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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 1 April 2026
Pronounced on: 01 July 2026

\+ LPA 264/2013 & CM APPL. 6818/2013

TV TODAY NETWORK LIMITED .....Appellant
Through: Mr. Sushil Salwan, Sr. Adv. with Mr. Hrishikesh Baruah, Ms. Pragya Agarwal, Mr. Utkarsh Dwivedi, Mr. Kumar Kshitij, Ms. Nishtha Sachan and Mr. Yashaswy Ghosh, Advs.

versus

ABC & ORS. .....Respondents
Through: Ms. Jayshree Satpute, Ms. Damini Chawla, Ms. Farha Qureshi and Mr. Anshuman, Advs. for R-1
Mr. Sukhbir Sheoran, Adv. for R-3

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

% JUDGMENT
01.07.2026

C. HARI SHANKAR, J.

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A. The *lis*

1. X, the daughter of her mother ABC and her father P, lodged a First Information Report[1] in PS Vasant Kunj on 2 August 2005 against P under Sections 354[2] and 506[3] of the erstwhile Indian Penal Code,

[1] "FIR" hereinafter

[2] **354. Assault or criminal force to woman with intent to outrage her modesty**.—
Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

[3] **506. Punishment for criminal intimidation**.—
Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;
If threat be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a

1860[4], alleging that P had sexually assaulted her. Admittedly, the details as well as their residential address, etc. of X, ABC and P were disclosed in the FIR.

2. The very next date, i.e., on 3 August 2005, a team of reporters from Star TV interviewed ABC at her residence, during the course of which she disclosed the identity of X and the particulars of the incident. However, on 4 August 2005, ABC addressed a notice to Star News, prohibiting the telecasting of the interview. As it happened, the interview was never telecast.

3. Three days thereafter, on 7 August 2005, a team of reporters from the office of the appellant visited the residence of ABC with an intent to obtain an interview from her and from X. ABC, however, declined to allow them entry in the house and clearly stated that neither she nor her daughter were amenable to interacting with the team from the appellant-channel. Though the appellant's team thereafter withdrew from the premises, they, on the very same day, i.e., 7 August 2005, telecast, over their "Aaj Tak" channel, a broadcast which, according to the writ petition from which the present appeal emanates, disclosed the identity of P, his designation and official address, the fact that X was his daughter, as well as the street and block in which they resided, from which it would be possible to ascertain the identity of X.

4. Simultaneously, a news item also figured in the Hindustan

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term which may extend to seven years, or with fine, or with both.

[4] "IPC" hereinafter

Times with respect to the aforesaid incident, in which the above details were allegedly disclosed.

5. These facts prompted ABC to institute WP (C) 12730/2005 before this Court. Initially, the Commissioner of Police, who was stated to have provided the details of the incident to the other respondents, Hindustan Times House and Star TV were impleaded as the respondents. Subsequently, however, on Star TV making a statement before the learned Single Judge of this Court on 8 August 2005 that it was not going to air the interview which had taken place on 3 August 2005, ABC, by CM 9505/2005, sought to delete Star News from the array of respondents and, instead, impleaded the present appellant as Respondent 3.

6. This writ petition stands adjudicated by a learned Single Judge of this Court by way of judgment dated 5 February 2013, which forms subject matter of challenge in the present appeal.

B. The Impugned Judgment

I. ABC's stand before the learned Single Judge

7. Apropos the appellant, ABC alleged, in the writ petition, that the broadcast which was aired on the appellant's Aaj Tak channel on 7 August 2005 disclosed the name, designation and office of P, the block and sector as well as images of the colony in which they were residing, and also recorded voice of ABC refusing entry to the appellant's crew members. These facts, alleged the writ petition, were

sufficient to disclose the identity of X. The appellant was alleged, thereby, to have violated Section 228-A[5] of the IPC, the Norms of Journalistic Conduct issued by the Press Council of India[6] and the right of X to privacy and confidentiality, ingrained in Article 21 of the Constitution of India.

8. Predicated on these assertions and allegations, the writ petition sought injunctive reliefs against the appellant as well as monetary compensation.

II. Appellant's stand before the learned Single Judge

9. In response, the appellant contended, before the learned Single Judge, that there could be no sustainable claim to breach of privacy of X, as ABC herself had, in her interview to the Star TV channel, disclosed X's identity. Star News had, thereafter, been included as Respondent 3 in the writ petition and was later deleted. The appellant contended that ABC could not thereafter complain of violation of the right of privacy or confidentiality of X.

10. Moreover, on facts, the appellant disputed any breach on its part. It was asserted that X was neither interviewed, nor were any photographs taken either of her or of ABC, and the face of ABC was not visible in the telecast. The telecast was intended only to draw

[5] **228-A. Disclosure of identity of the victim of certain offences, etc**.—
(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB or Section 376-E is alleged or found to have been committed shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

[6] "PCI" hereinafter

attention to the complaint which had been filed by X to the police authorities. No information pertaining to X or to ABC was disclosed and no details regarding the allegations levelled by X against P were disclosed either. It was asserted that there was no material, in the telecast, on the basis of which the identity of X could be divined.

11. The appellant also disputed the maintainability of the writ petition, as it was a private entity not discharging any public function. Moreover, it was submitted that a claim for monetary compensation in such a case could lie only before a civil court, as it would involve adjudication of disputed issues of fact.

III. Observations and Findings of learned Single Judge

12. The learned Single Judge has initially addressed the aspect of maintainability of the writ petition. The impugned judgment holds that a writ petition lies even against a private body performing a public function or discharging a public duty. Reliance has been placed, by the learned Single Judge, in this context, on the judgments of the Supreme Court in ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V. Rudani***[7]***, Zee Telefilms v. Union of India***[8] and ***Federal Bank Ltd. v. Sagar Thomas***[9]**.**

13. With respect to the judgment of a Division Bench of this Court

[7] **(1989) 2 SCC 691**, hereinafter "**Andi Mukta Sadguru**"
[8] **(2005) 4 SCC 649**
[9] **(2003) 10 SCC 733**

in ***Indu Jain v. Forbes Inc.***[10], on which the appellant sought to rely, the learned Single Judge observes that, apart from the fact that the decision did not consider the earlier law declared in ***Andi Mukta Sadguru, Zee Telefilms*** and ***Federal Bank***, the Court was not, in that case, called upon to decide whether a writ petition would lie against a private person discharging a public duty. The proceedings were not, in fact, instituted under Article 226 of the Constitution of India.

14. The learned Single Judge has thereafter examined whether the appellant could be said to be performing public functions or discharging public duties when it aired the allegedly injurious telecast. Placing reliance on the judgments of the Supreme Court in ***VST Industries v. Workers' Union***[11] and ***Binny Ltd. v. V. Sadasivan***[12]**,** the learned Single Judge holds, with respect to the question of whether the appellant was discharging a public function or performing a public duty, thus, in paragraphs 35 and 36 of the impugned judgment:

> "35. The position that emerges from the aforementioned observations is that, an activity/function of a body can be said to be a public function, for the purposes of scrutiny by a writ court, when the same is performed under a duty to act in public interest. Such duty may be cast upon the body: by virtue of the nature of the function it is performing; by the fact that it is seeking to achieve some collective benefit for the public or section of the public or which is accepted by the public or the concerned section thereof as having authority to do so. What is relevant is that such a body should participate, as a part of its functions, in social or economic affairs in the public interest.
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> 36. Respondent No. 2 while functioning as a widely read newspaper, disseminating news & views to the public at large, and respondent No. 3 while functioning as a news channel, perform the important public function of disseminating information & views

[10] **2007 SCC OnLine Del 1424**
[11] **(2001) 1 SCC 298**
[12] **(2005) 6 SCC 657**

> and holding public debates & discussion in the society. The press and the media, in a democracy where freedom of speech & expression is preserved, have an extremely vital role to perform in the larger public interest. The press & the media are instrumentalities through which the right to freedom of speech and expression of the citizens is exercised and they are also the repository of public trust and faith. Consequently, they owe a duty to the public at large to report news & views which ought to be reported, correctly and wherever necessary, with restrain and caution."

15. Specifically with respect to the role played by the Press, the learned Single Judge cites an Article by Hon'ble Mr. Justice Markandey Katju (Retd.), titled Role of Media in the 21st Century[13] as well as the judgments of the Supreme Court in ***Bennett Coleman Co. v. Union of India***[14] and ***Indian Express Newspapers (Bombay) Pvt Ltd v. Union of India***[15]**.** Following this, the learned Single Judge observes, with respect to the public functions discharged by the Press, thus:

> "39. It is, therefore, clear that the press & media are essential and indispensable organs of democracy which play a very significant and important role in the process of development and evolution of the State. The press & media act as mirrors - reflecting the conscience of the people of the State. They act as instruments of change and revolution. The fundamental freedoms of speech & expression guaranteed by Article 19(1)(a) of the Constitution of India would remain mere theoretical concepts without a free press and media as it is through the instrumentality of press & media that the said freedoms are effectually exercised.
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> 48. In the light of the aforesaid discussion, I am of the view, that the press and the media perform a public function and discharge a public duty of: disseminating news, views & information; initiating and responding to debates; dealing with matters of current interest in the society in all fields such as politics, morality, law, crime,

[13] **AIR 2002 Journal 273**
[14] **(1972) 2 SCC 788**
[15] **(1985) 1 SCC 641**

arts, sports, entertainment, science, philosophy, religion, etc. There is not an aspect related to human rights and human existence which is not dealt with by the press and the media. Considering the immense impact that the press and media has over the polity, in my view, it cannot be said that they do not perform a public function or discharge a public duty, *inter alia*, when they perform the act of reporting news. Their functions touch the lives of practically everyone. Their reach is very deep and pervasive. Infact, the audio-visual media creates an even greater impact in today's time with deeper & wider penetration all across the State. They command immense power of making, moulding, sustaining or even changing public opinion. The functions performed by the press & media are recognised by the State which, consequently, accords various rights & privileges to them.

49. The controversy in the present case, as aforementioned, relates to the alleged disclosure of the identity of the petitioner's daughter, who had reported a case of alleged child sexual abuse against her own father, by the respondents herein. The duty of the respondents herein to maintain utmost secrecy and confidence in the matter of identity of the petitioner's daughter has not been disputed. Such a duty of the press & media stems from the need to prevent social obliteration and humiliation of the victim. The potential of the press and media to cause such harm is immense because the press and the media enjoy a position of trust in the society and also because of their reach. Any function/activity, alleged to be in violation of such duty, would fall within the ambit of scrutiny of this court exercising jurisdiction under Article 226, especially when the same is alleged to have infringed the fundamental rights of the victim. Therefore, the respondent nos. 2 and 3 are subject to the writ jurisdiction of this court in respect of the public function and public duty performed by them."

16. On merits, the learned Single Judge holds that the right to privacy is recognized as an integral part of the right to personal liberty under Article 21 of the Constitution of India and relies, for this purpose, on the judgment of the Supreme Court in ***R. Rajagopal v. State of Tamil Nadu***[16]. The right to privacy, holds the learned Single Judge, was subject to an exception in a case where the matter had become part of public record, but in cases of sexual assault, kidnap,

[16] **(1994) 6 SCC 632**

abduction and like offences, this exception would not apply. The findings of the learned Single Judge, in this regard, as contained in paragraph 66 of the impugned judgment, read thus:

> "66. The said right to privacy is subject to certain exceptions, as enumerated by the Supreme Court hereinabove, such as where the matter becomes part of a public record-in which case the right to privacy comes to an end and the press and the media get a legitimate right to comment upon the same. There are exceptions to this, as recognised by the Supreme Court in cases, such as, where they pertain to a victim of sexual assault, kidnap, abduction or a like offence. Therefore, even if the matter relating to a case of alleged sexual abuse etc. becomes a part of the public record, the fundamental right of the victim to be safeguarded from further disclosure of identity and consequent subjection to social indignity does not come to an end. Therefore, an act which violates the said right gives cause of action to, *inter alia*, stake a claim of damages."

17. The learned Single Judge, thereafter, refers to the Norms of Journalistic Conduct issued by the PCI in 1996 which may be reproduced as under:

> "NORMS OF JOURNALISTIC CONDUCT
>
> Principles and Ethics
>
> The fundamental objective of journalism is to serve the people with news, views, comments and information on matters of public interest in a fair, accurate, unbiased, sober and decent manner. To this end, the Press is expected to conduct itself in keeping with certain norms of professionalism, universally recognised. The norms enunciated below and other specific guidelines appended thereafter, when applied with due discernment and adaptation to the varying circumstance of each case, will help the journalist to self-regulate his or her conduct.
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> Right to Privacy
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> i) The Press shall not intrude or invade the privacy of an individual, unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity. So, however, that

once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by the Press and the media, among others.

Explanation: Things concerning a person's home, family, religion, health, sexuality, personal life and private affairs are covered by the concept of PRIVACY excepting where any of these impinges upon the public or public interest.

ii) Caution against Identification: While reporting crime involving rape, abduction or kidnap of women/females or sexual assault on children, or raising doubts and questions touching the chastity, personal character and privacy of women, the names, photographs of the victims or other particulars leading to their identity shall not be published.

iii) Minor children and infants who are the offspring of sexual abuse or 'forcible marriage' or illicit sexual union shall not be identified or photographed.

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Recording interviews and phone conversation

i) The Press shall not tape-record anyone's conversation without that person's knowledge or consent, except where the recording is necessary to protect the journalist in a legal action, or for other compelling good reason.

ii) The Press shall, prior to publication, delete offensive epithets used by a person whose statements are being reported.

iii) Intrusion through photography into moments of personal grief shall be avoided. However, photography of victims of accidents or natural calamity may be in larger public interest.

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Paramount national interest

i) Newspapers shall, as a matter of self-regulation, exercise due restraint and caution in presenting any news, comment or information which is likely to jeopardise, endanger or harm the paramount interests of the State and society, or the rights of individuals with respect to which reasonable restrictions may be imposed by law on the right to freedom of speech and expression under clause (2) of Article 19 of the Constitution of India.

18. Following this, the learned Single Judge holds that, having broadcasted, on its Aaj Tak channel, the visit which took place at the residence of ABC, with the details already noted hereinabove, the appellant could not seek to wish away its liability and pass the buck on to Star TV. Specifically with respect to the liability of the appellant, the impugned judgment holds, in paragraphs 78 to 81, thus:

> "78. The submission of respondent no. 3 - that the telecast only mentioned that a complaint had been filed by the child to the police; that respondent no. 3 took all precautions of not disclosing the address or block where the petitioner resided; that the office address of the petitioner's husband was not disclosed, and; that the telecast did not contain any information pertaining to the petitioner which could directly establish her identity - appear to be in teeth of the material on record, which is self-explanatory.
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> 79. A perusal of the video recording of the said telecast along with its transcript reveals blatant violation and disregard of the petitioner's daughter's right to privacy and confidentiality as also the duty of respondent no. 3 herein to maintain utmost secrecy and confidentiality in the matter of the identity of the victim of alleged child sexual abuse. The said telecast discloses: the name of the accused father & his place of work along with his designation - which would not only identify him but also the victim as it is disclosed that the victim is his own daughter; the age of the victim; visual shots of the display board of the colony containing particulars regarding the Sector and Pocket, wherein the petitioner resides with her daughter; visual shots of the staircase leading to the house along with the side shot of the doorstep of the house and; the voice of the petitioner. Revelation of particulars of such nature and to such an extent, are patently sufficient for the disclosure of the identity of the petitioner's daughter in the petitioner's community and society. The fact that the petitioner and her daughter came to be identified by their acquaintances and neighbours is also indicated by the fact that they had to leave their home and go into hiding and have been located by their counsel only recently Respondent no. 3 by its conduct, has acted in utter disregard and disrespect of the right of the victim of sexual abuse to privacy, recognised not only as inherent to the fundamental right to life under Article 21 of the Constitution, but also enumerated in the norms of journalistic conduct by which respondent no. 3 is governed.
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> 80. The submission of the respondent no. 3 that the recording

> mike and the camera, which were put into motion when the correspondent initiated talks with the petitioner, were made fully visible and of which the petitioner was duly informed about and no attempt had been made to hide or conceal the same, is also entirely meritless. There is not an iota of suggestion, from a perusal of the telecast, of any such information having being passed onto the petitioner by the crew members of respondent no. 3. The crew members on the other hand, chose to remain silent as regards the factum of such recording. Even if this submission of respondent no. 3 were to be accepted, the same is no excuse to justify their conduct. Once the petitioner had expressed her reluctance to speak to the correspondents of respondent no. 3, they should have left without making any further recording and could not have utilised and aired any part of the recording made by them. They cannot now turn around and say that they did not conceal the recording and that the same was within the knowledge of the petitioner who, admittedly, was still inside her house while the cameraman of respondent no. 3 was recording from the side down below the staircase leading to the petitioner's house. Such gross misconduct on the part of respondent no. 3 calls for the strongest condemnation. Their act was a display of *a prurient or morbid curiosity as proscribed in the **Norms of Journalistic Conduct***' laid down by the PCI.
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> 81. I therefore, hold respondent no. 3 herein liable for gross negligence and, consequent, breach of fundamental right of the petitioner's daughter in telecasting the said programme containing particulars, sufficient for the disclosure of the identity of the petitioner's daughter."

19. Following the above discussion, the learned Single Judge concludes the impugned judgment by observing that, in such a case, a writ court was well within its jurisdiction in granting palliative damages and, keeping in mind the need to deter others from committing similar misdemeanors in future, the learned Single Judge has deemed it appropriate to award damages of ₹ 5 lakhs in favour of ABC and against the appellant.

20. Aggrieved thereby, the appellant has approached this Court by means of the present appeal.

C. Rival Contentions

21. We have heard Mr. Sushil Salwan, learned Senior Counsel appearing for the appellant and Ms. Jayshree Satpute, learned Counsel for the ABC at length.

I. Submissions of Mr. Sushil Salwan

22. Mr. Salwan submits, initially, that the writ petition instituted by ABC was not maintainable. There is no pleading, in the writ petition, to the effect that it lies against the appellant, or that the appellant was performing any public function or discharging any public duty. Relying on paragraphs 9 to 10 of ***Prakash Singh v. Union of India***[17], ***G. Bassi Reddy v. International Crops Research Institute***[18]**,** paragraph 20 of ***Ramakrishna Mission v. Kago Kunya***[19] and ***S. Shobha v. Muthoot Finance Limited***[20]**,** Mr. Salwan submits that a "public function" has to be of a character closely related to functions performed by the State in its sovereign capacity. Thus viewed, it is sought to be submitted that the appellant cannot be treated as performing any public function.

23. Mr. Salwan further submits that no fundamental right can be enforced against a private party. He places reliance on paragraph 397 of the well known decision in ***K.S. Puttaswamy v. Union of India***[21]**,**

[17] **2022 SCC OnLine Del 2213**
[18] **(2003) 4 SCC 225**
[19] **(2019) 16 SCC 303**
[20] **2025 SCC OnLine SC 177**
[21] **(2017) 10 SCC 1**

in which it was held that a right to privacy, though a fundamental right, can be enforced by a writ Court against the State, an instrumentality of the State or persons performing public functions. The appellant does not fall within any of these categories.

24. A writ petition would not be an appropriate remedy in such a case, he further submits, as it would require elaborate adjudication and understanding of all defences available to the appellant. Several disputed questions of fact would arise for consideration, *inter alia* including aspects such as whether a right to privacy exists; whether, by her own actions and conduct, ABC was foreclosed from asserting any right to privacy; the remedy, if any, in the event of violation of X's or ABC's right to privacy; and whether the violation could be compensated in monetary terms. The learned Single Judge, he submits, has awarded compensation without addressing these issues, leaving all of them to be decided in the pending criminal proceedings.

25. Mr. Salwan further submits that Section 228A of the IPC, in any case, does not apply where the alleged offence is under Section 354 and 506 of the IPC. Besides, as the FIR itself provided all details regarding the identity of X as well as of her parents, their address etc., ABC could not maintain any claim of violation of privacy of X. In fact, these details were also disclosed in the writ petition, till they were removed by an order of Court on 8 January 2013.

26. In para IV.5 of the written submissions filed by the appellant, it is thus further contended:

> "IV.5 There is no law which prohibited even disclosure of the identity of the victim. Section 228 A of the IPC is not applicable to an offence under Section 354, 506 IPC. It is only restricted to an offence (at that time) under Section 376 IPC. Therefore, there is no law which prohibited disclosure of the identity of the victim also. However, the identity of the victim is not disclosed in the present case. Her face or the face of the Writ Petitioner is not disclosed. There is also no requirement (at that time) not to disclose the name of the father[22]."

27. Mr. Salwan submits, finally, that the dispute between X and her father P has since been settled and, therefore, that it would be appropriate to bring a quietus to the present controversy as well.

II. Submissions of Ms. Jayshree Satpute

28. In response, Ms. Satpute, relying on ***Rudul Sah v. State of Bihar***[23] and ***Nilabati Behera v. State of Orissa***[24], submits that grant of relief by way of monetary compensation is a recognised public law remedy for violation of Article 21 of the Constitution of India. She submits that the right to privacy, particularly of a child, is integral to the right to life and dignity as enshrined in Article 21. In the case of privacy violations, she submits that there can be no quantified loss or damage, as the harm caused is serious and intangible. Violation of privacy itself results in injury. She emphasises the position that the facts are not in dispute.

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[22] "The requirement not to disclose anything which may lead to the disclosure of the identity of child has been introduced only by enactment of the Protection of Children from Sexual Offence Act, 2012. Section 23 (2) prohibits any media to disclose the identity of a child including his name, address, photograph, family details, school, neighborhood or any other particulars which may lead to the disclosure of the identity of the child. The present incident has taken place on 02.08.2005 which is much prior to the introduction of the Protection of Children from Sexual Offence Act, 2012, which came into force on 20.06.2012." (also quoted from the written submissions filed by Mr Salwan)

[23] **(1983) 4 SCC 141**

[24] **(1993) 2 SCC 746**

29. The nature of privacy as a fundamental right, relatable to Article 21, submits Ms. Satpute, now stands crystallised by the judgment of the Supreme Court in ***Puttaswamy***, which has been reinforced in ***Nipun Saxena v. Union of India***[25], which prohibited disclosure of the identity of victims of sexual assault. Any such disclosure itself violates Article 21.

30. Ms. Satpute submits that she is not relying on Section 228A of the IPC. She pegs her case on Articles 19 and 21 of the Constitution and the Journalistic Norms and Ethics as framed by the PCI.

31. In sum, Ms. Satpute submits that the case does not deserve interference by this Court, in LPA jurisdiction.

D. Issues

32. Three distinct issues, therefore, arise for consideration:

(i) Was the writ petition maintainable?

(ii) Had the Appellant violated the right to privacy of X, or the Journalistic Norms and Ethics framed by the PCI?

(iii) If so, was the learned Single Judge justified in awarding compensation of ₹ 5 lakhs to ABC/X?

E. Analysis

[25] **(2019) 13 SCC 715**

I. Re. maintainability of the writ petition

33. Mr. Salwan disputes the maintainability of the writ petition on three grounds, viz. that (i) the appellant is a purely private institution, not rendering any public function or discharging any public duty, (ii) the case involves serious disputed questions of fact, which cannot be adjudicated in writ jurisdiction and, in fact, the learned Single Judge has not adjudicated any of these issues, while awarding compensation and (iii) in view of the availability of an alternate remedy by way of a civil suit, the writ petition ought not to have been entertained.

34. We proceed to address each of these contentions.

IA. Re. Contention that the appellant is a private institution, not discharging any public duty or performing any public function

35. The law, relating to the exposure of private parties to Article 226 of the Constitution of India, is settled through a plethora of judgments of the Supreme Court through which we may peregrinate, chronologically, thus.

36. ***Andi Mukta Sadguru*** (by a bench of two Hon'ble Judges)

36.1 Appellant 1 before the Supreme Court in this case, Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust[26], was a public trust, running a Science College at

[26] "the Trust" hereinafter

Ahmedabad. Academic staff employed in the college instituted a writ petition seeking arrears of salary allegedly due to them along with certain other attendant reliefs.

36.2 The Trust contended, *inter alia*, that it was not a statutory body and was not, therefore, subject to the writ jurisdiction of the High Court. We are concerned, for our purposes, only with this objection and the decision of the Supreme Court thereon. The Supreme Court dealt with the matter thus:

> "15. *If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied.* It has to be appreciated that the appellants trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. *The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to* the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. *Employment in such institutions, therefore, is not devoid of any public character.* [See The Evolving Indian Administrative Law by M.P. Jain (1983), p. 226] So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.
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> 16. *The law relating to mandamus has made the most spectacular advance. …*
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> 17. *There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them means everybody which is*

created by statute — and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

18. Article 226 reads:

> "226. *Power of High Courts to issue certain writs.*—(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
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> *****

19. The scope of this article has been explained by Subba Rao, J., in ***Dwarkanath v. ITO***[27]:

> "This article is couched in comprehensive phraseology and *it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised.* It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue

[27] **(1965) 3 SCR 536**

> prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

20. *The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12.* Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. *Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.*

21. In ***Praga Tools Corpn. v. C.A. Imanual***[28]***,*** this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they are not public officials or statutory body. It was observed:

> "It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities. (Cf. Halsbury's Laws of England, 3rd Edn., Vol. II, p. 52 and onwards.)"

22. *Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute.* Commenting on the development of this law, Professor de Smith states: *"To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common*

[28] **(1969) 1 SCC 585**

law, custom or even contract." [Judicial Review of Administrative Action, 4th Edn., p. 540] We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

(Emphasis supplied)

36.3 Principles that emerge

(i) If

(a) the rights ventilated by the petitioner are not of a purely private character,

(b) the respondent is not a purely private body and

(c) there is no other equally convenient remedy, mandamus cannot be denied.

(ii) Imparting of education is a "public function".

(iii) The relief of mandamus is not confined to public authorities to compel performance of a public duty.

(iv) Article 226 employs the expressions "any person or authority" and "for enforcement of fundamental rights or any other purpose".

(v) In ***Dwarkanath,*** the Supreme Court has held that

(a) Article 226 confers wide power on the High Court

to reach injustice wherever found, and

(b) the Constitution designedly used wide language in Article 226 in describing

(i) the nature of the power,

(ii) the purpose of its exercise and

(iii) the person against whom it could be exercised.

(vi) The expression "authority" in Article 226 has to be given a liberal meaning, unlike the meaning to be accorded to the expression in Article 12.

(vii) The words "any person or authority" in Article 12 covers any other person or body performing a public duty.

(viii) The form of the body was not very relevant.

(ix) What is relevant is the nature of duty performed by the body, which must be adjudged in the light of the positive obligation owed to the affected party. If a positive duty exists, mandamus could not be denied.

(x) In ***Praga Tools Corpn,*** the Supreme Court had held that mandamus could issue against any person or body to carry out the duties placed on it by statute, even if it was not a public official or a statutory body.

(xi) Mandamus cannot, however, be denied on the ground that the duty was not imposed by statute. It could be imposed by

charter, common law, custom or contract.

(xii) Technicalities should not come in the way of grant of relief under Article 226.

37. ***VST Industries Ltd.*** (by a bench of two Hon'ble Judges)

37.1 These appeals before the Supreme Court emanated from writ petitions filed by the VST Industries Workers' Union[29] under Article 226 of the Constitution of India, seeking a mandamus to VST Industries Ltd to treat the members of the Union, working in the canteen of the factory of VST Industries, as employees of VST Industries and grant of consequential benefits. VST Industries contested the writ petition, *inter alia*, on the ground that it was a private company which did not discharge any public duty and that, therefore, no writ could issue against it. It was submitted that VST Industries was engaged only in manufacture and sale of cigarettes and that providing of a canteen to the workers was merely incidental, pursuant to an obligation under Section 46(1)[30] of the Factories Act, 1948. VST Industries, it was urged, was not thereby performing any public function.

37.2 The Supreme Court addressed the issue thus:

"7. In de Smith, Woolf and Jowell's Judicial Review of Administrative Action, 5th Edn., it is noticed that not all the

[29] "the Union" hereinafter

[30] **46. Canteens**.—
(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

activities of the private bodies are subject to private law, e.g., *the activities by private bodies may be governed by the standards of public law when its decisions are subject to duties conferred by statute or when, by virtue of the function it is performing or possibly its dominant position in the market, it is under an implied duty to act in the public interest.* By way of illustration, it is noticed that a private company selected to run a prison although motivated by commercial profit *should be regarded, at least in relation to some of its activities, as subject to public law because of the nature of the function it is performing*. This is because the prisoners, for whose custody and care it is responsible, are in the prison in consequence of an order of the court, and the purpose and nature of their detention is a matter of public concern and interest. After detailed discussion, the learned authors have summarised the position with the following propositions:

> (*1*) *The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a "public" or a "private" body.*
>
> *(2) The principles of judicial review prima facie govern the activities of bodies performing public functions.*
>
> (*3*) However, not all decisions taken by bodies in the course of their public functions are the subject-matter of judicial review. *In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function:*
>
> > *(a) Where some other branch of the law more appropriately governs the dispute between the parties.* In such a case, that branch of the law and its remedies should and normally will be applied; and
> >
> > (*b*) *Where there is a contract between the litigants.* In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed upon by the parties (expressly or by necessary implication), that regime, and not judicial review, will normally govern the dispute.

8. The High Court has relied very strongly on the decision of

a learned Single Judge in ***T. Gattaiah***[31] wherein it was stated that a writ may lie under Article 226 of the Constitution against a company incorporated under the Companies Act, 1956 as it is permissible to issue a writ against any person. *Prima facie*, therefore, a private person or an incorporated company cannot be taken out of the sweep and contemplation of Article 226 of the Constitution. That decision does not take note of the fact as to the nature of the functions that a person or an incorporated company should be performing to attract judicial review under Article 226 of the Constitution. In ***Andi Mukta*** this Court examined the various aspects and the distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the present case, *the appellant is engaged in the manufacture and sale of cigarettes. Manufacture and sale of cigarettes will not involve any public function. Incidental to that activity there is an obligation under Section 46 of the Act to set up a canteen when the establishment has more than 250 workmen. That means, it is a condition of service in relation to a workman providing better facilities to workmen to discharge their duties properly and maintain their own health or welfare. In other words, it is only a labour welfare device for the benefit of its workforce unlike a provision where the Pollution Control Act makes it obligatory even on a private company not to discharge certain effluents. In such cases public duty is owed to the public in general and not specifically to any person or group of persons*. Further the damage that would be caused in not observing them is immense. If merely, what can be considered a part of the conditions of service of a workman is violated then we do not think there is any justification to hold that such activity will amount to public duty. Thus, we are of the view that the High Court fell into error that the appellant is amenable to writ jurisdiction."

(Emphasis supplied)

37.3 Principles that emerge

(i) Activities of private bodies may be governed by the standards of public law when the decisions are subject to duties conferred by statute or when the private body is under an implied duty to act in public interest.

[31] **T. Gattaiah v. Commissioner of Labour, (1981) 2 LLJ 54 (AP)**

(ii) The nature of the function performed by a private company could, wholly or at least partially, in a given case, be regarded as subject to public law, such as a private company which was engaged to run a prison.

(iii) The test of whether a body is performing a public function and is, therefore, amenable to Article 226, may not depend on the source of the power or whether the body is ostensibly a "public" or a "private" body.

(iv) Activities of bodies performing public functions are *prima facie* subject to Article 226.

(v) However, Article 226 would not apply where, though the body performs a public function, either

(a) some other branch of the law more appropriately governs the dispute, or

(b) there is a contract between the litigants.

(vi) In this context, a distinction is required to be drawn between a public duty owed to the public in general and a public duty owed to a specific person or group of persons.

37.4 Applying these principles, the Supreme Court held that though VST Industries was under an obligation to set up a canteen in terms of Section 46 of the Factories Act, that obligation was not to the public in general but was only a labour welfare device for the benefit of its own

workforce. The Supreme Court contradistinguished such an obligation with the obligation which was enforced by, for example, a statute such as the Pollution Control Act, which was *vis-à-vis* the general public instead of a specific section thereof.

37.5 Following this reasoning, the Supreme Court held that no writ petition would lie against VST Industries, at the instance of the Union.

38. ***G. Bassi Reddy*** (by a bench of two Hon'ble Judges)

38.1 The services of the appellants before the Supreme Court were terminated by the respondent- International Crops Research Institute[32]. They challenged the termination by way of writ petitions, which were dismissed by the High Court on the ground that the ICRISAT was not amenable to the writ jurisdiction of the High Court. The appellants appealed to the Supreme Court.

38.2 The Supreme Court concurred with the view of the High Court. The reasoning of the Supreme Court is to be found in the following passages from the report:

> "25. A writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed [***Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B.***[33]. The claim as made by the appellant in his writ petition is founded on Articles 14 and 16. The claim would not be maintainable against ICRISAT unless ICRISAT were a "State" or authority within the meaning of Article 12. The tests for determining whether an organization is either, has been recently considered by a Constitution Bench of this Court in ***Pradeep***

[32] "ICRISAT" hereinafter
[33] **AIR 1962 SC 1044**

Kumar Biswas v. Indian Institute of Chemical Biology in which we said:

> "The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

26. The facts which have been narrated earlier clearly show that ICRISAT does not fulfil any of these tests. It was not set up by the Government and it gives its services voluntarily to a large number of countries besides India. It is not controlled by nor is it accountable to the Government. The Indian Government's financial contribution to ICRISAT is minimal. Its participation in ICRISAT's administration is limited to 3 out of 15 members. It cannot therefore be said that ICRISAT is a State or other authority as defined in Article 12 of the Constitution.

27. *It is true that a writ under Article 226 also lies against a "person" for "any other purpose"*. The power of the High Court to issue such a writ to "any person" can only mean the power to issue such a writ to any person to whom, according to the well-established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words "and for any other purpose" must mean "for any other purpose for which any of the writs mentioned would, according to well-established principles issue". [***Carlshad Mineral Water Mfg. Co. Ltd. v. H.M. Jagtiani***[34]]

28. A writ under Article 226 can lie against a "person" if it is a statutory body *or performs a public function or discharges a public or statutory duty* (***Praga Tools Corpn. v. C.A. Imanual***, ***Shri Anadi Mukta Sadguru Trust v. V.R. Rudani*** and ***VST Industries Ltd. v. Workers' Union***). ICRISAT has not been set up by a statute nor are its activities statutorily controlled. *Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity*. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary

[34] **AIR 1952 Cal 315 at 318**

basis. *A service voluntarily undertaken cannot be said to be a public duty.* Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. *While the Indian public may be the beneficiary of the activities of the Institute, it certainly cannot be said that ICRISAT owes a duty to the Indian public to provide research and training facilities.* In ***Praga Tools Corpn. v. C.V. Imanual*** this Court construed Article 226 to hold that the High Court could issue a writ of mandamus "to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest". The Court also held that:

> "[A]n application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See ***Sohan Lal v. Union of India***[35].)
>
> 29. We are therefore of the view that the High Court was right in its conclusion that the writ petition of the appellant was not maintainable against ICRISAT."
>
> (Emphasis supplied)

38.3 Principles that emerge

(i) Though ordinarily a writ petition would lie only against the "State" or other authority within the meaning of Article 12 of the Constitution, it would also lie against a "person" if it is a statutory body, performs a public function *or discharges a public or statutory duty.*

(ii) Though it is not easy to define a "public function" or "public duty", it can be reasonably said that such functions are similar, or closely related to those performable by the State in its sovereign capacity.

(iii) A voluntarily undertaken service cannot be said to be a public duty.

38.4 Applying these principles, the Supreme Court held that the ICRISAT did not owe a duty to the Indian public to provide research and training facilities. Ergo, it was held that the ICRISAT was not amenable to writ jurisdiction.

39. ***Federal Bank*** (by a bench of two Hon'ble Judges)

39.1 The Supreme Court was, in this case, concerned with whether a writ petition, challenging termination from service, would lie at the instance of an employee of the Federal Bank Ltd, under Article 226 of the Constitution of India. The Federal Bank contended that it was a private bank, not a State Agency or instrumentality within the meaning of Article 12 of the Constitution of India, and that, therefore, no writ petition under Article 226 could lie against it.

39.2 While the Supreme Court ultimately ruled in favour of the Federal Bank, paras 18, 27 and 33 of the judgment are relevant:

> "18. From the decisions referred to above, the position that emerges is that *a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform*

[35] **AIR 1957 SC 529**

such a statutory function.

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27. *Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies*. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. *If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to*.

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33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. *A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it*. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed."

(emphasis supplied)

39.3 Principles that emerge

(i) A writ petition under Article 226 of the Constitution of India is maintainable against

(a) the State (Government),

(b) an authority,

(c) a statutory body,

(d) an instrumentality or agency of the State,

(e) a company which is financed and owned by the State,

(f) a private body run substantially on State funding,

(g) *a private body discharging public duty or positive obligation of public nature*, and

(h) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

(ii) Private companies are normally not amenable to Article 226 of the Constitution of India.

(iii) However, a writ can issue to private companies or private bodies for enforcing compliance with statutory obligations or positive obligations of public nature.

(iv) In such a nature, *the aggrieved party would be entitled to invoke Article 226 apart from her or his remedies in ordinary civil law. Clearly, therefore, the availability of an alternate*

remedy in civil law, even if it exists, would not be a bar to approaching the writ court under Article 226, in such a case.

40. ***Zee Telefilms*** (by a five Judge Constitution Bench)

40.1 Zee Telefilms directly filed a writ petition in the Supreme Court, under Article 32 of the Constitution, against the Board of Control for Cricket in India[36]. A preliminary objection was raised, by the BCCI, to the effect that no writ petition could lie against it under Article 32, as it was not a "State" within the meaning of Article 12.

40.2 Most of the discussion in the majority opinion in this case, authored by N Santosh Hegde, J. relates to whether the BCCI was, or was not, "State" within the meaning of Article 12. The Supreme Court held, finally, that BCCI was not "State". That part of the opinion of the Supreme Court is not of relevance to us.

40.3 What matters is that the Supreme Court, even after holding that BCCI was not "State" under Article 12, observed that the BCCI could, nonetheless, maintain a writ petition seeking its reliefs under Article 226 of the Constitution of India, for which purpose it relied on the discussion in ***Andi Mukta Sadguru***. Paras 31 to 33 of the judgment in ***Zee Telefilms*** are of relevance:

> "31. Be that as it may, it cannot be denied that *the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any*

[36] "BCCI", hereinafter

constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

32. This Court in the case of ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust***:

> "Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to 'any person or authority'. The term 'authority' used in the context, must receive a liberal meaning unlike the term in Article 12 which is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

33. *Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Therefore, merely because a non-governmental body exercises some public duty, that by itself would not suffice to make such body a State for the purpose of Article 12.* In the instant case the activities of the Board do not come under the guidelines laid down by this Court in ***Pradeep Kumar Biswas***[37] hence there is force in the contention of Mr. Venugopal that this petition under Article 32 of the Constitution is not maintainable."

[37] **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111**

(Emphasis supplied)

40.4 Principles that emerge

(i) A writ petition is maintainable under Article 226 of the Constitution of India for enforcing any legal right even against a private party which discharges activities which are akin to public duties or State functions.

(ii) By means of such a writ petition, violation of constitutional or statutory obligations or rights of the citizens can be corrected.

(iii) While a writ petition under Article 32 would lie only against a "State", every such body which performs activities akin to public duties or State functions would be amenable to Article 226.

(iv) When a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy *not only under the ordinary law but also by way of a writ petition under Article 226 of the Constitution of India*.

41. ***Binny*** (by a bench of two Hon'ble Judges)

41.1 Binny Ltd[38] was a company engaged in the manufacture of cloth. The respondents before the Supreme Court were employees of

[38] "Binny", hereinafter

Binny, who were terminated in terms of clause (8) of an agreement executed between Binny and the respondents. The respondents filed a writ petition under Article 226 of the Constitution of India for a declaration that clause (8) of the agreement, and the order of termination, were void, illegal and violative of Section 23 of the Contract Act, 1872. The respondents, therefore, sought reinstatement in service with consequential benefits.

41.2 Binny, contesting the writ petition, contended that it was a private body against which no writ petition under Article 226 of the Constitution of India was maintainable. Binny claimed not to be a public authority or undertaking any action involving a public law element.

41.3 The Supreme Court, relying on the decision in ***Dwarkanath***, ruled thus:

> "9. Superior court's supervisory jurisdiction of judicial review is invoked by an aggrieved party in myriad cases. High Courts in India are empowered under Article 226 of the Constitution to exercise judicial review to correct administrative decisions and under this jurisdiction the High Court can issue to any person or authority, any direction or order or writs for enforcement of any of the rights conferred by Part III or for any other purpose. *The jurisdiction conferred on the High Court under Article 226 is very wide. However, it is an accepted principle that this is a public law remedy and it is available against a body or person performing a public law function.*
>
> 10. *The writ of mandamus lies to secure the performance of a public or a statutory duty. The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities.*
>
> 11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, *under*

our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same *time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.* In a book on *Judicial Review of Administrative Action* (5th Edn.) by de Smith, Woolf & Jowell in Chapter 3, para 0.24, it is stated thus:

> "A body is performing a 'public function' when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides 'public goods' or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). *They also do so if they regulate commercial and professional activities to ensure compliance with proper standards*. For all these purposes, a range of legal and administrative techniques may be deployed, including rule making, adjudication (and other forms of dispute resolution); inspection; and licensing.
>
> Public functions need not be the exclusive domain of the State. Charities, self-regulatory organisations and other nominally private institutions (such as universities, the

> Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson, M.R. urged, it is important for the courts to 'recognise the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted'. Non-governmental bodies such as these are just as capable of abusing their powers as is Government."
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> *****
>
> 16. The above guidelines and principles applied by English courts cannot be fully applied to Indian conditions while exercising jurisdiction under Article 226 or 32 of the Constitution. As already stated, *the power of the High Courts under Article 226 is very wide and these powers have to be exercised by applying the constitutional provisions and judicial guidelines and violation, if any, of the fundamental rights guaranteed in Part III of the Constitution.* In the matter of employment of workers by private bodies on the basis of contracts entered into between them, the Courts have been reluctant to exercise the powers of judicial review and whenever the powers were exercised as against private employers, it was solely done based on public law element involved therein.
>
> *****
>
> 32. Applying these principles, *it can very well be said that a writ of mandamus can be issued against a private body which is not "State" within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties*."
>
> (emphasis supplied)

41.4 Principles that emerge

(i) Article 226 is available where performance is sought to be secured of a public or statutory duty. A writ petition under Article 226 would lie against a private authority if it was

discharging a public function and the act or obligation which was sought to be enforced was in discharge of such public function.

(ii) A function would be a "public function" if it was

(i) to achieve some collective benefit for the public or a section of the public

(ii) was accepted by the public as having authority to do so.

(iii) Intervention or participation in social or economic affairs in public interest would be regarded as a "public function".

(iv) Regulation of commercial and professional activities, to ensure compliance with proper standards, is also a public function.

(v) Applying the principles enunciated by it to the facts, the Supreme Court held that as Binny was a non-statutory body incorporated under the Companies Act, and the obligation which was sought to be enforced was not in exercise of any statutory or public duty, no writ petition would lie at the instance of the workmen.

42. ***Ramesh Ahluwalia v. State of Punjab***[39] (by a bench of two Hon'ble Judges)

42.1 Ramesh Ahluwalia, employed as an Administrative Officer in

the DAV Public School, was dismissed from service. He challenged the dismissal by way of a writ petition under Article 226 of the Constitution. The learned Single Judge of the High Court dismissed the writ petition as not maintainable, as the DAV Public School, being an unaided private school managed by a society, was not "State" or an instrumentality of the State, and also because the writ petition raised disputed questions of fact. The matter was carried in appeal to the Supreme Court.

42.2 The Supreme Court noticed the earlier decisions in ***Andi Mukta Sadguru***, ***Zee Telefilms*** and ***Pradeep Kumar Biswas***. Several of the paragraphs from the judgment of the Constitution Bench in ***Pradeep Kumar Biswas*** were extracted. Thereafter, the Supreme Court held, with respect to the finding of the High Court on the aspect of maintainability of the writ petition as having been filed against a body which was not State, thus, in para 14:

> "14. In view of the law laid down in the aforementioned judgments of this Court, the judgment of the learned Single Judge as also the Division Bench of the High Court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent institution is a purely unaided private educational institution. *The appellant had specifically taken the plea that the respondents perform public functions i.e. providing education to children in their institutions throughout India*."
>
> (Emphasis supplied)

Having so held, however, the Supreme Court sustained the final decision of the High Court on the ground that the writ petition raised disputed questions of fact.

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[39] **(2012) 12 SCC 331**

42.3 The italicised words in para 14 of ***Ramesh Ahluwalia***, as extracted *supra*, indicate that the Supreme Court accepted the contention of Ramesh Ahluwalia, advanced before the High Court, that providing education to children was a "public function".

43. ***Ramakrishna Mission*** (by a bench of two Hon'ble Judges)

43.1 This, again, was a service matter in which the respondent filed a writ petition against the Ramakrishna Mission, praying for a direction that he be allowed to continue in service in the Hospital run by the Mission till he completed 35 years of service. Among the grounds on which the Mission contested the writ petition was the plea that the Mission was managing the hospital purely as a voluntary service to society, and was not performing any public duty, so that it was not amenable to writ jurisdiction. The Supreme Court, in para 17 of the report, identified the basic issue arising before it as "whether the functions performed by the hospital are public functions, on the basis of which a writ of mandamus can lie under Article 226 of the Constitution".

43.2 Citing from ***Andi Mukta Sadguru***, ***VST Industries***, ***Federal Bank*** and ***Binny***, the Supreme Court proceeded to observe and hold, in paras 25 and 29 to 32 of the report, thus:

> "25. A similar view was taken in ***Ramesh Ahluwalia v. State of Punjab***, where a two-Judge Bench of this Court held that *a private body can be held to be amenable to the jurisdiction of the High Court under Article 226 when it performs public functions which are normally expected to be performed by the State or its*

authorities.

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29. More recently in ***K.K. Saksena v. International Commission on Irrigation & Drainage***[40] , another two-Judge Bench of this Court held that *a writ would not lie to enforce purely private law rights*. Consequently, even if a body is performing a public duty and is amenable to the exercise of writ jurisdiction, all its decisions would not be subject to judicial review. The Court held thus:

> "43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is "State" within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, *even if writ petition would be maintainable against an authority, which is "State" under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law*."

30. Thus, even if the body discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service.

31. Having analysed the circumstances which were relied upon by the State of Arunachal Pradesh, we are of the view that in running the hospital, Ramakrishna Mission does not discharge a public function. Undoubtedly, the hospital is in receipt of some element of grant. The grants which are received by the hospital cover only a part of the expenditure. The terms of the grant do not indicate any form of governmental control in the management or day to day functioning of the hospital. The nature of the work which is rendered by Ramakrishna Mission, in general, including in relation to its activities concerning the hospital in question is

[40] **(2015) 4 SCC 670**

purely voluntary.

> 32. *Before an organisation can be held to discharge a public function, the function must be of a character that is closely related to functions which are performed by the State in its sovereign capacity. There is nothing on record to indicate that the hospital performs functions which are akin to those solely performed by State authorities. Medical services are provided by private as well as State entities. The character of the organisation as a public authority is dependent on the circumstances of the case.* In setting up the hospital, the Mission cannot be construed as having assumed a public function. The hospital has no monopoly status conferred or mandated by law. That it was the first in the State to provide service of a particular dispensation does not make it an "authority" within the meaning of Article 226. State Governments provide concessional terms to a variety of organisations in order to attract them to set up establishments within the territorial jurisdiction of the State. The State may encourage them as an adjunct of its social policy or the imperatives of economic development. The mere fact that land had been provided on a concessional basis to the hospital would not by itself result in the conclusion that the hospital performs a public function. In the present case, the absence of State control in the management of the hospital has a significant bearing on our coming to the conclusion that the hospital does not come within the ambit of a public authority."
>
> (Emphasis supplied)

43.3 The Supreme Court also endorsed the view, in ***Binny***, that, while it is difficult to precisely draw a line between private and public functions, a body "performs a public function when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public as having authority to do so" and that bodies, "therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest".

43.4 Principles that emerge

(i) A private body is amenable to Article 226 of the

Constitution of India when it performs public functions.

(ii) While it is difficult to precisely draw a line between private and public functions, a body "performs a public function when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public as having authority to do so" and bodies "therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest".

(iii) A "public function" must be of a character which is closely related to functions performed by the State in its sovereign capacity.

(iv) Pure private law rights cannot be enforced by a writ petition, even if the authority performing the act concerned is "State" within the meaning of Article 12.

(v) No public law element is involved in enforcement of a private contract of service. No public function is discharged in setting up a hospital.

44. ***S. Shobha*** (by a Bench of two Hon'ble Judges)

44.1 The Supreme Court, in this case, approved and affirmed the decision, of the High Court, that Muthoot Finance Ltd was not amenable to writ jurisdiction of the High Court. We need only extract paras 7 to 9 of the decision, as they lay down its *ratio decidendi*:

"7. Applying the above test, *the respondent herein cannot be called a public body. It has no duty towards the public*. It's duty is towards its account holders, which may include the borrowers having availed of the loan facility. It has no power to take any action, or pass any order affecting the rights of the members of the public. The binding nature of its orders and actions is confined to its account holders and borrowers and to its employees. Its functions are also not akin to Governmental functions.

8. *A body, public or private, should not be categorized as "amenable" or "not amenable" to writ jurisdiction. The most important and vital consideration should be the "function" test as regards the maintainability of a writ application. If a public duty or public function is involved, any body, public or private, concerned or connection with that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of Article 226 of the Constitution of India.*

9. We may sum up thus:

(1) For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.

(2) *A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.*

(3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, *yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.*

(4) *A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.*

(5) *Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.*

(6) Merely because a statue or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

(7) *If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.*

(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point."

(Emphasis supplied)

44.2 Principles that emerge

(i) A private banking company is not a "public body".

(ii) However, amenability to writ jurisdiction should not be decided on the basis of whether a body is a "private body" or "public body". The "function" test is determinative. If a public

function is performed by a body, then, irrespective of whether the body is a private body or a public body, the discharge of such duty or function, and limited thereto, would be open to judicial review under Article 226.

(iii) A writ petition under Article 226 of the Constitution of India is maintainable against

(a) the State (Government),

(b) an authority,

(c) a statutory body,

(d) an instrumentality or agency of the State,

(e) a company which is financed and owned by the State,

(f) a private body run substantially on State funding,

(g) *a private body discharging public duty or positive obligation of public nature*, and

(h) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

(iv) A writ of mandamus can issue to a purely private body discharging a public function or public duty, but only to compel the private body to so discharge its public function or public duty. If the denial of rights, as complained of by the petitioner, is in connection with the public duty imposed on the body, the right can be enforced under Article 226. The existence of a public law element in the action of the private body is the *sine qua non.*

(v) Mere regulatory measures would not amount to participatory Governmental dominance or control over the affairs of a private company.

(vi) A private company, carrying on banking business, cannot be said to be discharging any public function or public duty.

(vii) Ultimately, there cannot be any general definition of "public action". The facts of each case would decide the issue.

45. The sequitur, and its application to the present case

45.1 There can be no dispute about the fact that the appellant is not "State" or an instrumentality of the State within the meaning of Article 12 of the Constitution.

45.2 However, while the remedy under Article 32 may be available only against a "State" or "other authority" within the meaning of Article 12, this restriction does not apply to Article 226. A writ, under Article 226, can issue even to a purely private body, provided it is discharging a public function or public duty, and the relief sought is to compel discharge of such public function or public duty.

45.3 These aspects have been correctly noted and understood by the learned Single Judge.

45.4 As has been held by the Supreme Court in its most recent

decision in ***Shobha***, the "function test" is determinative of the issue of whether judicial review, under Article 226, can be exercised in a particular case. The main question that the Court has to pose to itself is whether the relief that is sought in the writ petition is for compelling performance of a public function or a public duty which is being undertaken by the body in question, irrespective of whether the body itself is a private body or a public body.

45.5 This, of course, would first entail the question of whether the body in question is in fact discharging a "public function" or "public duty". As the Courts have almost universally held, this is not a question which can easily be resolved, and the line between a public function or a public duty, and a private function or private duty, is often thin. The facts of a case would be determinative.

45.6 Section 228A of the IPC clearly does not apply, as the FIR was lodged under Section 354 read with Section 506 of the IPC. Ms. Satpute also candidly acknowledged that ABC was not pressing Section 228A.

45.7 Insofar as the aspect of "public duty" or "public function" is concerned, the position that emerges from the authorities earlier cited is as follows:

(i) ***Andi Mukta*** holds that the nature of duty performed by the body "must be adjudged in the light of the positive obligation owed to the affected party". If a positive duty exists, mandamus cannot be denied. It further holds that the duty in

question need not be statutorily imposed, and may be imposed even by charter, common law, custom or contract.

(ii) ***VST Industries*** distinguishes between a public duty owed to the public in general and the public duty owed to a specific person or group of persons. The former is enforceable by writ; the latter is not. Running a prison, therefore, is a "public duty" or "public function", as it addresses the public in general, whereas setting up of a canteen, even if in terms of the mandate of the Factories Act, is not a public duty or public function, as it is intended to cater only to the workforce of that particular establishment. The source of the power whereby or whereunder the duty or function is discharged or performed by the body may not be relevant.

(iii) ***VST Industries*** further holds that duties which are similar, or closely related to those performable by the State in its sovereign capacity are "public duties". In this context, it is necessary to note that, while certain decisions use the performability of such duties by the State in its sovereign capacity as a determinative test to decide whether the duty is a "public duty", others have merely treated the test as indicative. The "similarity" test, between the function of duty performed by the body in question and activities performable by the State, to determine whether the function or duty performed by the respondent would be a public function or public duty, is reiterated in ***Zee Telefilms*** and ***Ramakrishna Mission***.

(iv) ***G. Bassi Reddy*** reiterates that a writ petition is maintainable even against a private person with respect to discharge of a statutory or a public duty. In other words, the duty need not be one which is enforced by statute. However, the judgment clarifies that a voluntarily undertaken service cannot be a "public duty".

(v) Even if the body is discharging a public function or public duty, a writ petition under Article 226 would lie only if the relief sought is by way of compelling the body authority to properly discharge such public function or public duty. It is not, therefore, merely the nature of the function or duty performed by the body which is relevant; the Court has also to see the nature of the relief sought, and the extent to which the relief compels performance of the public function or public duty.

(vi) The principle that a private body, which discharges a public duty or positive obligation of public nature, would be subject to Article 226, is reiterated in ***Federal Bank***. The obligation that is sought to be enforced by writ may be a statutory obligation or a positive obligation of public nature.

(vii) ***Binny*** reiterates the position that a petition would lie against a private authority if it discharges a public function, and the remedy in the petition seeks enforcement of such public function. The judgment also defines a "public function" as a function which achieves some collective benefit for the public or a section of the public, where the public accepts the body

discharging the function as having authority to do so. For example, intervention or participation in social or economic affairs in public interest is identified as a "public function", as the regulation of commercial and professional activities, to ensure compliance with proper standards. This test stands reiterated in ***Ramakrishna Mission***.

(viii) Providing education to children has been held to be a "public function" in ***Ramesh Ahluwalia***, whereas a private banking company has been held, in ***Shobha***, not to be discharging any public function.

(ix) ***Shobha*** again reiterates the position that the availability of a remedy under Article 226 is not to be decided on the basis of the nature of the body against whom the remedy is being sought to be enforced, but the nature of the duty or function performed by such body. If the body performs a public duty or public function, then a writ petition would lie for ensuring the performance of such public duty or public function. It expresses the principle otherwise by observing that the existence of a public law element in the action of the private body is the *sine qua non* for judicial review of such action to be permissible under Article 226.

45.8 We have already extracted, in para 15 *supra*, the basis on which the learned Single Judge has held that the appellant performs a public function. The learned Single Judge has relied, in this context, on an article by Hon'ble Mr. Justice Markandey Katju as well as the

judgments of the Supreme Court in ***Bennett Coleman*** and ***Indian Express Newspapers***. Following these, the learned Single Judge observes, in para 39, 48 and 49 of the impugned judgment, that the press and media, of which the appellant is an inalienable part, certainly performs a public function, and also discharges the public duty of dissemination of news, views and information, debates on current issues, and the like. It has been noted, by the learned Single Judge that, as on date, there is no aspect relating to human rights and human existence which is not dealt with by the press and the media. The impugned judgment was rendered 12 years ago, and the extent of societal penetration, by the media, both electronic as well as the press, has only increased since then, by leaps and bounds. Human affairs, in today's day and age, are often controlled, to the greatest extent, by the fourth estate. We reiterate the observations, by the learned Single Judge, that the media commands immense power of making, moulding, sustaining and even changing public opinion.

45.9 The reliance, by the learned Single Judge, on the following passages from ***Bennett Coleman*** is, in the context, well taken:

> "80. *The faith of a citizen is that political wisdom and virtue will sustain themselves in the free market of ideas so long as the channels of communication are left open. The faith in the popular Government rests on the old dictum, "let the people have the truth and the freedom to discuss it and all will go well." The liberty of the press remains an "Art of the Covenant" in every democracy.* Steel will yield products of steel. Newsprint will manifest whatever is thought of by man. *The newspapers give ideas. The newspapers give the people the freedom to find out what ideas are correct. Therefore, the freedom of the press is to be enriched by removing the restrictions on page limit and allowing them to have new editions or new papers*. It need not be stressed that if the quantity of newsprint available does not permit grant of additional quota for new papers that is a different matter. The restrictions are to be

removed. Newspapers have to be left free to determine their pages, their circulation and their new editions within their quota of that has been fixed fairly.

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95. *It is difficult to over-emphasize the importance of Freedom of the Press as one of the pillars of a Government "of the people, by the people, and for the people*". I may quote what Lord Bryce said in American Commonwealth (New and Revised Edition)(pp. 274, 275, and 367):

> *'The more completely popular sovereignty prevails in a country, so much the more important is it that organs of opinion should be adequate to its expression, prompt, full, and unmistakable in their utterances.… The press, and particularly the newspaper press, stands by common consent first among the organs of opinion.… The conscience and common sense of the nation as a whole keep down the evils which have crept into the working of the Constitution, and may in time extinguish them.… That which, carrying a once famous phrase, we may call the genius of universal publicity, has some disagreeable results, but the wholesome ones are greater and more numerous*. Selfishness, injustice, cruelty, tricks and jobs of all sorts, shun the light; to expose them is to defeat them. No serious evils, no rankling sore in the body politic, can remain long concealed, and, when disclosed, it is half destroyed. So long as the opinion of a nation is sound, the main lines of its policy cannot go far wrong.'

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97. *Political philosophers and historians have taught us that intellectual advances made by our civilisation would have been impossible without freedom of speech and expression.* At any rate, political democracy is based on the assumption that such freedom must be jealously guarded. Voltaire expressed a democrat's faith when he told an adversary in argument: "I do not agree with a word you say, but I will defend to the death your right to say it". Champions of human freedom of thought and expression, throughout the ages, have realised that intellectual paralysis creeps over a Society which denies, is however subtle a form, due freedom of thought and expression to its members.

98. Although, our Constitution does not contain a separate guarantee of Freedom of the Press, apart from the freedom of expression and opinion contained in Article 19(1)(a) of the Constitution, yet, *it is well recognised that the Press provides the*

principal vehicle of expression of their views to citizens. It has been said: 'Freedom of the Press is the Ark of the Covenant of Democracy because public criticism is essential to the working of its institutions. Never has criticism been more necessary than today, when the weapons of propaganda are so strong and so subtle. But, like other liberties, this also must be limited'."

(Emphasis in the original)

45.10 ***Indian Express Newspapers*** perpetuated the principle:

"32. *In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.* …… Governments naturally take recourse to suppress newspapers publishing such articles in different ways. Over the years, Governments in different parts of the world have used diverse methods to keep press under control. …… It is with a view to checking such malpractices which interfere with free flow of information, democratic constitutions all over the world have made provisions guaranteeing the freedom of speech and expression laying down the limits of interference with it. It is, therefore, the primary duty of all the national courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it, contrary to the constitutional mandate.

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39. The Second Press Commission has explained the concept of freedom of press in its Report (Vol. I pp. 34-35) thus:

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16. The theory is that in a democracy freedom of expression is indispensable as all men are entitled to participate in the process of formulation of common decisions. Indeed, freedom of expression is the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succour and protection to other liberties. It has been truly said that it is the mother of all

other liberties. *The Press as a medium of communication is a modern phenomenon. It has immense power to advance or thwart the progress of civilization. Its freedom can be used to create a brave new world or to bring about universal catastrophe.*

17. ….. ….. ….. ….. …… *It is the function of the Press to disseminate news from as many different sources and with as many different facts and colours as possible. A citizen is entirely dependent on the Press for the quality, proportion and extent of his news supply.* ….. ….. ….. ….. ….. ….. The assumption in a democratic set-up is that the freedom of the press will produce a sufficiently diverse Press not only to satisfy the public interest by throwing up a broad spectrum of views but also to fulfil the individual interest by enabling virtually everyone with a distinctive opinion to find some place to express it' "

(Emphasis in the original)

45.11 Yet again, in ***Sanjay Narayan v. Hon'ble High Court of Allahabad***[41], we find the following exposition:

"3. *The media, be it electronic or print media, is generally called the fourth pillar of democracy. The media, in all its forms, whether electronic or print, discharges a very onerous duty of keeping the people knowledgeable and informed. The impact of media is far-reaching as it reaches not only the people physically but also influences them mentally. It creates opinions, broadcasts different points of view, brings to the fore wrongs and lapses of the Government and all other governing bodies and is an important tool in restraining corruption and other ill-effects of society. The media ensures that the individual actively participates in the decision-making process.* The right to information is fundamental in encouraging the individual to be a part of the governing process. …"

45.12 In such circumstances, it would be unrealistic to hold that the media, and those who form an inalienable part thereof, do not perform any public function.

[41] **(2011) 13 SCC 155**

45.13 Inherent, in the public function performed by the media, which would include the appellant, is the public duty to ensure that the rights of the public are not prejudiced or injured by the manner in which such public function is performed. Intrinsically intertwined with the performance of the public function is, therefore, the public duty to ensure due care and attention during its discharge and performance.

45.14 The case set up by ABC in the writ petition, was of serious and irreparable injury of the right of X to privacy and confidentiality, as a consequence of the telecast aired by the appellant in its *Aaj Tak* program. If the allegation were to be accepted, it would clearly amount to improper and, in fact, illegal discharge, by the appellant, of its public function of disseminating news. The remedy sought in the writ petition was, therefore, clearly intended to ensure proper discharge, by the appellant, of the public duty which vested in it, while performing the public function of conveying news to the nation.

45.15 Applying the test in the decisions cited *supra*, therefore, we are of the opinion that the appellant is in fact discharging a public function, which involved the public duty to ensure that the public function was discharged without injuring the fundamental rights of the persons involved, and that the reliefs sought in the writ petition were intended to ensure proper and constitutional discharge of such public function.

45.16 ***Zee Telefilms***, rendered by the Constitutional bench, further clarifies that, in such a case, the remedy under Article 226 is available *apart from and in addition to the remedy available in ordinary civil*

law. No plea of alternate remedy can, therefore, sustain.

46. Mr. Salwan also sought to contend that, as disputed questions of facts were involved, the learned Single Judge ought not to have entertained the writ petition. We would be dealing with this aspect towards the conclusion of this judgment. Suffice it, at this stage, to state that we unhesitatingly reject it.

47. The writ petition was, therefore, maintainable under Article 226 of the Constitution of India.

II. Whether the appellant had violated X's right to privacy and confidentiality

48. The learned Single Judge has castigated the act of the appellant in telecasting the details of the visit at the residence of X, as well as the details of the location of the residence, the name, official designation and the official address of her father, and the voice of ABC, as "display of prurient or morbid curiosity". The expressions used are extreme.

49. We entirely endorse the view.

50. This is a classic case in which, probably in the zeal of securing higher TRPs[42], a Nelson's eye was turned to the rights of X, who, even as per the appellant's own understanding at that point of time, had alleged sexual assault at the hands of her own father. The apathy

[42] Television Rating Points

displayed by the appellant in the following passage from its written submissions, already reproduced in para 26 *supra*, is deeply disturbing:

> "IV.5 There is no law which prohibited even disclosure of the identity of the victim. Section 228 A of the IPC is not applicable to an offence under Section 354, 506 IPC. It is only restricted to an offence (at that time) under Section 376 IPC. Therefore, there is no law which prohibited disclosure of the identity of the victim also. However, the identity of the victim is not disclosed in the present case. Her face or the face of the Writ Petitioner is not disclosed. There is also no requirement (at that time) not to disclose the name of the father."

Apart from the fact that such an attitude is not expected from what purports to be a TV channel of some distinction, it also displays a woeful lack of understanding of fundamental rights, and what they mean and entail.

51. The above submission of the appellant is truly surprising, especially as the learned Single Judge has reproduced, in para 65 of the impugned judgment, the following summarisation of the right to privacy, as it resides in Article 21 of the Constitution of India, from para 26 of the report from the judgment of the Supreme Court in ***R. Rajagopal***:

> "(1) *The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages.* Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a

controversy.

> (2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. *We are, however, of the opinion that in the interest of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media*."
>
> (Emphasis supplied)

52. As the appellant has taken pains to point out, the Protection of Children from Sexual Offence Act, which statutorily proscribed disclosure, by anyone, of any such details as would render it possible to identify a victim of sexual assault, came to be enacted only in 2012. The injurious telecast, in the present case, was in 2005. The appellant submits, therefore, that, at the time of broadcasting of the injurious telecast, there was no proscription against disclosure, either of the identity of the victim of sexual assault, or of the identity of her father.

53. Sources of law, in the Indian legal system, as is taught in elementary law school, are statute, precedent and custom. None cedes place to the other. Under Article 141 of the Constitution of India, the Supreme Court declares the law as it always stood, and it is only where a judgment is expressly made prospectively applicable, that it would so apply; else, every judgment of the Supreme Court is declaratory of the legal position as it always was and, therefore, *ipso*

facto has retrospective application[43].

54. Moreover, fundamental rights are fundamental because they are inherent in every citizen. They do not need a declaration by a Court for recognition. That privacy is inherent in the right to life, guaranteed by Article 21, is *ex facie* apparent. The Supreme Court has, since time immemorial, at least since as far back as in ***Upendra Baxi v. State of Uttar Pradesh***[44], consistently ruled that the right to life includes, within it, the right to live with dignity. Inherent in the right to live with dignity is the right to privacy, which includes the right against having any such details, of one's personal existence, put up for public gaze, save and except with one's consent. We cannot believe that the appellant was of the view that it was perfectly permissible for it to broadcast, to the viewing public, who viewed its *Aaj Tak* programme, the events which transpired with the X, without the X's consent, and especially when ABC had expressly declined to interact with the appellant's team.

55. In the wake of the fact that ABC had specifically declined to interact with the appellant's team, the only course of action open to them was to withdraw and give up the idea of telecasting any mention of what had transpired with X. Instead, with complete indifference to the wishes of ABC, the appellant went ahead and telecast its program.

56. We have already reproduced, earlier in this judgement, the Norms of Journalistic Conduct laid down by the PCI in 1996. It goes

[43] Refer **M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517**
[44] **(1983) 2 SCC 308**

without saying that these norms bound the Appellant. The specific section, in the Norms, deals with the right to privacy, and proscribed intrusion or invasion, by the Press, of the privacy of an individual, unless outweighed by genuine overriding public interest. The Explanation to this clause clarifies the position by specifically prohibiting disclosure of "things concerning a person's home, family, religion, health, sexuality, personal life and private affairs". Clause ii), which follows, again, even more specifically, proscribed publication, while reporting any case of sexual assault on children, "the names, photographs of the victims *or other particulars leading to their identity*". We cannot accept an explanation that it was necessary to telecast the details of the receipt which took place at ABC's home, disclosed the details of the incident concerned and provide pointers on the basis of which the identity as well as the residents of X could easily be ascertained, in overarching public interest.

57. The transcript of the program aired by the appellant is on record. As the learned Single Judge has correctly observed, the program disclosed the full name of X's father P, his official designation as well as the organisation in which he was employed, the age of X, the address board of the colony as well as a photograph of X's house and the steps leading thereto. Moreover, the voice of ABC was also telecast.

58. The act of the appellant is clearly in the teeth of the principles laid down by the Supreme Court in para 26 of ***R. Rajagopal***. It is, therefore, *ex facie* illegal.

59. We, therefore, uphold the view of the learned Single Judge that, by telecasting the injurious program on its Aaj Tak channel, the appellant blatantly violated the right to privacy of X.

III. Whether the learned Single Judge correctly awarded compensation to X

60. The learned Single Judge has held that, having violated X's right to privacy and confidentiality, and having telecast the program revealing the details of her allegation against P, as well as details which would enable disclosure of her identity, the appellant was liable to compensate X.

61. Compensation has long been recognised as a remedy and measure in cases where, by tortious acts, injury results, which cannot be quantified in actual terms. That X has suffered serious and irreparable injury as a result of the telecasting of the Aaj Tak programme, despite ABC having clearly declined even to interact with the appellant's team, cannot be disputed. In ***Jane Kaushik v. Union of India***[45], the Supreme Court has upheld the power to remedy violation of a fundamental right, where there is no remedial measure available under the statute, by monetary compensation. The Supreme Court has, in the said case, identified the distinction between vertical and horizontal applicability of fundamental rights. Fundamental rights apply both vertically and horizontally. When applied vertically, they apply between the individual and the State. However, it is the duty of every citizen to ensure that she, or he, does not act in such a way as to

[45] **(2026) 1 SCC 336**

trespass on the fundamental rights of other individuals and, in that manner, fundamental rights apply horizontally as well. In this context, the Supreme Court has referred to the earlier decision of the Constitution Bench in ***Kaushal Kishor v. State of Uttar Pradesh***[46]. That decision contains a detailed discussion on the vertical and horizontal applicability of fundamental rights, which is an instructive treatise on its own, and essential reading for every student of fundamental rights.

62. We do not deem it necessary to burden this judgment with any exhaustive discussion on the aspect. Suffice it, therefore, to state that, in para 80 of the report, the Constitution Bench has held that "for instance, the rights conferred by Articles 15(2)(*a*) and (*b*), 17, 20(2), *21*, 23, 24, 29(2), etc. are obviously enforceable against non-State actors also". The Court further observes, in the same profession, that, where non-State actors violate fundamental rights of others, the Court has awarded damages. Various examples have been provided, in the said decision, in this regard, in the following passages:

> "81.9. As rightly highlighted by the learned Amicus Curiae, this Court has awarded damages against non-State actors under the environmental law regime, whenever they were found to have violated the right under Article 21. For instance this Court was concerned with a case in ***M.C. Mehta v. Kamal Nath***[47] where a company built a club on the banks of River Beas, partly taken on lease from the Government and partly by encroaching into forest land and virtually turning the course of the river. Invoking the "*polluter pays principle*" and "*precautionary principle*" landscaped in ***Vellore Citizens' Welfare Forum v. Union of India***[48] and also applied in ***Indian Council For Enviro-Legal***

[46] **(2023) 4 SCC 1**
[47] **(1997) 1 SCC 388**
[48] **(1996) 5 SCC 647**

Action v. Union of India[49], this Court held the owner of the private motel to be liable to pay compensation towards the cost of restoration of the ecology of the area. Thereafter, a show-cause notice was issued to the motel as to why they should not be asked to pay compensation to reverse the degraded environment and as to why a pollution fine should not be imposed. In response, the motel contended before this Court that though in proceedings under Article 32 it was open to this Court to grant compensation to the victims whose fundamental rights were violated or who are victims of arbitrary Executive action or victims of atrocious behaviour of public authorities, the Court cannot impose any fine on those who are guilty of that action. The motel also contended that fine is a component of criminal jurisprudence and hence the imposition of fine would be violative of Articles 20 and 21. This Court, even while accepting the said argument insofar as the component of fine is concerned, directed the issue of fresh notice to the motel to show cause why exemplary damages be not awarded, in addition to the damages already awarded. Thereafter, this Court held in ***M.C. Mehta v. Kamal Nath*** as follows:

> "10. In the matter of enforcement of fundamental rights under Article 21, under public law domain, the Court, in exercise of its powers under Article 32 of the Constitution, has awarded damages against those who have been responsible for disturbing the ecological balance either by running the industries or any other activity which has the effect of causing pollution in the environment. The Court while awarding damages also enforces the "polluter-pays principle" which is widely accepted as a means of paying for the cost of pollution and control. To put in other words, the wrongdoer, the polluter, is under an obligation to make good the damage caused to the environment."

81.10. In ***Consumer Education & Research Centre v. Union of India***[50], this Court held that in appropriate cases the Court could give appropriate directions to the employer, be it the State or its undertaking or *private employer*, to make the right to life meaningful, to prevent pollution of work place, protection of environment, protection of the health of the workmen and to preserve free and unpolluted water for the safety and health of the people. The Court was dealing in that case with the occupational health hazards and diseases afflicting the workmen employed in asbestos industries. In para 29 of the Report, this Court said:

> "29. … It is, therefore, settled law that <u>in public law claim for compensation is a remedy available under Article 32 or</u>

[49] **(1996) 3 SCC 212**
[50] **(1995) 3 SCC 42**

> Article 226 for the enforcement and protection of fundamental and human rights. … It is a practical and inexpensive mode of redress available for the contravention made by the State, its servants, its instrumentalities, *a company or a person in the purported exercise of their powers and enforcement of the rights claimed either under the statutes or licence issued under the statute or for the enforcement of any right or duty under the Constitution or the law*."

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81.13. In ***Indian Medical Assn. v. Union of India***[51], the policy of an Army College of Medical Sciences to admit only those who are wards of army personnel, based on scores obtained in an entrance test, was under challenge. The question that came up for consideration was whether this discriminatory practice by a private entity would be in violation of Article 15 of the Constitution. This Court in para 187 stated:

> "187. Inasmuch as education, pursuant to ***T.M.A. Pai***[52], is an occupation under sub-clause (*g*) of clause (1) of Article 19, and it is a service that is offered for a fee that takes care of all the expenses of the educational institution in rendering that service, plus a reasonable surplus, and is offered to all those amongst the general public, who are otherwise qualified, then such educational institutions would also be subject to the discipline of clause (2) of Article 15. In this regard, *the purport of the above exposition of clause (2) of Article 15, when read in the context of egalitarian jurisprudence inherent in Articles 14, 15, 16 and Article 38, and read with our national aspirations of establishing a society in which equality of status and opportunity, and justice, social, economic and political, would imply that the private sector which offers such facilities ought not to be conducting their affairs in a manner which promote existing discriminations and disadvantages*."

81.14. In ***Society for Unaided Private Schools of Rajasthan***[53], the constitutionality of Section 12 of the Right of Children to Free and Compulsory Education Act, 2009 was challenged on the ground that it violated Articles 19(1)(*g*) and 30 of those who had established schools in the private sector. While upholding the constitutionality of the provision, which required all schools, private and State-funded, to reserve 25% of its intake for students

[51] **(2011) 7 SCC 179**
[52] **T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481**
[53] **(2012) 6 SCC 1**

from disadvantaged background, this Court held:

> "222. The provisions referred to above and other provisions of international conventions indicate that the rights have been guaranteed to the children and those rights carry corresponding State obligations to respect, protect and fulfil the realisation of children's rights. *The obligation to protect implies the horizontal right which casts an obligation on the State to see that it is not violated by non-State actors. For non-State actors to respect children's rights casts a negative duty of non-violation to protect children's rights and a positive duty on them to prevent the violation of children's rights by others, and also to fulfil children's rights and take measures for progressive improvement. In other words, in the spheres of non-State activity there shall be no violation of children's rights.*"

81.15. In ***Jeeja Ghosh v. Union of India***[54], the petitioner, a disabled person suffering from cerebral palsy, was unceremoniously ordered off a SpiceJet aircraft by the flight crew on account of the disability. The petition was filed for putting in place a system to ensure such a violation of human dignity and inequality is not meted out to similarly placed persons. This Court observed as follows:

> "10. It is submitted by the petitioner that the Union of India (Respondent 1) has an obligation to ensure that its citizens are not subject to such arbitrary and humiliating discrimination. It is a violation of their fundamental rights, including the right to life, right to equality, right to move freely throughout the territory of India, and right to practise their profession. *The State has an obligation to ensure that these rights are protected* — particularly for those who are disabled."

This Court awarded compensation to the petitioner against the private Airline on the ground that the airline, though a private enterprise, ought not to have violated her fundamental right.

81.16. In ***Zee Telefilms Ltd. v. Union of India***, this Court held that though BCCI does not fall within the purview of the term "*State*", it discharges public duties and that therefore even if a remedy under Article 32 is not available, the aggrieved party can always seek a remedy before the ordinary courts of law or by way of a writ petition under Article 226. This Court pointed out that the violator of a constitutional right could not go scot-free merely because it is

[54] **(2016) 7 SCC 761**

not a State. The said logic was extended by this Court to a "Deemed to be University" in ***Janet Jeyapaul v. SRM University***[55], on the ground that though it is a private university, it was discharging "public functions", by imparting education.

82. All the above decisions show that on a case-to-case basis, this Court applied horizontal effect, considering the nature of the right violated and the extent of obligation on the part of the violator. But to enable the courts to have certain basic guidelines in place, for dealing with such cases, this Court developed a tool in ***K.S. Puttaswamy***. While affirming the right to privacy as a fundamental right, this Court laid down the landscape as follows:

> "397. Once we have arrived at this understanding of the nature of fundamental rights, we can dismantle a core assumption of the Union's argument : *that a right must either be a common law right or a fundamental right*. The only material distinctions between the two classes of right—of which the nature and content may be the same—lie in the incidence of the duty to respect the right and in the forum in which a failure to do so can be redressed. *Common law rights are horizontal in their operation when they are violated by one's fellow man, he can be named and proceeded against in an ordinary court of law. Constitutional and fundamental rights, on the other hand, provide remedy against the violation of a valued interest by the "State", as an abstract entity, whether through legislation or otherwise, as well as by identifiable public officials, being individuals clothed with the powers of the State. It is perfectly possible for an interest to simultaneously be recognised as a common law right and a fundamental right. Where the interference with a recognised interest is by the State or any other like entity recognised by Article 12, a claim for the violation of a fundamental right would lie. Where the author of an identical interference is a non-State actor, an action at common law would lie in an ordinary court*.
>
> 398. Privacy has the nature of being *both* a common law right as well as a fundamental right. Its content, in both forms, is identical. All that differs is the incidence of burden and the forum for enforcement for each form."

83. Thus, the answer to Question 2 is partly found in the nine-Judge Bench decision in ***K.S. Puttaswamy*** itself. We have seen from the line of judicial pronouncements listed above that

[55] **(2015) 16 SCC 530**

after ***A.K. Gopalan v. State of Madras***[56] lost its hold, this Court has expanded the width of Article 21 in several areas such as health, environment, transportation, education and prisoner's life, etc. As Vivian Bose, J., put it in a poetic language in ***S. Krishnan v. State of Madras***[57]***:***

> *"63. Brush aside for a moment the pettifogging of the law and forget for the nonce all the learned disputations about this and that, and "and" or "or";, or "may" and "must". Look past the mere verbiage of the words and penetrate deep into the heart and spirit of the Constitution.*"

The original thinking of this Court that these rights can be enforced only against the State, changed over a period of time. The transformation was from "State" to "Authorities" to "instrumentalities of State" to "agency of the Government" to "impregnation with Governmental character" to "enjoyment of monopoly status conferred by State" to "deep and pervasive control" [***Ramana Dayaram Shetty v. International Airport Authority of India***[58]] to the "nature of the duties/functions performed" [***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani***]. Therefore, we would answer Question 2 as follows:

> "A *fundamental right under Articles 19/21 can be enforced even against persons other than the State or its instrumentalities.*"
>
> (Italics in original; underscoring supplied)

63. The right to privacy is, thus, both a common law right and a fundamental right. It can, therefore, be enforced by way of judicial review under Article 226 as well as by way of civil proceedings in a civil court. We have already noted, earlier, from ***Binny*** and other decisions, that these remedies are available in the alternative.

64. The above passages from ***Kaushal Kishor*** also emphasize the authority of the Court, in a given case, to recompense the victim of the

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[56] **AIR 1950 SC 27**
[57] **AIR 1951 SC 301**
[58] **(1979) 3 SCC 489**

tort of privacy violation by way of monetary compensation against the tortfeasor.

65. We, therefore, reject Mr. Salwan's contention that the right to privacy is solely a fundamental right and is, therefore, available only against "State" or other authorities under Article 12. The submission is in the teeth of the law declared by the Supreme Court. We also, equally, reject Mr. Salwan's submission that the learned Single Judge could not have awarded compensation to ABC and, through her, to X.

IV. The plea of disputed issues of fact

66. Mr. Salwan sought to submit that, as disputed questions of fact are involved, the learned Single Judge ought not to have entertained the writ petition.

67. The submission has not been made in vacuum. In para E.1 of the written submission filed by him, Mr. Salwan has identified the "disputed questions of fact" as "(i) whether right to privacy exists; (ii) whether by the actions of conduct of the writ petitioner, the writ petitioner cannot claim rights to privacy; (iii) in case there is a violation, then what is the remedy of the violation; and (iv) can the violation be compensated in monetary terms".

68. The principle that a writ court does not enter into disputed questions of fact has, with the march of time, thankfully outlived its welcome. We can do no better than cite the following passages from the recent judgment of the Supreme Court in ***A.P. Electrical***

Equipment Corpn v. Tahsildar[59]:

> "48. Normally, the disputed questions of fact are not investigated or adjudicated by a writ court while exercising powers under Article 226 of the Constitution of India. But the mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of this writ court in granting appropriate relief to the petitioner. In a case where the Court is satisfied, like the one on hand, that the facts are disputed by the State merely to create a ground for the rejection of the writ petition on the ground of disputed questions of fact, it is the duty of the writ court to reject such contention and to investigate the disputed facts and record its finding if the particular facts of the case, like the one at hand, was required in the interest of justice.
>
> 49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 respectively. Obviously, the High Court must avoid such consequences.
>
> 50. In the aforesaid context, we may look into the decision of this Court in the case of ***State of Orissa v. Dr. (Miss) Binapani Dei***[60]. In paragraph 6 at p. 1270 of the said judgment, this Court has been pleased to hold as follows:—
>
> > *"Under Art. 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Art. 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined. The High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court."*
>
> 51. This Court in the case of ***Gunwant Kaur v. Bhatinda***

[59] **2025 SCC OnLine SC 447**
[60] **AIR 1967 SC 1269**

Municipality[61], observed as follows:—

> *"The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Art. 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Art. 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated., or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons."*

52. In one of the recent pronouncements of this Court in ***State of U.P. v. Ehsan***[62], this Court observed that:—

> *"28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.*
>
> *29. Bearing the aforesaid legal principles in mind, we*

[61] **(1969) 3 SCC 769**
[62] **(2024) 14 SCC 269**

would have to consider whether, in the facts of the case, the High Court ought to have dismissed the third writ petition of the first respondent and relegate him to a suit as there existed a serious dispute between the parties regarding taking of possession. More so, when the High Court, in the earlier round of litigation, refrained from taking up the said issue even though it had arisen between the parties.

30. No doubt, in a writ proceeding between the State and a landholder, the Court can, on the basis of materials/evidence(s) placed on record, determine whether possession has been taken or not and while doing so, it may draw adverse inference against the State where the statutory mode of taking possession has not been followed [See ***State of UP v. Hari Ram***[63] *(supra)]. However, where possession is stated to have been taken long ago and there is undue delay on the part of landholder in approaching the writ court, infraction of the prescribed procedure for taking possession would not be a determining factor, inasmuch as, it could be taken that the person for whose benefit the procedure existed had waived his right thereunder [See* ***State of Assam v. Bhaskar Jyoti Sarma***[64]*, (supra)]. In such an event, the factum of actual possession would have to be determined on the basis of materials/evidence(s) available on record and not merely by finding fault in the procedure adopted for taking possession from the land holder. And if the writ court finds it difficult to determine such question, either for insufficient/inconclusive materials/evidence(s) on record or because oral evidence would also be required to form a definite opinion, it may relegate the writ petitioner to a suit, if the suit is otherwise maintainable."*

53. Thus, it would all depend on the nature of the question of fact. In other words, what is exactly, that the writ court needs to determine so as to arrive at the right decision. If the only issue, that revolves around the entire debate is one relating to actual taking over of the physical possession of the excess land under the provisions of sub-sections (5) and (6) of Section 10 of the Act, 1976 respectively, then in such circumstances, the writ court has no other option but to go into the factual aspects and take an appropriate decision in that regard. The issue of possession, by itself, will not become a disputed question of fact. If all that has been said by the State is to be accepted as a gospel truth and nothing shown by the landowner is to be looked into on the ground that a writ court cannot go into disputed questions of fact, then the

[63] (2013) 4 SCC 280
[64] (2015) 5 SCC 321

same may lead to a serious miscarriage of justice."

(Emphasis entirely in original)

69. We do not see how the issues identified by Mr. Salwan are "disputed questions of fact" which cannot be decided in a writ petition. We have, in fact, already answered these questions in the present judgment; we may, however, reiterate our response. The right to privacy exists. There is no question of the right to privacy having been sacrificed by any act committed by ABC, especially as the right arises out of a duty which vests exclusively in the appellant to ensure that, when ABC had clearly expressed her disinclination to entertain the appellant's visiting crew members, the appellant ought to have stepped back, as the learned Single Judge has correctly held. Even if, for the sake of argument, it were to be presumed that, at any stage, ABC had, in any proceeding, disclosed the identity of X, that would not provide a *carte blanche* to the rest of the world to go ahead and do likewise. The extent to which a citizen desires to enforce her, or his, right to privacy, is the exclusive prerogative of the citizen, and the citizen's decision in that regard has to be respected. To borrow a famous quote voiced by a well-known thespian from a somewhat recent Hindi film, "No means no."

70. Insofar as the remedy is concerned, the learned Single Judge has correctly awarded compensation, which was well within his power and jurisdiction.

71. No such disputed questions of fact, therefore, arise in the present case, as would justify relegating the respondent to a civil suit.

F. Conclusion

72. Resultantly, the appeal is dismissed**.**

73. While we would have been inclined to award reparative costs, given the nature of the present appeal, we decline from doing so. We direct, however, that the remaining amount, as per the judgment of the learned Single Judge, be paid by the appellant to ABC or to X within a period of four weeks from the date of uploading of this judgment on the website of this Court. Failure to do so would entail interest, on the said amount, at the rate of 12% p.a. till the date of actual payment.

74. List on 12 August 2026 for reporting compliance.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JULY 01, 2026
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