their joints so that the march of social progress and order remains unimpeded. The smooth balance built with delicacy must always be maintained;

B

(2) In its anxiety to safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made;

C (3) The Court, therefore, needs to carefully scan the law to find out: (a) whether the vice pointed out by the court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements; (b) whether the legislature has competence to validate the law; (c) whether such validation is consistent with the rights guaranteed in D Part III of the Constitution."

65. *Welfare Association A.R.P., Maharashtra & Anr.* v. *Ranjit P. Gohil & Ors.*, JT (2003) 2 SC 335, is a decision to which both of us are parties. Therein we have held that it is permissible for the legislature, E subject to its legislative competence otherwise, to enact a law which will withdraw or fundamentally alter the very basis on which a judicial pronouncement has proceeded and create a situation which, if it had existed earlier, the Court would not have made the pronouncement. Very recently in *People's Union for Civil Liberties (PUCL) & Anr.* v. *Union of India & Anr.*, [2003] 4 SCC 399, in the leading opinion recorded by M.B. Shah, F J. (the other two learned Judges having also recorded their separate but concurring opinions), the legal position has been summarized thus:-

"the Legislature can change the basis on which a decision is rendered by this Court and change the law in general. However, G this power can be exercised subject to constitutional provisions, particularly legislative competence and if it is violative of fundamental rights enshrined in Part III of the Constitution, such law would be void as provided under Article 13 of the Constitution. The legislature also cannot declare any decision of a court of law H to be void or of no effect."

66. In *Smt. Indira Nehru Gandhi* v. *Shri Raj Narain & Anr.*, [1975] Supp. SCC 1, Chandrachud, J., as His Lordship then was, cited with approval the opinion of Harold Laski that the "separation of powers does not mean the equal balance of powers" and observed that "what cannot be sustained is the exercise by the legislature of what is purely and indubitably a judicial function. In our cooperative federalism there is no rigid distribution of powers; what is provided is a system of salutary checks and balances".

67. With advantage, we may quote Justice Aharon Barak, President of the Supreme Court of Israel. In the context of a new statute having been enacted on the previous one having been annulled, the learned Chief Justice says— "Review of a new statute should focus not on the fact that it changes the previous ruling of the court, but on the fact that it undermines democracy. Moreover, everything is a question of degree. If the interpretation of a statute is met with an immediate and hasty response from the legislature in the form of new legislation, uncertainty about the law will result, and the public will lose confidence in the legislative branch. This is not the case, however, when the change in legislation after a judicial ruling reflects a thorough and deliberate examination of the ruling and an objective expression of the will of the legislature". (A Judge on Judging : The Role of a Supreme Court in Democracy—President Aharon Barak, Harvard Law Review, Vol. 116, No. 1, November 2002, at p. 135). He further states that "foundation of democracy is a legislature elected freely and periodically by the people. Judges and legal scholars ought not to forget this fundamental principle. The role of a judge in a democracy recognizes the central role of the legislature. Undermining the legislature undermines democracy. My conception of the rule of law and of the separation of powers do not undermine the legislature. Rather, they ensure that all branches of state act within the framework of the constitution and statutes. Only thus can we maintain public confidence in the legislature; only thus can we preserve the dignity of legislation." He quotes Justice McLachlin as rightly saying that in democracies, "the elected legislators, the executive and the courts all have their role to play. Each must play that role in a spirit of profound respect for the other. We are not adversaries. We are all in the justice business, together." (ibid, pp.136, 137).

68. The position in the present case is, of course, a little different. We

A are not here dealing with the validity of a validating enactment. In the judgment dated September 10, 1990 (C.W.P. No. 9120 of 1990) the High Court (Bench presided over by the learned single-Judge) unfortunately, unmindful of the correct width and expanse of the rights conferred by sub-clauses (a) and (c) of clause (1) of Article 19 of the Constitution, did not B correctly comprehend the scope of Article 19(1) of the Constitution and overlooked the fine distinction in the breach of rights complained of by a citizen or citizens - collectively but as citizens, and the right to certain activities claimed by an association. The High Court just confined itself to finding whether the impugned ordinance could be saved by clauses (2) C and (4) of Article 19, and if not, then it was unconstitutional, also because it was too drastic and hence unreasonable. The High Court also went on to say that as compensation was not paid for the property acquired, the ordinance was arbitrary and discriminatory more so because it aimed only at a particular society. While making this observation the High Court D overlooked the fact that the ordinance aimed at the Institution and not at the Society, though the nomenclature of the two was the same. The High Court nowhere recorded a finding that any property either belonged to the petitioners or was vested in them before it was taken away, and also did not consider the affect of repeal of Articles 19(1)(f) and 31 of the E Constitution after which repeal the right to property had ceased to be a fundamental right and the newly engrafted Article 300A of the Constitution requires only authority of law for depriving any person or his property.

69. That decision of the learned Single Judge was not left unchallenged. In fact, the correctness of the judgment of the learned single-Judge was F put in issue by the Union of India by filing an intra-court appeal. Filing of an appeal destroys the finality of the judgment under appeal. The issues determined by the learned Single Judge were open for consideration before the Division Bench. However, the Division Bench was denied the opportunity of hearing and the aggrieved party could also not press for G decision of the appeal on merits, as before the appeal could be heard it was rendered infructuous on account of the Ordinance itself having ceased to operate. The Union of India, howsoever it may have felt aggrieved by the pronouncement of the learned single-Judge, had no remedy left available to it to pursue. The judgment of the Division Bench refusing to dwell upon H the correctness of the judgment of the Single Judge had the effect of leaving

the matter at large. Upon the lapsing of the earlier Ordinance pending an appeal before a Division Bench, the judgment of the Single Judge about the illegality of the earlier Ordinance, cannot any longer bar this Court from deciding about the validity of a fresh law on its own merits, even if the fresh law contains similar provisions.

70. Be that as it may, we are clearly of the opinion that the judgment dated September 10, 1990, is not correct and we specifically record our overruling of the same. The doctrine of Separation of Powers and the constitutional convention of the three organs of the State, having regard and respect for each other, is enough answer to the plea raised on behalf of the petitioners founded on the doctrine of Separation of Powers. We cannot strike down a legislation which we have on an independent scrutiny held to be within the legislative competence of the enacting legislature merely because the legislature has re-enacted the same legal provisions into an Act which, ten years before, were incorporated in an ordinance and were found to be unconstitutional in an erroneous judgment of the High Court and before the error could be corrected in appeal the Ordinance itself lapsed. It has to be remembered that by the impugned Act the Parliament has not overruled the judgment of the High Court nor has it declared the same law to be valid which has been pronounced to be void by the court. It would have been better if before passing the Bill into an Act the attention of the Parliament was specifically invited to the factum of an earlier *pari materia* Ordinance having been annulled by the High Court. If an ordinance invalidated by the High Court is still reenacted into an Act after the pronouncement by the High Court, the subsequent Act would be liable to be annulled once again on finding that the High Court was right in taking the view of the illegality of the Ordinance, which it did. However, as we have already stated, this is not the position obtaining in the present case. The impugned Act is not liable to be annulled on the ground of violation of the doctrine of Separation of Powers.

Impugned Act covered by Entries 62, 63 of List I of Schedule - 7

71. The challenge to the constitutional validity of the impugned Act fails on all the grounds alleged. The legislation is clearly covered by Entries 62 and 63 of List I Schedule 7. Initially at one time, the institution was receiving financial aid from the Government of India. The institution

A ICWA has been declared to be an 'institution of national importance' by the Act of Parliament. There is no challenge to the validity of such declaration nor do we find any grounds to take a view different from the one taken in the declaration made by the Government of India. Once an institution is declared to be of national importance, the Parliament is B competent to make any law governing the management, administration and affairs of such an institution. It is not the case of the petitioners that though the institution is declared and held to be of national importance, yet in enacting other provisions of the impugned Act, the Parliament has encroached upon any field of legislation not available to it. The provisions of the Act fall within the field of legislation meant for the Union of India.

C

72. The various Entries in the three Lists of the Seventh Schedule are legislative heads defining the fields of legislation and should be liberally and widely interpreted. Not only the main matter but also any incidental and ancillary matters are available to be included within the field of the D entry. The settled rules of interpretation governing the Entries do not countenance any narrow and pedantic interpretation. The judicial opinion is for giving a large and liberal interpretation to the scope of the Entries. Suffice it to quote from the opinion of the judicial committee of the Privy Council in *British Coal Corporation* v. *The King,* AIR (1935) PC 158, 162 — that in interpreting a constituent or organic statute indeed that construction E which is most beneficial to the widest possible amplitude of its powers must be adopted. The Federal Court in the *United Provinces* v. *Atiqa Begum,* AIR (1941) FC 16, 25 observed that none of the items in the Lists is to be read in a narrow or restricted sense and all ancillary or subsidiary matters referable to the words used in the Entry and which can fairly and F reasonably be said to be comprehended therein are to be read in the Entry. This approach has been countenanced in several decisions of this Court. (To wit, see *Navinchandra Mafatlal* v. *CIT Bombay City,* [1955] 1 SCR 829, 836; *Sri Ram Ram Narain Medhi* v. *The State of Bombay,* [1959] Supp. (1) SCR 989.)

G *Conclusion*

The writ petition is dismissed with costs.

N.J. W.P. (C) No. 276 of 2001 disposed of.
W.P. (C) No. 543 of 2001 dismissed.