BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

APPEAL NO. 24 OF 2022

IN THE MATTER OF:-

Satyanarayan Rao …Appellant

Versus

Union of India & Ors. …Respondent(s)

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Place: KOLKATA

Date: 04.12.2024

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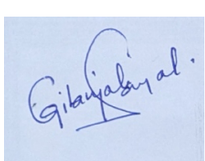

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2021 SCC OnLine SC 7

In the Supreme Court of India

(BEFORE A.M. KHANWILKAR, DINESH MAHESHWARI AND SANJIV KHANNA, JJ.)

Transferred Case (Civil) No. 229 of 2020

Rajeev Suri … Petitioner;

Versus

Delhi Development Authority and Others … Respondents.

With

Transferred Case (Civil) No. 230 of 2020

Civil Appeal No. …….. of 2020[†]

(@ Diary No. 8430/2020)

Writ Petition (Civil) No. 510/2020

Writ Petition (Civil) No. 638/2020

Writ Petition (Civil) No. 681/2020

Writ Petition (Civil) No. 845/2020

Writ Petition (Civil) No. 853 of 2020

Writ Petition (Civil) No. 922/2020

Writ Petition (Civil) No. 1041/2020

Transferred Case (Civil) No. 229 of 2020, Transferred Case (Civil) No. 230 of 2020, Civil Appeal No. …….. of 2020 (@ Diary No. 8430/2020), Writ Petition (Civil) No. 510/2020, Writ Petition (Civil) No. 638/2020, Writ Petition (Civil) No. 681/2020, Writ Petition (Civil) No. 845/2020, Writ Petition (Civil) No. 853 of 2020, Writ Petition (Civil) No. 922/2020 and Writ Petition (Civil) No. 1041/2020

Decided on January 5, 2021

The Judgment of the Court was delivered by

A.M. KHANWILKAR, J.:—

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INTRODUCTION

1. By these petition(s)/appeal(s)/case(s), we are called upon by the petitioners to undertake a comprehensive and heightened judicial scrutiny regarding the permissibility of the Central Vista Project[1] of the Government of India. Diverse issues concerning the decisions taken by the statutory Authorities including regarding the change in land use, grant of statutory and other permissions, environmental as well as heritage clearances etc., have been raised in these proceedings. The challenge is premised on high principles of democratic values as applicable in India and not limited to mere infringement of statutory provisions of the governing enactments. That is on account of the nature of project - being of high political significance and eminence for our democratic republic; and for upholding the "Rule of Law", which is on a higher pedestal than the governance by "Rule by Law".

OBJECTIVES OF THE PROJECT

2. As per the policy documents, the need for the development of the Project is rooted in the creation of a larger working space for efficient functioning of the highest legislative wing of the country and for integrated administrative block for Ministries/Departments presently spread out at different locations including on rental basis.

3. The Parliament House building, a Grade-I heritage structure, was commissioned in 1927 and stands as a 93 years old structure today. The structure has been subjected to various modifications in the post-independence period so as to maintain its functionality as per changing requirements. Post 1971 census wherein the total population of India was recorded as 548,159,6521, the number of seats for the House of People was fixed at 545. Today, the population has spiralled exponentially and is stated to have crossed the 130-crore mark. The next delimitation exercise, proposed to take place in 2026, is bound to result in a substantial increase in the total number of seats in both the Houses. Accordingly, enhanced and commensurate spatial requirements ought to be in place.

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4. The present Central Hall has a seating capacity of only 440 persons. That already falls short of the present need to accommodate members of both Houses together during a joint session. Presently, there is no scope to expand the existing Central Hall. Resultantly, the Joint Sessions of both the Houses of Parliament are conducted by way of a makeshift arrangement in the Central Hall causing inconvenience to the members attending official functions thereat, apart from undermining their dignity. Furthermore, the structure falls short of fire, water and electrical safety norms and poses a grave security risk for the legislators and secretariat staff.

5. In order to address the concerns stated above, the Central Government decided to construct a new Parliament building with a futuristic approach and the House of People being 3 times the size of the present chamber. That along with the present Parliament building and Annexe attached therewith, would be referred to as the Parliament Complex. It is further proposed that all the 51 Ministries of the Central Government be housed in 10 buildings within an integrated complex marked with underground transit connectivity and structural identity. Expressing the need for urgent completion of the project, it has been stated that the new Parliament shall symbolize the 75th Independence Day of the country in 2022 as well as the Global G-20 Summit to be hosted by India in the same year. The objectives, as stated in the written submissions of the respondents, succinctly read thus:

> "(i) A new Parliament Building with space and technology to meet the present and emerging needs of vibrant Indian democracy.
>
> (ii) Common Central Secretariat with all Ministries in a single location for efficiency and synergy in functioning.
>
> (iii) Central Vista to be redeveloped as a world class public space and venue for national and international events."

6. Similar structural defects, along with acute shortage of office spaces, have been pointed out in the offices of various Ministries presently spread across 47 buildings in the Central Vista region and in particular, Central Secretariat block. It is stated that various buildings housing the Ministries, including North Block and South Block, are ill-equipped to meet even the basic fire and earthquake safety norms and require regular upgradations involving recurring expenses to the tune of Rs. 50 crores annually. As per Non-Availability Certificates (NACs) issued by Directorate of Estate, a shortage of 3.8 lakh sq.m. of office space has been flagged. To add to this state of affairs, the Central Government is spending an amount equivalent to about Rs. 1,000 crores on rental spaces to accommodate the offices of various Ministries annually. The proposal states thus:

> "Most of the buildings in the Central Vista area are more than 40-50 years old and have either outlived or approaching their structural lives. Further buildings constructed over 100 years ago such as North and South Block are not earthquake safe. There is shortage of working spaces, parking amenities and services. The spread of Central Government Ministries and Departments in different locations leads to inefficiencies and difficulty in coordination."

7. Upon examination of other documents associated with the Project, the objectives for redeveloping/constructing the existing Central Secretariat have been broadly summed up thus:

> (i) Even after 73 years of independence, the nation does not have a common secretariat building. Some Ministries are housed in Central Vista complex while some Ministries are housed in other parts of Delhi;
>
> (ii) Various Ministries, due to lack of available space, have hired premises on rent and till date most of the rent paid for and on behalf of the Central Government for using its Ministries in Delhi runs into thousands of crores;

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(iii) Except North Block and South Block and one or two other buildings, rest of the buildings are not heritage buildings and are constructed in the near vicinity based upon the need;

(iv) Most of the existing buildings have outlived its structural life and are not earthquake resistant;

(v) As there is no common Central Secretariat and Ministries are spread over different locations, the resultant effect is administrative inefficiency and difficulty in inter-departmental coordination;

(vi) This also leads to travelling, resulting into traffic congestion and pollution;

(vii) Existing secretariat buildings spread all over haphazardly, suffering from poor servicing, inefficient use of land, inadequate facilities and outdated infrastructure;

(viii) There are six plots on Central Vista, which houses temporary barracks or stable building during 2nd World War occupying 90 acres of land, which has remained underutilised;

(ix) To utilise the underutilised spaces in the Central Vista region;

(x) Integrated functioning of all offices of the Central Government;

(xi) Modernisation of Government work spaces for enhanced productivity and efficient management of human resources;

(xi) To promote the concept of green buildings commensurate with scientific standards and sustainable with the needs of future generations; and

(xiii) To connect all the ministerial offices through an underground shuttle transportation system for smooth performance of routine administrative functions.

8. As regards the decision to supplement the existing Parliament building (on plot No. 116 admeasuring 10.75 acres having built-up area 44940 sq. mts.) with utilities constructed on plot No. 118 admeasuring 10.5 acres having built-up area of 5200 sq. mts. which is not a heritage building/site; has been felt necessary because:

(i) The existing Parliament House was constructed during 1921-1927;

(ii) The building was constructed prior to independence to house the Imperial Legislative Council and was never intended to house a bicameral national legislature;

(iii) 2 floors were added to this structure in 1956 as per the demand for more space;

(iv) Periodically ad-hoc additions have taken place in this building as per the requirement of the day, which has added to an additional stress on the heritage structure;

(v) The building is not designed as per the fire norms;

(vi) Water supply lines and sewer lines are installed in a haphazard manner, leading to seepage and destroying the heritage nature of the building;

(vii) These systems like audio-video system, A/c system etc. are later additions and were installed in various stages on an ad-hoc basis;

(viii) By 2026, the number of seats in Lok Sabha would increase from 545. Both Lok Sabha and Rajya Sabha are packed and would have no capacity for addition of seats when the number of seats would increase;

(ix) To prepare the Houses of Parliament for emerging spatial requirements in light of the impending delimitation exercise.

(x) In the Central Hall of the Parliament, the seating capacity is only for 440 persons. Whenever constitutional joint sessions are held, large number of temporary seats are placed in the aisles, undermining the dignity of this great

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democratic institutions;

(xi) The cramped seating arrangement both for members of the House and the staff posed a serious security risk in case of either any fire hazard or any external attack requiring quick evacuation. The existing Parliament is not built from the earthquake resistant point of view;

(xii) Concerns about these factors have been raised periodically by the Speaker of the Lok Sabha and Chairman of the Rajya Sabha in past.

(xiii) To ensure a modern and technologically advanced space for single and joint sittings of the Houses of Parliament commensurate with modern safety norms; and

(xiv) To preserve the built heritage by not undertaking aggressive reconstruction activity on graded heritage structures on which only minimum renovation measures are permissible in law.

9. Before we begin the discussion, we deem it fit to observe that the proposal, as far as change in land use is concerned, comprises of seven plots falling in the central vista region - Plots no. 2[2] (or Plot No. 118 - New Parliament Building), 3, 4, 5, 6, 7 and 8. The terms "central vista region or area" and "central vista precincts", as used at various places in the judgment, are not interchangeable. Whereas the central vista region broadly refers to the entire region as per the master plan, central vista precincts refers to the "Central Vista Precincts at Rajpath" as per the list of 141 heritage buildings/precincts. The subject plots, except plot no. 3, fall in the central vista region and not in the central vista precincts.

10. In a constitutional democracy governed by Rule of Law where diversity of views is both heard and respected; and the principle of constitutionalism touches both ends as well as means of accomplishing the wisest of intentions, every action of the Government, howsoever laudable, need not have a free flow in its implementation and unless it stands the test of constitutional parameters. In the same vein, the petitioners herein (claiming to be public spirited persons) have approached this Court taking exception to various aspects of the project, including but not limited to the manner and procedure adopted for effecting the proposed changes in the central vista precincts. Our examination flows from such objections which have been presented to us in this set of cases.

PROCEEDINGS AND CONTENTIONS OF THE PARTIES

11. After objections to the proposed change in land use were received by the Delhi Development Authority[3] and public hearings were conducted thereagainst, the petitioners approached the High Court of Delhi[4] for challenging the Public Notice dated 21.12.2019 in W.P. (C) No. 1568 of 2020. The learned single Judge of High Court, vide order dated 11.2.2020, directed the respondents to inform the Court before taking any step in furtherance of the impugned public notice. The relevant extract of the order reads thus:

"20. In case, a decision is taken to notify the proposed changes in MPD 2020-21, the DDA will approach the court before notifying such decision."

12. The respondent Union of India took exception to the aforesaid order by filing L.P.A. No. 119 of 2020 before the Division Bench of the High Court. The Division Bench ordered an *ex-parte* stay on the above direction of learned single Judge vide order dated 28.2.2020. Another writ petition being W.P. (C) No. 1575 of 2020 was also pending before the High Court.

13. Aggrieved by the order of the Division Bench, the petitioners approached this Court vide S.L.P. (Civil) Diary No. 8430 of 2020 which resulted in the withdrawal of the entire subject matter before this Court in terms of order dated 6.3.2020, which reads thus:

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"……

In our opinion, it is just and proper that writ petition itself is heard by this Court instead of examining the grievance about the manner in which the interim directions have been passed and then vacated by the High Court. Indeed, this order is not a reflection on the proceedings before the High Court, in any manner, but in larger public interest, we deem it appropriate that the entire matter pertaining to challenge pending before the High Court is heard and decided by this court expeditiously.

We are given to understand that there is one more writ petition pending before the High Court involving the same issue. Accordingly, Writ Petition Nos. 1568 and 1575 of 2020 pending before the High Court of Delhi shall stand withdrawn to this Court and be registered as Transferred Cases, to be heard along with the present Special Leave Petition on 18.03.2020.

Letters Patent Appeal No. 119 of 2020 before the High Court stands disposed of in terms of this order.

Any steps taken by the authorities, in the meantime, will be subject to the outcome of the proceedings.

Liberty is granted to both sides to file additional documents.

The Registry shall forthwith call for the case records of Writ Petition Nos. 1568 and 1575 of 2020 from the High Court."

14. Thereafter, more petitions were filed and we agreed to hear all petitions analogously. We deem it apposite to reproduce two other orders passed in the leading case dated 19.6.2020 and 29.7.2020 respectively. The same read thus:

19.6.2020

"ORDER

We have heard learned counsel for the parties.

Application(s) for amendment of petition(s) are allowed subject to just exceptions and without prejudice to the contentions available to the respondent(s).

The petitioner(s) in the respective case(s) to file separate compilation with index consisting of writ petition memo, as amended, along with annexure(s) thereto, followed by the affidavits filed before the Delhi High Court in seriatum. The said compilation will be used at the time of hearing of the concerned cases. The compilation in the respective transferred cases be filed by 23rd June, 2020 through e-mail/on-line.

Mr. Shikhil Suri, learned counsel for the petitioner(s), has informed us that one more petition has been filed in this Court being Writ Petition (C) No. 510 of 2020. The said petition shall be heard along with these petitions (transferred cases).

We make it clear that any other petition/proceedings instituted or to be filed hereafter by any party concerning the subject Project, be heard and proceeded along with the present cases.

The respondent(s) may file consolidated reply on or before 3rd July, 2020, which can be placed on record in the respective transferred cases/proceedings.

List these matter(s) along with all connected cases on 7th July, 2020."

29.7.2020

"ORDER

Heard learned counsel for the parties on the preliminary objection raised by Mr. Shyam Divan, learned senior counsel appearing for the applicant(s)-intervenor(s).

In deference to the observations made by the Court, Mr. Shyam Divan submits that he would commend to the applicant(s) in application I.A. No. 59230/2020 to file substantive writ petition challenging the environmental clearance dated

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17.06.2020 by way of writ petition under Article 32 of the Constitution while maintaining the preliminary objection already raised so that all aspects can be considered by the Court at appropriate stage.

Counsel for the respondent(s) and the petitioner(s) have no objection to take recourse to this option while permitting each of them to file response to the proposed writ petition, to be filed by the applicant(s) in I.A. No. 59230/2020. As assured by Mr. Shyam Divan, learned senior counsel, the substantive writ petition will be filed within one week from today.

The respondents in the said writ petition to file a comprehensive reply within one week from service of memo of writ petition. Advance copy of the proposed writ petition be served by the applicant(s) in the office of the Solicitor General through e-mail/on-line, at the time of filing the same in the Registry.

List the matters at the end of Board in the week commencing 17th August, 2020."

15. Being mindful of the prevailing state of affairs amidst the pandemic, we refrained from insisting upon technicalities during the course of hearing and granted complete freedom to the parties, both in terms of timelines and volume of submissions, to file pleadings, written statements and documents. We may now advert to the challenge raised by the petitioners in the subject petitions.

Civil Appeal No. ……/2020

(Arising out of S.L.P. (C) No…….2020 @ Diary No. 8430/2020)

16. The appellant (writ petitioners) has challenged the order of Division Bench on the ground that well-considered order of learned single Judge came to be vacated by the Division Bench without hearing the appellant. This amounted to violation of the basic principles of natural justice which required the appellant to be heard before passing an adverse order. It is further stated that the learned single Judge had asked the respondents to file a reply to the original writ petition, however, no reply was filed and the Division Bench failed to consider this aspect while vacating the stay granted by the learned single Judge.

17. In this appeal arising out of special leave petition, the applicants (third parties) filed I.A. No. 59796/2020 praying for recall/modification of the order of this Court dated 6.3.2020 whereby the following direction was issued:

"We make it clear that any other petition/proceedings instituted or to be filed hereafter by any party concerning the subject Project, be heard and proceeded along with the present cases."

18. The applicants have contended that the aforesaid direction debarred the applicants from approaching the National Green Tribunal[5] for the invocation of their statutory remedy of challenging the grant of environmental clearance[6]. It is submitted that NGT, being an expert body equipped with technical members, ought to exercise jurisdiction concerning environmental issues in the first place. Hence, the order of this Court could not have curtailed the statutory remedies otherwise available to the applicants. At the conclusion of the hearing of these cases, however, the learned counsel for the applicants had prayed that this application be disposed of as infructuous.

T.C. (C) NO. 229/2020

(formerly W.P. (C) No. 1568 of 2020 before the High Court of Delhi)

19. In this petition, originally filed in the High Court under Article 226 of the Constitution, the petitioners therein have assailed the public notice dated 21.12.2019 and final notification for change in land use dated 20.3.2020. The relevant prayers read thus:

"I. Issue an appropriate writ, order or direction calling for records and quashing

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Public Notice S.O. 4587 E dated 21.12.2019, issued by Respondent No. 1 Delhi Development Authority (DDA); and/or

xxx xxx xxx

IV. Issue an appropriate writ, order or direction calling for records and quashing Notification S.O. 1192 (E) dated 20.03.2020 issued by Union of India Represented Through Ministry of Housing and Urban Affairs."

20. The Land & Development Officer[7], Ministry of Housing and Urban Affairs[8], Government of India, being the land-owning agency of the plots, initiated the process of change in land use vide letter no. L&DO/L-IIA/11(1158)/545 dated 4.12.2019 for 8 plots. Plots No. 1 to 7 and 8 are in Planning Zone-D and C respectively of the central vista area. The said proposal was considered in the Technical Committee Meeting of the DDA on 5.12.2019 wherein the proposal was recommended for further processing by the Authority. The recommendation reads thus:

"After detailed deliberation, the proposal as contained in Para 4.0 of the agenda with the above modification in landuse for Plot No. 1 was recommended by the Technical Committee for further processing under Section-11A of DD Act, 1957. With the following **conditions**:

(i) **The clearances from the PMO, Heritage Conservation Committee and Central Vista Committee shall be taken by L&DO.**

(ii) The heritage buildings shall be dealt as per the relevant heritage provisions."

(emphasis supplied)

21. Thereafter, on 11.12.2019, in the meeting of the Authority at Raj Niwas, Delhi (Lieutenant Governor's Residence), the recommendations of the Technical Committee were placed for consideration. The Authority approved the recommendations with a direction for issuing public notice inviting objections/suggestions from the public qua the proposed modifications in accordance with Section-11A of the Delhi Development Act, 1957[9]. The decision taken on 11.12.2019 reads thus:

"The proposal contained in the agenda item was approved. Public notice inviting objections/suggestions under Section-11A of DD Act, 1957 be issued."

22. Thereafter, on 21.12.2019, the Authority issued Public Notice S.O. 4587 E with a proposal for the change in land use of Plots No. 1 to 8 situated at different direction/location in Zones C and D and inviting suggestions/objections from the citizens of the country qua the said proposal. After a public hearing on objections, the matter was considered by the Authority in its following meeting chaired by Lt. Governor, Delhi on 10.2.2020. The Board recommended that a fresh proposal be initiated as regards plot no. 1. This recommendation was accepted by the Authority in the meeting. Thus, plot no. 1 stood excluded from the original proposal and is not the subject matter of these petitions. As regards plots no. 2 to 8, the Authority approved the proposal after public consultation and the same was finally submitted to the Central Government for issuing the final notification. On 20.3.2020, the final notification *(impugned)* was issued by the Central Government notifying the change in land use of plots nos. 2 to 8.

23. To buttress the challenge, the petitioner would assert that the changes in land use had been proposed without framing an updated Zonal Development Plan[10] for Zone D, as mandated in the Master Plan Delhi, 2021[11], and therefore, the changes are not backed by updated information and empirical data. It is submitted that the respondents relied upon an old ZDP of 2001 for carrying on the changes. Further, in the absence of an updated plan, an informed decision could not have been taken by the respondents with regard to the proposed changes, more particularly relating to standards of population density. It is supplemented by referring to Chapter-16 of the Master Plan which requires a comprehensive land use plan based on current data for undertaking different urban activities, social and physical infrastructure.

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24. It is submitted that the proposal issued is *ultra vires* Section 11A of 1957 Act as the Authority had no power to modify the land use of subject plots. The argument stems from the understanding that the proposed modifications substantially alter the Master Plan and Section 11A(1) prohibits the Authority from undertaking modifications of a nature that effect important alterations in the character of the plan. It is submitted that the nature of changes proposed could not have been carried forth in the name of modifications as they were of a substantial nature and thus, required a fresh Master Plan or amendment to the extant Master Plan.

25. Mr. Shikhil Suri, learned counsel for the petitioner has submitted that since the notice dated 21.12.2019 stood vitiated in terms of the abovementioned submissions, the final notification dated 20.3.2020 is bad and illegal as such notification ought to have preceded by a valid public notice. The petitioner submits that the proposed changes contradict the Master Plan. An attempt has been made to demonstrate contradictions within various chapters of the plan. It is stated that the public notice does not advert to Chapter-17 of the Master Plan which provides for a "Development Code" and lays emphasis on the quality of built environment while considering any land use proposals and development policies. It is stated that Chapter-8 of the plan requires decentralization of Government offices in the NCR region which is contrary to the proposal of creating an integrated vista of Government offices. It is further stated that proposal to alter central vista precincts does not reckon the mandate of Chapter-10 for conservation of built heritage.

26. It is urged that the respondents have acted in an arbitrary manner and have violated Article 21 as well as the Doctrine of Public Trust by denying basic access to public/recreational spaces which are essential to life and liberty.

27. To buttress their submissions, the petitioners have placed reliance upon *Lal Bahadur* v. *State of Uttar Pradesh*[12], *Bangalore Medical Trust* v. *B.S. Muddappa*[13], *R.K. Mittal* v. *State of Uttar Pradesh*[14], *Municipal Corporation of Greater Mumbai* v. *Hiraman Sitaram Deorukhar*[15] and *Goel Ganga Developers India Private Limited* v. *Union of India Through Secretary, Ministry of Environment and Forests*[16].

28. In the counter affidavit filed by DDA, it is submitted that the proposal is merely meant to align the existing land use with the proposed plan for optimum utilisation whilst preserving and conserving environment and built heritage of the central vista precincts as a whole. As regards the contention of population density, it is submitted that the project is not going to result in any enhancement in population density as the area attracts floating population which brings in a temporary footprint during official working hours only.

29. As regards the absence of an updated ZDP, the respondent DDA, in its counter affidavit, placed reliance upon Chapter-16 of the Master Plan to urge that such plan was not required at all as Chapter-16 expressly permits the usage of the previous plan. It is submitted that in the absence of an updated plan, the ZDP formulated under the previous Master Plan continues to be operative.

30. In the consolidated counter affidavit, the respondents (Union of India) have urged that the changes indicated in the proposal regarding land use are in the nature of minor modifications and not substantial alterations of the Master Plan, as suggested. Responding to the argument of lack of authority, the respondents have urged that the power of Central Government to propose modifications falling under Section 11A(2) is not restricted as the limitations of sub-Section (1) are strictly meant for the Authority and do not apply to the Central Government as such. To buttress the submission, it is urged that the powers of Central Government under sub-Section (2) are untrammelled and uninhibited by restrictions which apply to the Authority.

31. Countering the argument that DDA possessed no power to issue public notice, it is submitted in the written submissions that procedure prescribed under the Act

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requires DDA to publish notice inviting objections, be it for modification of the existing plan or for preparation of new Master Plan. Reference has been made to S.O. 141 dated 7.2.2007 to support this view.

32. It is further urged in the written submissions that procedure prescribed by law has been strictly followed by the Authority. In that, the proposal was initiated by Land & Development Office - land owning agency - and was placed for due consideration of Technical Committee on 5.12.2019 before being finally placed before the Authority on 11.12.2019 wherein all recommendations of the Technical Committee were considered before approving the release of public notice. Appearing for the respondents, learned Solicitor General has submitted that the above sequence of events reveals due application of mind and no ground for arbitrariness has been made out.

33. The respondents, in addition to the arguments, have placed reliance upon *Union of India* v. *Cynamide India Ltd.*[17], *Shri Sitaram Sugar Company Limited* v. *Union of India*[18], *State of Punjab* v. *Tehal Singh*[19], *Pune Municipal Corporation* v. *Promoters and Builders Association*[20], *Transmission Corporation of Andhra Pradesh Limited* v. *Sai Renewable Power Private Limited*[21], *Tulsipur Sugar Co. Ltd.* v. *the Notified Area Committee, Tulsipur*[22], *Sundarjas Kanyalal Bhatija* v. *Collector, Thane, Maharahstra*[23], *Bangalore Development Authority* v. *Aircraft Employees' Cooperative Society Limited*[24] and *Chairman, Indore Vikas Pradhikaran* v. *Pure Industrial Coke & Chemicals Ltd.*[25].

T.C. (C) No. 230/2020 [formerly W.P. (C) No. 1575 of 2020 before the High Court of Delhi]

34. The challenge in this petition is to the public notice dated 5.2.2020 and also the final notification dated 20.3.2020. The relevant extract of prayers read thus:

> "a) Issue a Writ in the nature of mandamus or any other Writ/Order/Direction thereby quashing the impugned public notice dated 05.02.2020 issued by the Respondent No. 1 herein and all consequential actions taken thereto;
>
> b) Issue a Writ in the nature of mandamus or any other Writ/Order/Direction thereby quashing the impugned notification for change in land use dated 20.03.2020 issued by the Respondent No. 2 herein and all actions taken in furtherance thereof."

35. In response to the notice inviting objections/suggestions regarding the change in land use, a total of 1292 responses were received by the Authority. Thereafter, on 3.2.2020, the Authority sent emails and SMS to the objectors conveying about personal/public hearing on the said responses before the Board of Enquiry and Hearing[26] scheduled for 6.2.2020 and 7.2.2020. Additionally, on 5.2.2020, the Authority also published a notice (impugned notice) in six leading newspapers having wide circulation informing about the said hearing. The objectors were asked to remain present for personal/public hearing as per the slot (time) allotted to objections clubbed on the basis of commonality of the issue(s) raised by them so as to hear them together. In response, only 42 persons appeared for the oral hearing. The hearings were concluded as per the schedule published for that purpose.

36. Assailing the said notice, the petitioners submit that the respondents called the objectors for public hearing at short notice of only one day which effectively disabled most of the objectors from appearing as travel arrangements could not be made within such short period. It is submitted that short notice resulted in the denial of natural justice to the objectors and negated the very essence of the requirement of public consultation as envisaged in Section-11A of 1957 Act. To buttress this submission, it is urged that the impugned notice had the effect of reducing the hearing into a mere formality and violated the requirements of fair opportunity which is an essential facet of democratic decision making. It is further submitted that as many as 200 persons were called for oral submissions within a time slot of one hour, thereby rendering the hearing itself as meaningless and ineffective.

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37. Mr. Sanjay Hegde, learned senior counsel appearing for the petitioners further submitted that the respondents did not place complete information regarding the proposed changes in public domain and without adequate information, it entailed in denial of opportunity of raising effective objections. Reliance has been placed upon a series of judgments to support the view that a Master Plan ought to be preceded by a comprehensive consultative exercise based on multiple parameters including population density, availability of open spaces etc.

38. To support their case, the petitioners have made reference to *M.C. Mehta* v. *Union of India*[27], *Automotive Tyre Manufacturers Association* v. *Designated Authority*[28], *State of U.P.* v. *Maharaja Dharmander Prasad Singh*[29], *Aruna Roy* v. *Union of India*[30], *Travancore Rayon Ltd.* v. *Union of India*[31], *Hanuman Laxman Aroskar* v. *Union of India*[32], *Utkarsh Mandal* v. *Union of India*[33], *R.K. Mittal*[34], *Rajendra Shankar Shukla* v. *State of Chhattisgarh*[35], *S.N. Chandrashekar* v. *State of Karnataka*[36], *Lal Bahadur*[37], *Bangalore Medical Trust*[38] and *Virender Gaur* v. *State of Haryana*[39].

39. To counter the aforesaid submissions, respondent DDA, in its consolidated reply, has submitted that out of 1292 objections, 1156 were identical and even remaining objections raised similar issues. It is urged that personal communication in the form of emails and SMS was sent to the objectors at least 3 days before the date of hearing which constitutes reasonable time in the facts and circumstances of the case and thus, denial of principles of natural justice cannot be alleged. To buttress this submission, it is further submitted that apart from aforesaid communication, the notice of public hearing was also published in six leading newspapers to encourage participation.

40. Responding to the argument of lack of information in public domain before calling for objections, the consolidated reply states that each and every detail relating to the project was published on the official website of Authority (www.dda.org.in) and it was open to common public to access it at any point of time.

41. Learned Solicitor General, appearing for the respondents, contended that there is no requirement of oral hearing in the 1957 Act or in the 1959 Rules and despite that the hearing was provided by the Authority as a measure of fairness and transparency. He further submitted that none of the heritage buildings is being adversely affected in the process.

42. In the written submissions filed by the respondents, it is submitted that the argument of denial of natural justice cannot be sustained as modification of Master Plan and town planning are activities of a legislative character and in legislative functions, public hearing can be allowed only to the extent provided in the law unlike other administrative processes.

W.P. (C) No. 510/2020

43. Post the final notification of change in land use, the Special Advisory Group of Central Vista assembled at its 50th meeting to consider the agenda item - Proposed New Parliament Building at Plot No. 118 on 23.4.2020. The minutes of the said meeting were released on 30.4.2020 wherein "No Objection" was granted to the said proposal. The petitioner herein seeks to challenge the said grant of "No Objection". Another challenge to the Office Memorandum dated 14.10.2019 issued by Works Division, MoHUA whereby the Central Vista Committee[40] was reconstituted. The relevant prayers read thus:

> "I. Issue an appropriate writ, order or direction to Respondent No. 2 Ministry of Housing and Urban Affairs (MoHUA), calling for records and quashing the Minutes of Meeting of Central Vista Committee dated 30.04.2020 at the 5th Meeting of Special Advisory Group of Central Vista and Central Secretariat Central Vista Committee with Agenda Item - Proposed New Parliament Building at Plot No. 118 New Delhi which was held on 23rd April 2020; and/or

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II. Issue an appropriate writ, order or direction to Respondent No. 2 Ministry of Housing and Urban Affairs (MoHUA), quashing Office Memorandum F. No. 6/21/2018/ADG (Works)/338-W-1 dated 14th October, 2019 which was reconstituted as a patently biased Central Vista Committee with obvious conflict of interest in the Central Vista Project."

44. In the additional written note submitted by the petitioner, it is urged that the reconstitution of the CVC was done to rush through the proposals regarding the subject project without any impartial and objective scrutiny. It is submitted that the project proponent herein was Chief Architect (CPWD) and after reconstitution, the chairmanship of the Committee was entrusted to ADG (Works), CPWD, another officer of the project proponent, indicative of the fact that there was an apparent conflict of interest in the CVC. It is further urged that similar identity of the Project Proponent and Chairman subjugated the principle of *Nemo Judex In Causa Sua*. Referring to the minutes of the meeting, the petitioner argues that the minutes reveal a clear non-application of mind on the part of this Committee as no reasons are supplied for the alleged "No Objection". To buttress this submission, it is urged that the Committee was originally envisaged to be a study group which was meant to advise the Government and contrary to this purpose, the Committee paid a mere lip service to their duty and failed to act as a study group.

45. It is further submitted that the said meeting was not convened in a proper manner as it was not attended by designated officers and various junior officers were present on their behalf to consider the proposal. It is further submitted that the prescribed quorum of the meeting was not complete as only 7 out of 12 members of the study group were present in the meeting, thereby leaving out 5 members belonging to independent non-Governmental organisations. As per the petitioner's case, the absence of representation from non-Government organisations and presence of junior officers of the Government goes to show that there was no effective deliberation and application of mind.

46. The petitioner further submits that detailed maps, drawings, scheme, layouts and other relevant documents of the subject project were not placed before the Committee and these documents were *sine qua non* for taking an informed decision regarding the proposal. The absence of consideration of the relevant material, argues the petitioner, had vitiated the outcome of the meeting.

47. In the counter affidavit filed by respondents, it is submitted that the CVC serves a limited purpose and is meant to study the development proposals submitted for its consideration and examine whether the proposal is in sync with the overall character of the region. It is submitted that the Committee has been reconstituted at various points of time in the past as per emerging needs and nomination to chairmanship is made on the basis of designation (*ex-officio*) irrespective of individual holder of office. As regards the absence of designated members, it is submitted that as a general practice, when some members are preoccupied with other engagements, their representatives from the same department/office are nominated and authorised to act on their behalf. As regards quorum, it is stated that no quorum is prescribed for the meetings of the Committee and in absence thereof, the standard quorum of 25% would suffice the requirement.

48. Regarding the conduct of meeting, the counter affidavit states that the online meeting was in tune with the standard Government protocol amidst the pandemic and it was aimed towards facilitation of participation without requiring the members to step out of their homes for the purpose of meeting. It is submitted that the grant of no objection by CVC was a prerequisite to further processing of the proposal and the entire project could not have been kept in abeyance by delaying the CVC meeting indefinitely amidst the uncertainties of the pandemic. The respondents have also

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highlighted that the minutes of the meeting were sent to all the members (including the non-attendees) and no objections were raised by them nor received from any member concerning the propriety of the grant of no objection.

W.P.(C) No. 638/2020

49. The thrust of this petition is also on the "No Objection" dated 23.4.2020 granted by the CVC. The relevant prayer reads thus:

> "A. Issue a Writ in the nature of mandamus or any other Writ/Order/Direction thereby quashing "No-objection" granted by the Respondent No. 2 herein, being the Central Vista Committee, to the proposed New Parliament Building in its meeting dated 23.04.2020, which is reflected in the minutes of that meeting circulated on 30.04.2020 and all consequential actions taken thereto;"

50. In addition to the grounds urged in W.P. (C) 510/2020, the petitioners herein submit that the CVC was functioning under the chairmanship of ADG (Works) who is not an architect or town planner and thereby lacks the requisite skills/knowledge required for considering the said proposal. The argument is supplemented in the written submissions where it is stated that the nature of duties entrusted to CVC requires the head of the Committee to be a professional architect or town planner so as to consider the proposal in a nuanced manner. To buttress this submission, the petitioners contend that the meeting was called despite absence of external experts and it was a deliberate step to avoid professional scrutiny of the professional, thereby rendering the said no objection as arbitrary and illegal.

51. The petitioners have also pressed the argument of non-application of mind, akin to that taken in W.P. (C) 510/2020, on the ground that no assessment was made by the respondents to consider the viability and need of a new Parliament building and the entire process was carried in undue haste. To buttress this argument, reliance has been placed upon *Inderpreet Singh Kahlon* v. *State of Punjab*[41] and *Bahadursinh Lakhubhai Gohil* v. *Jagdishbhai M. Kamalia*[42] to urge that an action taken in undue haste could be declared as bad in law.

52. It is further submitted that CVC disregarded the legal framework for dealing with heritage structures. The petitioners seek support from clause 7.26 read with Annexure-II of Building Byelaws to contend that minimum changes are permissible on Grade-I heritage buildings/precincts and the Committee failed to take that into consideration. The said no objection is also assailed on the alleged failure of the Committee to take into consideration various factors concerning environmental impacts, traffic assessment etc.

53. During the hearing, Mr. Hegde, appearing for the petitioners, submitted that CVC, though originally conceived as an advisory body, has assumed a statutory character owing to its long functioning and is expected to discharge pivotal role in development of such projects. In "Supplementary Note on the Role of Central Vista Committee" submitted by the petitioners, reference is made to the notice inviting bids and clause 6.4.3 of ZDP for Zone-D to support the view that CVC was envisaged as a statutory committee.

54. Alternatively, it is urged that the statutory mandate of CVC is in line with the doctrine of legitimate expectations in administrative matters. The petitioners have relied upon *National Buildings Construction Corporation* v. *S. Raghunathan*[43] to contend that this doctrine is premised on the ground of reasonableness and natural justice, and has now become a source of substantive as well as procedural rights.

55. In addition to cases noted above, the petitioners have placed reliance upon *R.S. Garg* v. *State of U.P.*[44], *Council of Architecture* v. *Mukesh Goyal*[45] and *Maharashtra State Board of Secondary and Higher Secondary Education* v. *K.S. Gandhi*[46]

56. The argument regarding the statutory character of CVC has been countered by learned Solicitor General. He would urge that it is merely an advisory body with a

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limited mandate to advise the Government on a proposal submitted for its consideration. It has no authority to grant approvals or take decisions. Further, merely because a body has been referred to in the ZDP (Zone-D) or has been working for a prolonged period, it will not assume a statutory character on its own until it is so provided by a statute.

57. As regards the argument of non-application of mind, it is submitted that CVC is not supposed to supply reasons for its approval in a manner akin to judicial/quasi-judicial bodies and the fact that CVC, in its decision, had asked the project proponent/CPWD to ensure that the project is in sync with the character of Central Vista reveals due application of mind. It is urged that application of mind must be revealed from a substantial compliance perspective. The respondents have urged that the present case is a *sui generis* one and must be treated accordingly keeping in mind larger national interest. For brevity, other submissions of the respondents to this prayer are not being repeated here.

W.P.(C) No. 681/2020 AND W.P. (C) No. 845/2020

58. On 12.2.2020, the project proponent (CPWD) filed application for EC for "Expansion and Renovation of Existing Parliament Buildings, New Delhi". The Expert Appraisal Committee[47] considered the said application in its 49th meeting dated 25-26.2.2020. After examining details of the project, EAC noted that several objections have been received by the Committee as well as by the Ministry of Environment, Forests & Climate Change[48] wherein various concerns have been expressed regarding the project. After underlining this information, the Committee deemed it appropriate to record the said objections and ask the project proponent to submit additional information for further deliberation. Thus, the proposal stood deferred. On 11.3.2020, CPWD responded to the Committee's observation for supplying additional material and submitted the relevant documents for consideration of the proposal. Form-I and Form-IA were also revised in light of the additional information sought by the Committee. In the revised form, details touching upon cost of project, total built-up area and number of trees were modified. The total cost of the Project was enhanced from Rs. 776 crores to Rs. 922 crores, total built-up area of the proposed Parliament was enhanced from 59,800 sq.m. to 65,000 sq.m., number of trees on plot no. 118 was enhanced from 326 to 333. In its 50th meeting on 22.4.2020, EAC considered the revised proposal and approved the same for grant of EC subject to certain specific conditions commensurate with the nature of subject project along with standard conditions of EC. Thereafter on 17.6.2020, the MoEF accepted the recommendations of EAC and granted EC to the proposal on Expansion and Renovation of Parliament building. This grant of EC stands impugned in these two petitions. The relevant extract of prayers read thus:

"a. Pass an order in the nature of a Writ/Order quashing and setting aside the impugned Environmental Clearance dated 17.06.2020 issued by the Respondent No. 1 in respect to the project titled as "*Expansion and Renovation of Existing Parliament Building at Parliament Street, New Delhi*";

b. Pass an order in the nature of a Writ/Order calling for the records of the Environmental Clearance dated 17.06.2020 issued by the Respondent No. 1 and thereafter hold that the entire decision making process as carried out by the Expert Appraisal Committee in the build-up to the issuance of the Environmental Clearance dated 17.06.2020 is vitiated and accordingly set aside the same;

c. Pass an Order in the nature of a Writ/Order declaring that the subject project being *Development/Redevelopment of Parliament Building, Common Central Secretariat and Central Vista at New Delhi* is a composite project for the purposes of seeking Environmental Clearance;"

59. In addition to the aforesaid prayer for quashing the Clearance, the petitioners in W.P. (C) 681/2020 have alleged a case of deliberate concealment of information and

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supply of misleading information in the proposals submitted for EC and prayed thus:

> "2. Direct action against Respondent No. 3 as Project Proponent for concealment of information and submission of false and misleading information; classifying the project as a Category B2 instead of Category B1; and a Schedule 8(a) project instead of 8(b); and obtaining Environment Clearance; which attracts conditions stipulated in Clause 8 of the EIA Notification of 2006, 'Grant of Rejection of Prior Environmental Clearance', and the penal conditions of sub clause (vi); leading to cancellation of Environment Clearance."

60. The petitioners in W.P. (C) 845/2020 have submitted that the EAC failed to apply its mind while considering the proposal and both the proposal and objections by various persons were treated in a mechanical manner. The submission is buttressed by placing reliance upon *Hanuman Laxman Aroskar*[49], wherein this Court observed that EAC being an expert body must apply itself to every relevant aspect of the project and its bearing upon environment.

61. The petitioners, in common rejoinder, have furthered the argument by contending that merely seeking certain clarifications from the project proponent is not sufficient compliance and it would only be upon a detailed scrutiny of the response/data/statements that the requirement of application of mind could be satisfied. It is added that the absence of a reasoned order by EAC advances the case of the petitioners as administrative/quasi-judicial authorities cannot grant approvals without recording reasons.

62. To support this argument, it is submitted that EAC failed to note that the project proponent deliberately separated the Parliament project out of the larger Central Vista Project with an objective to lower the scrutiny level by considering it on a standalone basis. Due to this segregation, the project was categorised as B2 project (Building and Construction) in item 8(a); whereas a collective assessment of the project would make it fall in item 8(b) i.e., Township and Area Development, falling under category B1 in terms of the 2006 Environmental Impact Assessment[50] Notification[51]. As a result of this categorisation, as contended, the respondents unscrupulously did away with the requirements of preparing a comprehensive Terms of Reference (TOR), Scoping and EIA Report as these requirements do not apply to B2 category projects. To buttress this submission, it is added that it was only to bypass the comprehensive scrutiny that the respondents characterised the proposal as a "renovation" and "expansion" project, instead of specifying that a whole new building with a built-up area measuring 65,000 sq.m. is being proposed alongwith the development of Central Vista precincts as a whole.

63. According to the petitioners, the proposed Project is a single project with three components - Development/Redevelopment of Parliament Building, Common Central Secretariat and Central Vista. The argument of deliberate disintegration and slicing of the project is further supported by referring to various documents of the Government wherein a single vision was projected by the Government viz:

(i) CPWD notice inviting bids which referred to the project as "*Development/Redevelopment of Parliament Building, Common Central Secretariat and Central Vista at New Delhi*."

(ii) Public notice of DDA dated 21.12.2019 inviting objections and suggestions proposed change in land use of 8 plots collectively.

(iii) MoHUA Press Release dated 25.10.2019 treats it as an integrated project as it reads:

> "With an aim of improving the old buildings on Raisina Hills, make improved Common Secretariat Buildings, refurbish old Parliament building, make new space for new requirement of MPs and upgrade the entire Central Vista area by revisiting entire Master Plan, a world class Consultant was required. …."

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64. The petitioners have relied upon OM dated 24.12.2010 issued by MoEF which refers to "Consideration of Integrated and Inter-linked projects" to urge that legal mandate requires collective appraisal of interlinked and integrated projects for the purpose of EC so that their cumulative impact can be assessed. To buttress the submission, it is urged that the said O.M. ought to be given a purposive meaning so as to procure comprehensive information on such projects in line with the objective of environmental protection. Reliance has been placed upon *Alaknanda Hydropower Company Limited* v. *Anuj Joshi*[52] to supplement the view that combined impact of a project must be considered to arrive at a true assessment of environmental impact. Emphasizing on the meaning of the phrase "cumulative impact", the petitioners have relied upon the decision of NGT in *T. Muruganandam* v. *Ministry of Environment & Forests*[53] to contend that cumulative assessment involves a holistic approach towards all present and reasonably foreseeable future activities so that actual impact on ecology can be determined.

65. It is further submitted that the respondents wilfully concealed relevant information from the Expert Committee regarding cumulative effects, proximity to other existing or planned projects, etc. which would attract clause 8(vi) of 2006 Notification pertaining to concealment of information and submission of false information. Reliance has again been placed upon *Hanuman Laxman Aroskar*[54] to contend that submission of authentic information without any concealment is a basic expectation under the 2006 Notification and any clearance granted on the basis of a defective Form-I is liable to be rejected.

66. The petitioners submit that the project proponent failed to conduct any assessment studies for examining the real impact of the project on environment. The respondents' statement that the new Parliament building shall have minor and incremental impacts on the environment is alleged to be baseless and unfounded. It is urged that absent any scientific assessment to back its claim, the project proponent misinformed the expert committee and gave false assurances regarding impact on air pollution, noise pollution, geology, ecology and biodiversity. The respondents' assurance on transplantation of trees is also assailed as baseless and lacking in substance as no study was conducted to determine the age, girth and species of the trees which are essential elements for examining the potential of survival of a transplanted tree.

67. The petitioners further submit that the project proponent misinformed and misled the expert committee as regards the requirement of parking space and acted in violation of Master Plan which mandates a parking requirement of 1.8 ECS (Equivalent Car Space) per 100 sq.m. of built-up area. Contrary to this specification, parking space of 100 ECS was stated in the requirements for the proposed built-up area of 65,000 sq.m. which is grossly low.

68. Relying upon *Vellore Citizens' Welfare Forum* v. *Union of India*[55] and *A.P. Pollution Control Board II* v. *Prof. M.V. Nayudu (Retd.)*[56], the petitioners have contended that EAC ought to have given regard to the precautionary principle during appraisal as it is attracted in all those cases where an identifiable risk of environmental degradation is present and thus, there was heavy burden on the project proponent to demonstrate the absence of environmental harm. In this case, the EAC could not have relied upon blanket assurances without undertaking any analysis as it would otherwise be a case of non-application of mind. The threshold submission is that the role of EAC under 2006 Notification is well carved out and in *Hanuman Laxman Aroskar*[57], this Court had highlighted the importance of reasons and undertaking a detailed analysis of all environmental factors.

69. Mr. Shyam Divan, learned senior counsel appearing for the petitioners, further submitted that as per *Lafarge Umiam Mining Private Limited* v. *Union of India (UOI)*[58],

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doctrine of proportionality and non-application of mind standards can be invoked in environmental review cases and as per *Hanuman Laxman Aroskar*[59], an in-depth merits review is mandated by the 2006 Notification and EAC failed to undertake the same. Thus, the respondents are bound by these high standards and the entire matter needs to be examined on that basis by this Court.

70. The petitioner in W.P.(C) No. 681/2020 has adopted similar submissions to assail the EC and they are not being repeated. Referring to Clause 7 of 2006 Notification, the petitioner submitted that the notification contemplates four stages of EC for new projects and by showcasing this project as an "expansion" instead of new construction, the respondents have evaded the crucial stages. It is further submitted that EAC ought to have considered the proposal in the light of principles of sustainable development, public trust and inter-generational equity.

71. To support their submissions, petitioners have relied upon *Keystone Realtors Private Limited* v. *Anil V. Tharthare*[60], *Bengaluru Development Authority* v. *Sudhakar Hegde*[61], *Sunil Kumar Chugh* v. *Secretary, Environment Department, Government of Maharashtra*[62], *Samata* v. *Union of India*[63], *Intellectuals Forum, Tirupathi* v. *State of A.P.*[64], *Common Cause* v. *Union of India*[65], *Sarpanch, Grampanchayat, Tiroda, Tal. Sawantwadi, District Sindhudurg, Maharashtra* v. *Ministry of Environment & Forests*[66] and *Goel Ganga Developers India Private Limited*[67].

72. In counter affidavit filed by CPWD, it is submitted that the new Parliament building is being constructed adjacent to the existing building and both buildings will supplement each other in terms of functionality. Simultaneously, the existing building shall be retrofitted and renovated in accordance with the limitations prescribed for Grade-I structures and thus, the project was rightly named as an expansion and renovation project.

73. It is submitted that in terms of 2006 Notification, no detailed EIA is required for building projects with built-up area of less than 1,50,000 sq.m. as they fall under category 8(a), and since the built-up area of subject project is less than 1,50,000 sq.m., no such assessment is required as per the notification and thus, EAC was right in not insisting for any such impact assessment. Learned Solicitor General, would further submit that categorisation as 8(a) or 8(b) would not be of much consequence as the nature of categorisation causes no prejudice in considering the cumulative impact of the project on environment, if any. To buttress this submission, it is urged that as per the mandate of law, a detailed EIA would be carried out for the Central Secretariat project as it falls under category 8(b) i.e., Township and Area Development. Such assessment, as per law, would examine land use within the radius of 10km and since Parliament falls within these dimensions, environmental concerns (if any) associated with it may also be addressed in the same assessment and additional mitigating measures could be imposed.

74. To the argument that both these projects are integrated projects calling for a collective appraisal, the counter affidavit states that the expression "Integrated Projects" refers to those projects that cannot exist without each other to the extent that their existence as well as functionality is inevitably dependent upon each other. In present case, submitted the respondents, both these projects are marked by different timelines, different budgetary allocations, different wings of the Union of India (Parliament and Executive) and also for different utilities. In that, Parliament project is supposed to culminate in 2022, the other project may go on till 2026. It is further urged that budgetary allocation for Parliament project is made by Lok Sabha Secretariat and that for North/South Block project is made by Ministry of Culture. To further justify separate EC application for Parliament project, the consolidated reply states that as a matter of practice, EC is not given merely on the basis of preliminary vision/Master Plan and such application ought to be made for those projects only for

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which detailed drawings, planning layouts etc. are available so that an informed impact assessment (site specific) can be made. The central secretariat project has not reached that stage yet. The submission reads thus:

> "8. …Therefore, an application for Environment Clearance can be made effectively and accurately only in the final stages of the planning and execution of a project and not at a broad macro level without mentioning the minute details of the project."

75. Learned Solicitor General urged that merely because the project was mentioned in the comprehensive project and in the bid document for engagement of the Consultant, it does not mean that the project proponent is obliged to treat it as a whole for all future purposes. Whereas, the Government is well within its rights to even drop the plan of Central Secretariat project without impacting the Parliament project. It is urged that expansion/renovation of Parliament and development of new Central Secretariat in that sense are two distinct projects and attract different procedural compliances under law before the construction thereof commences, as stated in the written submissions thus:

> "20. It is submitted that carrying out architectural and engineering planning of all the components through a single consultant with a view to benefit from cost and planning efficiencies does not automatically mean that the Parliament project and the remaining Central Vista redevelopment projects are, for the purposes of an environment clearance, is a single project. It is submitted that Parliament Project and the remaining Central Vista redevelopment are different projects and the planning in respect of such projects is carried out in different stages. It is submitted that execution of the different projects shall be taken up in phases …"

76. It is submitted that the total built-up area of the proposed Parliament building is 65,000 sq.m. whereas that of proposed Central Secretariat is approximately 17 lakh sq.m. and it was a conscious policy decision of the competent authority to treat the Parliament project as an independent one being most urgent and to prevent it from falling prey to delays owing to the vast territorial expanse of the comprehensive plan. Thus, the conscious decision of the Government is to ensure completion of building project in a smooth manner and not to link it up with the town development project.

77. The contention regarding non application of mind by EAC has been countered by respondent MoHUA in its reply affidavit wherein it is submitted that EAC comprises of scientific experts who have been considering proposals for EC for past 1.5 years. It is submitted that detailed deliberation took place in the 49th EAC meeting after which supplementary information was sought in a revised Form-1/1A regarding scope of renovation of existing building, status of pending cases, traffic management plan, response to objections received from public, updated Master Plan showing land use of plot no. 118 and accordingly, entire information was placed before the Committee and the same was duly considered in the next meeting before formulating its recommendation. Thus, application of mind is writ large in the entire process. As regards the allegation of fraud and misrepresentation while providing information regarding connected projects in Form-I, the written submissions state that O.M. dated 24.12.2010, relied upon by the petitioners to extend this argument, was misconceived as the concept of inter-linked projects is used in reference to multi-sectoral projects and the subject project does not involve a multi-sectoral component and is a standalone building construction project.

78. In written submissions filed by the respondents, it is further submitted that a detailed study was conducted to identify the possible impacts of the proposed project and concerns relating to air emissions, water, soil etc. were duly addressed by EAC by prescribing an Environment Management Plan (EMP) and operational measures. It is informed that measures including setting up of sewage treatment plant at the site,

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usage of recycled water, rain water storage tanks, usage of recycled material, solid waste management etc. shall be followed.

79. Learned Solicitor General has sought to distinguish the judgment of this Court in *Hanuman Laxman Aroskar*[68] by contending that in the said case, the analysis was done in context of a Category-A project and moreover, the view of the Court as regards the requirement of reasons was in the context of the facts of that case. It is submitted that as per the 2006 Notification, reasons are required only in cases of rejection of objections and not in all cases. To buttress this submission, the argument advanced in W.P. (C) 638/2020 that decisions taken by experts are not akin to those taken by judicial/quasi-judicial bodies has been reiterated.

W.P. (C) No. 853/2020

80. On 2.9.2019, the respondent CPWD invited bids vide NIT No. 04/CPM/RPZ/NIT/2019-20 from national/international design and planning firms for appointment of Consultant (Consultancy Services) for a comprehensive architectural and engineering planning for development/redevelopment of Parliament Building, Common Central Secretariat and Central Vista. The minimum eligibility criteria required the bidders to have an average annual turnover of Rs. 20 crores from consultancy services in India. On 4.9.2019, the Indian Institute of Architects[69] gave a representation to the respondent raising certain objections to the eligibility conditions in the tender document. The Council of Architecture, on 9.9.2019, also raised similar objections and called for an Open Design Competition. On 12.9.2019, a pre-bid meeting was held for the interested parties for clarifications regarding the NIT. After the pre-bid meeting discussion, CPWD released a corrigendum and addendum to Consultation Services NIT whereby, the date of online submission was extended from 23.9.2019 to 30.9.2019 and sum of earnest money was reduced to Rs. 25 lakhs. After this process, five firms qualified for technical bids and four firms qualified for financial bids. On 25.10.2019, MoHUA announced that M/s. HCP Designs has been awarded the Consultation Services NIT for the development of entire Central Vista region. This was followed by DDA's public notice for change in land use, public hearing on objections, final notification of change in land use and grant of no objection by CVC at relevant points of time as already discussed above.

81. On 5.6.2020, Delhi Urban Art Commission[70], in its 1542nd meeting considered the proposal for Parliament project and recorded various observations regarding urban form, aesthetics, integration of old building with proposed old building, incorporation of green building features etc. Thereafter, on 1.7.2020 (1544th meeting), DUAC considered a revised building plan proposal submitted by the project proponent and granted its approval along with some observations regarding parking requirements, public art, skylights and height of the building.

82. The petitioners herein seek to raise a comprehensive challenge to the project by assailing various stages of the project elaborated above. The relevant extract of the prayers read thus:

"a. A declaration that the Central Vista Project including but not limited to the Parliament building is *ultra vires* the Constitution of India and is illegal, null and void;

b. A declaration that a project for redesigning the Central Vista including Parliament building may be carried out (i) only pursuant to an objective and independent assessment made after stakeholder consultation which confirms the necessity for such a project; (ii) through a widely publicized Open Design Competition; (iii) by adopting a transparent process with adequate timelines that enable wide participation in the consultancy, design and execution phases; and (iv) through the selection of the design by a representative and independent jury;

c. A declaration that Parliament building is a part of India's national political

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heritage; that it is a living symbol of Indian democracy; and that it can only be supplanted by following a transparent process involving the widest stakeholder consultation and global best practices for selecting excellence in design;

d. A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction ordering and directing Respondent No. 1 and No. 2 to disclose and furnish copies to the Petitioners of each and every document, correspondence and any other communication (including electronic records) relating to the conception of the impugned Project and up to the date of the issuance of the impugned Notice inviting Bid NIT No. 04/CPM/RPZ/NIT/2019-20 dated 02.09.2019 issued by Respondent No. 1, CPWD (the Consultation Services NIT), including all documents relating to the preparation of the Consultation Services NIT, which are in the possession and control of Respondent No. 1 and No. 2 or their officers, including any document, correspondence or any other communication exchanged inter se with the other Respondents or any of their officers;"

83. Apart from the above prayers, further prayers to quash and set aside the following are made:

"(i) Notice inviting Bid NIT No. 04/CPM/RPZ/NIT/2019-20 dated 02.09.2019, issued by Respondent No. 1, the Central Public Works Department;

(ii) The award of the consultancy bid to Respondent No. 9, HCP Design, Planning and Management Pvt. Ltd., dated 18.10.2019;

(iii) The Notice inviting pre-qualification bids, NIT No. 01/CE/PCWZ/CPWD/2020-21, dated July 2020, for the Construction of New Parliament Building at Plot No. 118 Parliament House Estate, New Delhi, released by Respondent No. 1 in July 2020.

(iv) The approval granted by Respondent No. 3, the Delhi Urban Art Commission in its 1545th meeting dated 01.07.2020 to the "*proposal for New Parliament Building, Plot No. 118, N.A., New Raisina Road, New Delhi*";

(v) The notice inviting objections from the public against the changes proposed to be made to the Master Plan for Delhi 2021/Zonal Development Plan for Zone-D under Section 11-A of the DDA Act, 1957 dated 21.12.2019, issued by Respondent No. 7, Delhi Development Authority;

(vi) The consequent decision dated 10.02.2020 made by DDA approving the change in land use for the aforementioned plot including Plot No. 118 wherein the new Parliament House is proposed to be made;

(vii) Notification dated 20.03.2020 under Section 11-A of the DDA Act, 1957, allowing the change in land use in Central Vista, including the change in land use for the proposed new Parliament building;

(viii) Decision taken by Respondent No. 8, the Central Vista Committee dated 23.04.2020, as reflected in minutes published on 30.04.2020."

84. Appearing for the petitioners, Mr. Shyam Divan, learned senior counsel supported by Ms. Vrinda Bhandari and Mr. Gautam Bhatia, learned counsel, submits that this petition seeks to interrogate the State at a very fundamental level so as to enforce the principle of "Rule of Law" as distinguished from "Rule by Law". Broadly, it is the petitioners' case that the respondents have followed the principle of "Rule by Law" right from the stage of conception of the subject project and have failed to comply with the idea of substantive due process including in obtaining various approvals and clearances for the same. As is manifest from the aforesaid prayer, the petitioners have called upon this Court to issue suitable declarations relating to democratic due process, standards of transparency, public consultation and procedural fairness in a project of this nature and importance.

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85. In addition to grounds already urged with respect to common prayers in previous petitions, the primary submission of the petitioners herein is that any decision to change or renovate the Parliament building ought to be preceded by widest public consultation as it is an essential feature of democratic due process. The petitioners contend that a project of this nature should be backed by a legislation and even if the same is not made, the executive Government is bound to work under the contours of a limited Government ensuring minimum standards of stakeholder consultation, transparency, fair competition, adequate participation time and excellence in design. Reliance has been placed upon *State of Madhya Pradesh* v. *Thakur Bharat Singh*[71] to contend that there are well recognised constitutional limitations on the Government of the day. The manner of consultation, as envisaged by the petitioners in writ petition and rejoinder to consolidated reply, involves two elements-consultation with expert agencies and consultation with common public.

86. The argument regarding lack of expert consultation states that the respondents failed to consult Heritage Conservation Committee[72] which is an expert body in matters involving heritage structures and ought to have been consulted right from the stage of conception of the project. It is contended that even before the design is freezed, the project proponent was obliged to consult HCC. For, as it would be of no use to consult it after the procedure is complete and development work is about to commence. It is submitted that the respondents have violated their obligation to protect and conserve the heritage as per globally accepted international principles. It is submitted that principles of adaptive re-use and minimal impact must be adhered to and any operation of restoration or modification ought to be considered as a special operation to be compulsorily preceded by a detailed archaeological and historical study. It is added that non-adherence to due procedure in the present case is also violative of Article 49 which, being a Directive Principle, is meant to be fundamental in the governance of the country. Similarly, consultation with other bodies such as DUAC and CVC was not only inadequate and arbitrary but also delayed as it ought to have been done at the plan conception stage itself. It is urged that the tender document called upon the consultant to make a new Master Plan for Central Vista without undertaking any assessment by expert bodies such as HCC or CVC. It is further contended that CPWD ought to have conducted a physical audit of heritage structures and called for views of special committee of Parliament. To buttress this submission, it is further submitted in written submissions that post 2015, no Parliamentary Committee has had examined the prospects of repairing the existing structure or the need for transformation of the entire Central Vista.

87. The petitioners invited our attention to the Parliament Buildings (Restoration and Renewal) Act, 2019 passed by UK Parliament to contend that this comprehensive legislation reflects the best practices adopted by other democracies while undertaking projects of this nature.

88. Assailing the decision of DUAC, the petitioners have argued that the Commission acted in a manner contrary to its statutory scheme as per Memorandum No. 1(2)/82-DUAC dated 7.7.2005 which enjoins it with the duty of preservation. As a statutory body, the petitioners submit, the Commission ought to have considered the impact of this project on heritage by conducting a thorough study and it failed to fulfil its mandate by not doing so. This mandate is borne from Section 11 of the Delhi Urban Art Commission Act, 1973[73] which enjoins the Commission with a duty to advise the Government and lay down guidelines for the local bodies. The petitioners submit that this duty to advise must continue at all stages of the process including the pre-tender stage.

89. While taking exception to the No Objection granted by CVC, the petitioners' stand is similar to that taken in W.P. (C) 638/2020 as has been set out hitherto. Hence, the same is not reiterated for brevity. The primary submission pertains to non-

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application of mind, absence of reasons, mechanical approval and abdication of real duty envisaged for CVC.

90. In addition to arguments set forth in previous petitions regarding need for empirical data, the petitioners herein have placed reliance upon *K.S. Puttaswamy (Retired) (II)* v. *Union of India*[74] and *Internet and Mobile Association of India* v. *Reserve Bank of India*[75] in the written submissions to reiterate the need for proper/empirical independent studies before taking actions in larger public interest. Reference has been made to *Internet and Mobile Association*[76] to support the view that empirical data is essential to understand the degree of harm and a decision based on lack of proper studies must fail the test of proportionality. The requirement of conducting proper scientific studies is also borne from Article 9 and 10 of Venice Charter for the Conservation and Restoration of Monuments and Sites, 1964.

91. Advancing the argument regarding direct public consultation, the petitioners have stated that the concept of participatory democracy demands that a project of this nature must involve the common public as they are the real stakeholders of national heritage and must be consulted at every stage of the project including prior to drawing outline of the project, releasing consultancy tender, modifying the Master Plan and finalisation of the design and making changes therein. Reliance has been placed upon *Hanuman Laxman Aroskar*[77] and clause 1.3 of Annexure-II of UBBL to contend that the mandate of law requires inviting suggestions from public and consideration thereof by the expert bodies before granting any permission. To buttress this submission, Mr. Divan has contended that the nature of Indian democracy envisages public participation at the most fundamental level of decision making. Placing reliance upon *Cellular Operators Association of India* v. *Telecom Regulatory Authority of India*[78], it is submitted that CPWD ought to have followed a three-step process including - stakeholder consultation, inviting submissions from stakeholders, full documentation of all decisions supported with reasons. Further reliance has been placed upon *K.S. Puttaswamy (I)* v. *Union of India*[79] to contend that akin to privacy, democracy is also a travelling right which travels across all tenets and all stages of the project.

92. The written submissions of petitioners state that right to public participation and consultation is a pre-requisite for consequential state action and it flows from 19 (1)(a) of the Constitution. It is submitted that this requirement is born out of reasonableness and State is under a constitutional duty to take affirmative measures to ensure maximum participation. It is urged that what extent of participation may be reasonable in a given case may be determined on a case-to-case basis keeping in mind certain parameters including - scope and public importance of State action, urgency involved, availability of forums to engage with public, efficacy of public participation etc.

93. The petitioners, in written submissions, have supported the idea of wide public participation by drawing strength from comparative constitutional position on the subject-matter in other jurisdictions. Reliance has been placed upon *Doctors for Life International* v. *Speaker of the National Assembly*[80], delivered by the Constitutional Court of South Africa, wherein an express provision providing for public consultation was considered to be a practical and symbolic part of the democratic process. While describing the nature and scope of such right, the petitioners adopt observations from para 98 of the judgment wherein indirect participation through elected representatives and direct participation by public are both recognized as essential tenets of democracy. Additionally, the petitioners also submit that in *Doctors for Life International*[81], the right to political participation is recognized even beyond the express provision by referring to various international and regional human rights instruments.

94. Mr. Divan, in order to advance the submission on public participation, placed

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further reliance upon the decision of Court of Appeal, Kenya in *Kiambu County Government* v. *Robert N. Gakuru*[82] wherein public participation was envisaged both quantitatively and qualitatively. While enunciating the concept of participatory democracy, the Court in *Kiambu County*[83] further observed that arms-length democracy is not participatory democracy.

95. The petitioners, in Rejoinder to Third Consolidated Reply filed by the respondents, submit that public participation is premised on the principle of democratic due process which requires the fulfilment of at least six basic parameters:

(i) decision based upon extensive debate and discussion;

(ii) Robust statutory framework laying out specific obligations of different bodies involved in the process;

(iii) Budgetary control through Parliament;

(iv) Public portal for continuous exchange with public and stakeholders;

(v) No substantial alteration of heritage;

(vi) Disclosure and transparency.

96. To conclude, the petitioners have submitted a set of principles which can be termed as essential features of "consultation" in any such process and we reproduce the same for clarity of thought and better consideration of the case thus:

"(a) There are two sets of parties involved—

(1) the proposer, upon whom a duty to consult has been cast - in this case, the State, acting through the Respondents; and

(2) the stakeholder, who has a claim to be consulted and whose input is sought - in this case, the entire citizenry of India, represented non-exclusively through the Writ Petitioners.

(b) There must be a 'meeting of minds' between the proposer and the stakeholder;

(c) The precursors for an effective 'meeting of minds' are that the stakeholder must be : (1) provided all relevant materials available to the proposer, and (2) given sufficient time to prepare its response;

(d) The parties must 'deliberate' upon the subject matter, such that there is full and meaningful communication of each party's proposals and counter-proposals, and the parties 'make their respective points of view known to the others' and 'discuss and examine the relative merits of their views'; and

(e) While a consensus is not necessary, the minimum preference is for there to be a 'satisfactory solution' for all concerned. It is submitted that the Central Vista Project has failed to meet these requirements."

97. The petitioners, in written submissions, have adopted a ground similar to that taken in T.C. (C) 230/2020 to contend that availability of information is essential for public consultation. Mr. Divan has submitted that the opaque manner in which various steps of this project have proceeded has jeopardized the citizens' right to know, which is considered to be fundamental under Article 19(1)(a) of the Constitution as per *Justice K.S. Puttaswamy (I)*[84] and *State of U.P.* v. *Raj Narain*[85] as well as under the broad spirit of the Constitution. Further reliance has been placed upon *Reliance Petrochemicals Ltd.* v. *Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd.*[86] to contend that right to know is also traceable from Article 21. It is urged that any modification/alteration/renovation with respect to structures like Parliament that reflect living heritage of the country must be undertaken in a manner wherein the voice of common public is recognised. To buttress this submission, it is argued that unless public is made aware of Government actions, it would not be in a position to question such actions and democratically participate in the decision-making process.

98. Regarding Respondent No. 9 (Consultant) as well, the petitioners submit that it is an agent of the State and is duty bound to adopt practices and procedures akin to

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the State including public consultation with respect to design, architecture, heritage impact etc.

99. In order to assail Consultation Services NIT, the petitioners contend that it undermined the principles of fair competition and prevented international firms from applying. The fact that six bidders applied for the tender demonstrates unfairness of the process. It is urged that an Open Design Competition ought to have been organized by the project proponent as it is a standard practice across the world. As per global standards, the petitioners have submitted, such competitions entail three basic norms - a two-part open competition, competition to be judged by jury (with citizen participation), encouragement of widest participation. Various domestic examples were also cited - including of National War Memorial and Indira Gandhi National Center for Arts - to demonstrate how an open design competition is the standard norm.

100. The petitioners contend that Consultation Services NIT was issued in violation of existing heritage conservation regulations as it called for redevelopment of entire area including demolition and construction of buildings which is violative of clause 7.26, UBBL 2016 which specifies that no changes other than prolonging the life of the heritage structures are permissible. The argument is on similar lines with those taken already in W.P. (C) Nos. 638/2020 and 845/2020 and is not being elaborated.

101. The petitioners have further submitted that no estimated cost of project was provided in the tender document which is not only arbitrary but also violative of Rule 182 of General Finance Rules, 2017 which envisages for an estimation of reasonable expenditure. It is submitted that consultation NIT sought to employ a Quality and Cost Based Selection (QCBS) system while at the same time, inviting bids on a cost percentage basis which effectively made it impossible to rank different bids in a fair and non-discriminatory manner. The provision regarding percentage-based fee has also been alleged to be contrary to clause 3.4.2 of Manual of Procurement of Consultancy & Services (Ministry of Finance) which discourages percentage-based fee as it lacks incentive for economic design.

102. Advancing the ground of public trust adopted in previous petitions, in this petition as well, Mr. Divan has stoutly contended that the respondents have compromised with the doctrine of public trust while proceeding with this project. Placing reliance upon *M.C. Mehta* v. *Kamal Nath*[87], it is submitted that a transient Government holds the resources in trust for the public and they can only be utilised for the benefit of public. It is further submitted that under American law *(Illinois Central Railroad Co.* v. *People of the State of Illinois*[88]) as well, the public trust doctrine extends to properties which are of "special consequence" and extending the same logic, it is urged that Central Vista is of special consequence for the nation, thereby calling for a high threshold of due process. To further the argument of suppression of public trust, it is urged that the bid document reveals that the decision of constructing a new Parliament building or to renovate the existing building was left to be decided by the private consultant and entrusting a private consultant with a fundamental decision of this nature does not fall in sync with the principles of public trust.

103. In addition to cases noted above, the petitioners have placed reliance upon *I.R. Coelho (Dead) by LRs* v. *State of T.N.*[89], *Government (NCT of Delhi)* v. *Union of India*[90], *Lok Prahari Through its General Secretary* v. *State of Uttar Pradesh*[91], *Rajeev Mankotia* v. *Secretary to the President of India*[92], *Sushanta Tagore* v. *Union of India*[93], *K. Guruprasad Rao* v. *State of Karnataka*[94], *Manohar Joshi* v. *State of Maharashtra*[95], *Public Interest Foundation* v. *Union of India*[96], *Brajendra Singh Yambem* v. *Union of India*[97], *Hindustan Construction Company Limited* v. *Union of India*[98], *State of Punjab* v. *Khan Chand*[99], *Shayara Bano* v. *Union of India*[100], *Natural Resources Allocation*, In re, Special Reference No. 1 of 2012[101], *Manoj Narula* v. *Union of India*[102], *Global Energy Limited* v. *Central Electricity Regulatory Commission*[103], *Sakal Papers (P) Ltd.* v. *Union*

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of India[104], *Bennett Coleman & Co.* v. *Union of India*[105], *Union of India* v. *Motion Picture Association*[106], *Life Insurance Corporation of India* v. *Prof. Manubhai D. Shah*[107], *Secretary, Ministry of Information & Broadcasting, Govt. of India* v. *Cricket Association of Bengal*[108], *Chandramouleshwar Prasad* v. *Patna High Court*[109], *Orissa Mining Corporation Limited* v. *Ministry of Environment & Forests*[110], *Democratic Alliance* v. *Masondo NO*[111], *Matatiele Municipality* v. *President of the Republic of South Africa*[112], *South African Veterinary Association* v. *Speaker of the National Assembly*[113], *Law Society Case of Kenya* v. *Attorney General*[114], *Archaeological Survey of India* v. *Narender Anand*[115], *Nagar Nigam, Meerut* v. *Al Faheem Meat Exports Pvt. Ltd.*[116], *Dutta Associates Pvt. Ltd.* v. *Indo Merchantiles Pvt. Ltd.*[117], *Meerut Development Authority* v. *Association of Management Studies*[118], *Manohar Lal Sharma* v. *Principal Secretary*[119], *Radha Krishna Agarwal* v. *State of Bihar*[120], *Uttar Pradesh Avas Evam Vikas Parishad* v. *Om Prakash Sharma*[121], *Akhil Bhartiya Upbhokta Congress* v. *State of Madhya Pradesh*[122], *Harminder Singh Arora* v. *Union of India*[123], *Jagdish Mandal* v. *State of Orissa*[124] and *Ramana Dayaram Shetty* v. *International Airport Authority of India*[125].

104. The respondents have filed elaborate written submissions to respond to petitioners' arguments on the concept of democracy, as it exists in India and democratic due process as envisaged under the Constitution. It is contended that the manner of public participation in India is through the representative mode, as we have adopted the representative model of governance. It is submitted that the public elects its representatives and the Council of Ministers are collectively responsible to the Parliament. To buttress this argument, the written submissions state that a necessary element of democratic process is that directly elected persons represent true will of the people and they must take decisions that affect the people.

105. The respondents have contended that the principle of Rule of Law, as envisaged in India, requires due adherence to existing statutory and constitutional principles. To include imaginary steps in the process of decision making by democratically elected representatives would be antithetical to the Rule of Law. It is urged in written submissions that the nature of participatory process proposed by the petitioners is akin to a referendum. Such process is not envisaged under our Constitution.

106. To demonstrate ample consultation within Lok Sabha Secretariat, the respondents have placed a short affidavit on General Purpose Committee[126] which states that the idea of GPC, originally constituted for the first time on 26.11.1954, was to enable the Presiding Officer/Speaker to take into confidence all members of the House irrespective of party lines while considering matters relating to the affairs of the House. Learned Solicitor general has further submitted that the need for this project was expressed by the then Speaker of Lok Sabha in writing vide letter dated 9.12.2015. In 2019, another letter was addressed by the present Speaker to the Prime Minister. Furthermore, separate presentations were conducted by the officials of the concerned departments before Speaker of Lok Sabha and Chairman of Rajya Sabha i.e., Vice-President of India in order to apprise them about the project. It is submitted in the affidavit that GPC for 17th Lok Sabha was constituted on 21.11.2019 and present composition of the said Committee has representation from the following national political parties; whose members were elected representatives in the Parliament:

- Bhartiya Janata Party (BJP)
- Dravida Munnetra Kazhagam (DMK)
- All India Trinamool Congress (AITC)
- Indian National Congress (INC)
- Shiv Sena (SS)
- Biju Janata Dal (BJD)
- Bahujan Samaj Party (BSP)

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- Lok Jan Shakti Party (LJSP)
- Revolutionary Socialist Party (RSP)
- Telangana Rashtra Samiti (TRS)
- Yuvajana Sramika Rythu Congress Party (YSR Congress Party)
- Janata Dal (United) (JDU)
- Nationalist Congress Party (NCP)
- Samajwadi Party (SP)

107. It is submitted that a detailed presentation was made before GPC on 19.3.2020. The meeting was attended by Members of Parliament being representatives of prominent national political parties having presence in the Lok Sabha, one Special Invitee, six Secretariat members, Secretary and Joint Secretary of MoHUA, Dr. Bimal Patel, Director, HCP Designs, and was chaired by the Speaker of Lok Sabha (Chairperson of GPC). The aforesaid persons were present during the presentation regarding the new Parliament Building project. Furthermore, the budgetary considerations were placed before the relevant committee comprising of members across party lines and no objections is placed on record. Therefore, it would be wrong to allege that Parliament was kept in the dark regarding the project.

108. Responding to the contention that a legislation ought to have been passed for this purpose, the respondents have submitted that there was no constitutional requirement to adopt the legislative route as construction projects can be carried out in discharge of executive functions.

109. The respondents have specifically addressed in the written submissions that extensive reliance on foreign decisions may not be useful in the Indian context. In any case, that cannot be made the basis to answer the matters in issue. It is urged that the precedents relied upon by the petitioners had dealt with express statutory provisions for public participation, as applicable in the concerned country, and judicial opinion was rendered in that specific context. Besides, these precedents deal with prior public participation in legislative action. That is entirely different than extending similar public participation in the matter of executive and administrative functions such as planning and development of a national project, in absence of any statutory requirement in that regard.

110. As regards approval by DUAC, the respondents, in consolidated reply, have submitted that every local body in Delhi is required to procure approval by DUAC, which is a statutory body meant to advise and guide the Government on matters submitted to it. It is submitted that as per Section 11 of the DUAC Act, the proposal must be submitted for scrutiny by DUAC in respect of any project of building operations or engineering operations or any development proposal. It is stated that considering different stages for different components of the project, DUAC approval as regards the Parliament project has been obtained whereas the approval for rest of central vista precincts shall be taken as and when the development activity thereat is proposed in future. As regards application of mind, it is stated that the proposal was first considered by the committee in its 1542nd meeting dated 5.6.2020 wherein it was deferred due to insufficient information as regards vehicular parking plan and landscape plan. Thereafter, a revised proposal was placed before the committee in its 1545th meeting dated 1.7.2020 wherein it had been approved. It is further submitted that the minutes of the committee reveal that all representations concerning heritage, parking, landscape etc. were placed before the committee and duly considered by it while granting approval. To buttress this submission, it is urged that the minutes were ratified by the committee in its 1547th meeting on 10.7.2020 and no amendments were suggested by any member at the time of such ratification.

111. As regards the preservation of heritage structures and permission of HCC, in addition to grounds already urged above, the respondents submit that no heritage

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structure is being affected in the entire project. In the written submissions, it is stated that heritage conservation does not prohibit improving the heritage structures by taking necessary action for increasing their life. The genesis of this argument could be understood by reproducing the following extract form para 150 of the written submissions:

> "150. …The present project represents not a radical break from the past so as to lean on the future, rather entails a judicious policy attempt to conserve the delicate heritage and historical value of the area whilst allowing room for growth and development for future generations. …."

112. It is further submitted that as per relevant laws, permission would be required only for retrofitting of existing Parliament building and no such prior permission is needed for the construction of new building in the neighbouring independent plot, without affecting the existing heritage Parliament building. Reliance has been placed upon Annexure-II of UBBL to show that regulations on development/redevelopment are only for listed buildings and even for such buildings, no such approval from HCC is needed at the planning stage. All such approvals are required at the development stage only. To buttress this submission, it is urged that the mandate of HCC is limited to buildings only and it does not concern the areas adjacent to such buildings. As far as area is concerned, DUAC is empowered to consider such changes and grant approval and accordingly, it has already granted its approval, as aforesaid.

113. Repelling the challenge to Consultation Services NIT on the ground of limited competition, it is submitted that both national and international design firms were invited to participate in the process and widest choice was given to applicants to encourage participation. It is urged that the requirement of prior experience of Government work was consciously provided for to ensure that the firm is capable of working in the administrative framework of Government. The respondents have also contended that even if any irregularity could be pointed out in the tender process, none of the participants raised any grievance as regards the same and the petitioners have no locus to escalate it at this stage by way of a public interest litigation.

114. On the alleged irregularities in percentage-based fee mechanism, it is submitted that the apprehension regarding percentage-based fee for consultancy services is not sustainable as the consultancy fee was consciously pegged by the Government vide corrigendum dated 23.9.2019 and thus, there was no incentive left for the consultant to escalate the cost of the project.

115. Addressing the contention of heightened judicial review in this case, the respondents, in addition to grounds already urged in T.C. (C) 229/2020, have submitted that the subject project involves a set of policy decisions, namely - construction of new Parliament, location of proposed structure, common Central Secretariat, treating them as mutually independent projects and to achieve these objectives without impinging upon heritage. It is urged that the scope of judicial review must be limited to the examination of violation of statutory and constitutional principles and theoretical and academic questions need not be entertained or invoked for striking down policy decisions otherwise in compliance with the statutory provisions and mandate of the Constitution. The respondents, in their written submissions, have placed reliance upon Justice K.S. Puttaswamy (II)[127] to contend that the expression "*procedure established by law*" connotes a fair and reasonable procedure and it cannot be equated with the due process clause, as understood and applied in the American constitutional scheme. Reliance has been placed upon *Sunil Batra* v. *Delhi Administration*[128] and *Rajbala* v. *State of Haryana*[129] to contend that this Court has expressly rejected the existence of substantive due process under the Constitution. To buttress this submission, it is submitted that judicial review in India, in context of Article 13, is to be understood in reference to actual violation of any of the provisions

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of Part III of the Constitution.

116. Learned Solicitor General has submitted that the entire case of the petitioners merely presents an alternative and to choose between available alternatives is not within the domain of judicial review. It is urged that when appeal is made to the Court on flimsy and abstract grounds which are incapable of any precise definition, the Court must be cautious and must interpret in line with the language of the Constitution. Reliance has been placed upon *Keshavan Madhava Menon* v. *State of Bombay*[130] to advance this proposition. It is also submitted that if procedure has been complied with substantially and in a broad sense and application of mind is duly revealed, then no minute enquiry is called for on the basis of exposition in *Lafarge Umiam Mining*[131].

117. Addressing the contention regarding public trust, the respondents categorically submit that they are principally in agreement with the notion that a Government ought to act in accordance with public trust. However, this doctrine does not prohibit the Government from utilising the resources held in public trust for the advancement of public interest itself.

118. Responding to the contention that respondents compromised with public trust by entrusting the decision of new construction/renovation to the consultant, it is submitted that the task of making a Master Plan or of deciding whether or not a new building is required was never entrusted to the consultant and it was a conscious decision taken by the Government after consultation with all relevant entities. The Consultation NIT merely called upon the prospective bidders to prepare a vision document which could be used to understand the vision of the bidders regarding the project and scrutinize their applications on that basis and therefore, it cannot be said that Government abdicated its duty. The consultant was merely to advise whether renovation would suffice or a new structure would be imminent and final decision regarding all aspects of the project rested with the Government.

119. To support their position, the respondents have placed reliance upon *Narmada Bachao Andolan* v. *Union of India*[132], *Shimnit Utsch India Private Limited* v. *West Bengal Transport Infrastructure Development Corporation Limited*[133], *State of Madhya Pradesh* v. *Narmada Bachao Andolan*[134], *Directorate of Film Festivals* v. *Gaurav Ashwin Jain*[135], *State of Kerala* v. *Joseph Antony*[136], *G. Sundarrajan* v. *Union of India*[137], *University of Mysore* v. *C.D. Govinda Rao*[138], *Tata Iron & Steel Co. Ltd.* v. *Union of India*[139], *Federation of Railway Officers Association* v. *Union of India*[140], *Avishek Goenka* v. *Union of India*[141], *Dental Council of India* v. *Subharti K.K.B. Charitable Trust*[142], *Basavaiah (Dr.)* v. *Dr. H.L. Ramesh*[143], *K.T. Plantation Private Limited* v. *State of Karntaka*[144], *Rohit Dhupar* v. *Lt. Governor*[145], *Cynamide India*[146], *Canara Bank* v. *V.K. Awasthy*[147], *Haryana Financial Corporation* v. *Kailash Chandra Ahuja*[148], *Punjab National Bank* v. *Manjeet Singh*[149], *Karnataka State Road Transport Corporation* v. *S.G. Kotturappa*[150], *Viveka Nand Sethi* v. *Chairman, J&K Bank Ltd.*[151], *Ranjan Kumar Mitra* v. *Andrew Yule & Co. Ltd.*[152], *Jagjit Singh* v. *State of Haryana*[153], *Chairman, Board of Mining Examination and Chief Inspector of Mines* v. *Ramjee*[154], *Sohan Lal Gupta (Dead) through LRs.* v. *Asha Devi Gupta*[155], *Major G.S. Sodhi* v. *Union of India*[156], *Bhim Sen* v. *State of Punjab*[157], *Barium Chemicals Ltd.* v. *Company Law Board*[158], *Rohtas Industries* v. *S.D. Agarwal*[159], *M. Jhangir Bhatusha* v. *Union of India*[160], *Haryana Financial Corporation* v. *Jagdamba Oil Mills*[161], *Puranlal Lakhanpal* v. *President of India*[162], *Union of India* v. *E.G. Nambudiri*[163], *Maharashtra State Board*[164], *Mahabir Jute Mills Ltd., Gorakhpore* v. *Shibban Lal Saxena*[165], *Sarat Kumar Dash* v. *Biswajit Patnaik*[166], *Dr. Ashwani Kumar* v. *Union of India*[167], *R.K. Garg* v. *Union of India*[168], *Premium Granites* v. *State of T.N.*[169], *Delhi Science Forum* v. *Union of India*[170], *BALCO Employees' Union (Regd.)* v. *Union of India*[171], *State of Madhya Pradesh* v. *Narmada Bachao Andolan*[172], *Natural Resources Allocation*[173], *G.B. Mahajan* v. *Jalgaon Municipal Council*[174], *Meerut Development Authority*[175], *Indira Nehru Gandhi* v. *Raj Narain*[176], *State of Karnataka* v. *Union of India*[177], *Kuldip Nayar* v. *Union of India*[178], *Ashoka*

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Kumar Thakur v. *Union of India*[179], *Supreme Court Advocates-on-Record Association* v. *Union of India*[180], *Council of Civil Service Unions* v. *Minister for the Civil Service*[181], *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation*[182], *Indian Railway Construction Company Ltd.* v. *Ajay Kumar*[183], *R* v. *Secretary of State for the Home Department, Ex Parte Daly*[184], *Regina (Mahmood)* v. *Secretary of State for the Home Department*[185], *Huang* v. *Secretary of State for the Home Department*[186], *Asia Foundation & Construction Ltd.* v. *Trafalgar House Construction (I) Ltd.*[187], *Reliance Airport Developers (P) Ltd.* v. *Airports Authority of India*[188], *Himachal Pradesh Housing and Urban Development Authority* v. *Universal Estate*[189], *Villianur Iyarkkai Padukappu Maiyam* v. *Union of India*[190], *Centre for Public Interest Litigation* v. *Union of India*[191], *Jagdish Mandal*[192], *Sterlite Industries (India) Limited* v. *Union of India*[193], *Municipal Corporation, Ujjain* v. *BVG India Limited*[194], *Lafarge Umiam Mining*[195], *N.D. Jayal* v. *Union of India*[196], *Alaknanda Hydropower Company*[197], *Lithoferro* v. *Ministry of Environment and Forests*[198], *Lochner* v. *New York*[199], *New State Ice Co.* v. *Liebmann*[200], *West Coast Hotel Co.* v. *Parrish*[201], *United States* v. *Carolene Products Co.*[202], *American Federation of Labor Et. Al.* v. *American Sash & Door Co.*[203], *Ferguson, Attorney General of Kansas, Et. Al.* v. *Skrupa*[204], *Kharak Singh* v. *State of U.P.*[205], *Satwant Singh Sawhney* v. *D. Ramarathnam, Assistant Passport Officer, New Delhi*[206], *Wolf* v. *Colorado*[207], *Rustom Cavasjee Cooper* v. *Union of India*[208], *Maneka Gandhi* v. *Union of India*[209], *Bachan Singh* v. *State of Punjab*[210], *State of A.P.* v. *McDowell & Company*[211], *Mohd. Arif alias Ashfaq* v. *Registrar, Supreme Court of India*[212], *Shayara Bano*[213], *K.S. Puttaswamy (I)*[214], *Swiss Ribbons Private Limited* v. *Union of India*[215], *Kesavananda Bharati Sripadagalvaru* v. *State of Kerala*[216], *Peerless General Finance and Investment Co. Limited* v. *Reserve Bank of India*[217] and *Daroga Singh* v. *B.K. Pandey*[218].

120. Appearing for Respondent No. 9 (Consultant), Mr. Harish Salve, learned senior counsel stoutly contends that allegations of bias and favouritism have been made by the petitioners which colourises this challenge as one based on malice in fact. That allegation cannot proceed further in absence of the person against whom such case of bias is pleaded, by name. It is submitted that the virtue of participatory democracy is laudable but the extent and nature of participation cannot be enforced through the medium of judicial review. Mr. Salve argues that participatory democracy is a two-tier process of which a major element is Parliamentary law making which is done through the representative mode in India and not by a referendum. It is submitted that the nature of participation envisaged in India requires participation without causing hindrance in the system. It is for the Government to decide who is to be heard, for instance, in EC issues, only local affected people are meant to be heard.

121. It is further urged that even arguably, mere absence of sufficient participation would not be capable of being termed as Wednesbury unreasonableness so as to quash the whole process. Further, the argument of participatory democracy in respect of important decisions to be taken by the Government such as in respect of construction of a new Parliament building, if accepted, would be forcing the judiciary to define the type of Government decisions where such procedure need to be followed by applying the same logic. That will be groping in the dark and by no standards a judicial function. In that, same logic may then be invoked to compel the Government of the day to undertake public participation before going for a war on the fronts due to aggression by the neighbouring country, which is more important than a decision to construct a new Parliament building.

122. Mr. Salve submits that the scope of judicial review should be focussed on two enquiries only - first, whether there is any illegality or infraction of any statutory mandate and second, whether there is any procedural unfairness which can be checked by judicially manageable standards. As regards the lack of information in public domain, it is submitted that it is one thing to place information in public

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domain, but it does not mean that mere absence of information would render the decision as vitiated.

123. To buttress his submissions, Mr. Salve placed reliance upon *Aruna Roy*[219].

W.P.(C) No. 922/2020

124. On 17.10.2017, the MoHUA, while acting under Section-11A of 1957 Act, had issued notification S.O. 3348 (E) whereby Chapter-17 (clause 8(2)) of Master Plan "Permission of Use Premises in Use Zones" was modified to permit the usage of land allocated for Public/Semi Public (PSP) usage for the purpose of Government offices. The said notification is assailed by the petitioners herein with the following prayer:

> "i. Issue an appropriate writ, order or direction calling for records and for quashing the Notification S.O. 3348 (E) dated 17.10.2017, promulgated by Respondent No. 1 being *ultra vires* the power under the Delhi Development Authority Act of 1957, and in violation of Article 14 and 21 of Constitution of India;"

125. In addition to grounds urged in T.C. (C) 229/2020, it is submitted that the said notification violates the tenets of Wednesbury Principle of Reasonableness and can be assailed on the three grounds of - illegality, irrationality and procedural impropriety. The petitioners submit that the notification was the result of a colourable exercise of power and no such power vested with the respondents so as to permit the usage of land for uncontemplated purposes.

126. To support their case, the petitioners have relied upon *Syed Hasan Rasul Numa* v. *Union of India*[220], *Mackinonn Mackenzie & Company Limited* v. *Mackinnon Mackenzie Employees Union*[221], *Babu Verghese* v. *Bar Council of Kerala*[222], *State of Uttar Pradesh* v. *Singhara Singh*[223], *Kedar Nath Yadav* v. *State of West Bengal*[224], *Khub Chand* v. *State of Rajasthan*[225], *S. Rama Rao* v. *Jawaharlal Nehru Technological University, Hyderabad*[226], *Aircel Cellular Ltd.* v. *Union of India*[227] and *Legg* v. *Inner London Education Authority*[228].

W.P. (C) No. 1041/2020

127. This petition seeks to challenge various approvals including award of tender dated 2.9.2019, EC dated 17.6.2020 and No Objection by CVC dated 30.4.2020. The prayer reads thus:

> "i. Issue a writ in the nature of order and/or direction(s) calling for the records of the various approvals/decisions granted/taken to redevelop Central Vista including the Parliament such as the tender awarded pursuant to the Notice dated 02.09.2019 NIT No. 04/CPM/RPZ/NIT/2019-20, Environmental Clearance dated 17.06.2020 in relation to the Parliament, the Central Vista Committee "No objection" dated 30.04.2020, and after reviewing the same to quash and set aside the said approvals/decisions."

128. The grounds adopted by the petitioner herein are similar to those adopted by the petitioners in W.P. (C) No. 853/2020 and W.P. (C) No. 638/2020 and we do not intend to dilate on the same for brevity.

CONSIDERATION

RULE OF LAW

129. After ruminating on the blistering and exquisite arguments of the learned counsel for the parties, we find that the same are proffered on the hypothesis of governance by Rule of Law with specific emphasis on the high constitutional tenets and values of democratic polity, as adopted in India, and the principle of constitutionalism. All other grounds, relating to alleged violations of statutory and municipal laws, flow from the petitioners' understanding of the aforesaid fundamental principles and thus, we begin our discussion by examining this fundamental premise so as to understand to what extent, if at all, and in what manner policy/administrative decision-making can be overseen in judicially manageable standards in the light of

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such principles.

130. To consider the matters in issue, we deem it apposite to traverse through some illuminating discourse of founding fathers of our country. On 9.12.1946, when the Constituent Assembly embarked upon the journey to create the most fundamental instrument of future governance of the country, it had two concepts in mind - democracy and Rule of Law. The reason for this pin-pointed emphasis reflects aptly from the words of Sir S. Radhakrishnan, who rose to speak up as the first speaker after election of Permanent Chairman on 11.12.1946. He said:

> "…We have to remember with gratitude all those great souls who worked and suffered for the freedom of this country, for the dawn of this day. Thousands died, more thousands suffered privation, imprisonment, and exile, and it is their suffering that has cemented and built up this great edifice …[229]"

131. The fact that millions of Indians had struggled incessantly to breathe in a democratic polity which treated them not as mere subjects but as cardinal constituents on which the whole edifice of the nation stands, was the primary reason that our Constitution makers wanted an environment where law operates equally upon one and all, where Rule of Law trumps over even the slightest notion of rule by whims, where the equation between state and citizens is not marked by imbalance and where law, as it exists, governs all legal relationships.

132. When an effort is made to decipher the understanding of members as regards the concept of governance by Rule of Law during the Constituent Assembly Debates, an interesting pattern emerges and we must delineate it henceforth. During the discussion on Part-III, Mr. Naziruddin Ahmad emphatically stated that democracy means rule of law. He elaborated his viewpoint by stating thus:

> "We are erecting one of the finest democracies in the world. But the implication of democracy must be squarely faced. **Democracy means a rule of law as opposed to a rule of force.** In autocracies and in Totalitarian States the law is not supreme. **But democracy means supremacy of the law where no one, be he the highest individual, is above the law.** We should therefore all respect law and should be law-abiding citizens in order to inculcate that sense of law-abidingness wherein lies the safety of democracy. We should ourselves follow democratic principles, democratic methods and respect the law.[230]"
>
> (emphasis supplied)

133. On another occasion, Dr. P.K. Sen exposited that Rule of Law is meant to save the Government from disruptive tendencies. He said:

> "…The rule of law is, in my humble judgment, the rule that should save the Government from all manner of disruptive tendencies…[231]"

134. While speaking on the administrative setup that the British left for us, Dr. P. Subbarayan observed Rule of Law to be a concept on which future of the country depends. He said:

> "The second point I wish to touch upon is the rule of law which I think is a peculiar part of the English legal system. If there is anything which I would like to cling to in the future of this country, it is this rule of law…[232]"

135. On 17.9.1949, Mr. K.M. Munshi rose to speak on the evolution of Supreme Court of India for the independent India and expressed an earnest hope premised on nothing but the ideal of Rule of Law. He said:

> "Sir, the British Parliament and the Privy, Council are the two great institutions which the Anglo-Saxon race has given to mankind. The Privy Council during the last few centuries has not only laid down law, but coordinated the concept of rights and obligations throughout all the Dominions and Colonies in the British Commonwealth. So far as India is concerned, the role of the Privy Council has been one of the most important. **It has been a very great unifying force and for us**

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Indians it became the instrument and embodiment of the rule of law, a concept on which alone we have based the democratic institutions which we have set up in our Constitution.[233]"

(emphasis supplied)

136. He added:

"Sir, on the 26th of January our Supreme Court will come into existence and it will join the family of Supreme Courts of the democratic world of which the Privy Council is the oldest and perhaps the greatest. I can only hope and trust that though we part with the Privy Council our Supreme Court will carry forward the traditions of the Privy Council, traditions which involve that judicial detachment, that unflinching integrity, **that subordination of everything to the rule of law and that conscientious regard for the rights and for justice not only between subjects and subjects but also between the State and the subjects.**"

(emphasis supplied)

137. What emerges from this discourse is that the makers of the Constitution envisaged a legal and political system which would be subservient to Rule of Law.

138. Rule of Law *inter alia* posits four universal tenets. It is a system of laws, institutions, norms and community commitment that envisages - Accountability of Government and private actors alike under the law; The laws must be just, clear, publicized and stable and applied evenly, protect fundamental rights and human rights; Open Government - meaning thereby the processes by which the laws are enacted, administered and enforced are accessible, fair and efficient; and Accessible justice - to include timely delivery of justice by competent, ethical, and independent representations and neutrals who are accessible, have adequate resources and mirror the traits of the communities they serve[234].

139. Theoretically, the concept of Rule of Law was understood and applied to advance even autocratic regime. Louis XIV, Napolean and Hitler had Governments based on nothing but Rule of Law. But with the evolution of political discourse, the expanse of Rule of Law traversed from an autocratic to a democratic one. It underwent a transformation from being a concept used by autocrats to control their subjects to a living idea of governance wherein citizens and state interact with each other on a level playing field.

140. For the purposes of present examination, we need to provide life and meaning to this idea as a concept capable of judicial application with manageable standards and not just as an idea of political rhetoric. The difference between these two approaches is real and reflects in the introductory words of T.R.S. Allan in "***Constitutional Justice***" where he notes thus:

"Its rhetorical power in aid of an argument about governmental authority, individual liberty, or constitutional legitimacy, makes the rule of law an object of understandable suspicion as much as one of reverence : **its uncertain and contested content allows it to be too readily invoked in support of opinions whose cogency might not withstand careful scrutiny**...[235]"

(emphasis supplied)

141. The principle of Rule of Law coalesces two words - *rule* and *law*. The two words are not only connected with each other but also control the meanings attributable to each other. "Rule" refers to the idea of governing the state and depending on the nature of model adopted in a country, such rule can be effected in multiple ways. When we gave to ourselves the Constitution, we categorically envisioned such rule to be "DEMOCRATIC" i.e., Government of *the people*, by *the people* and for *the people.* The word "law", now, lays down the precise contours of mode of ruling in India. Article

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13 provides an inclusive definition of "law" as understood in India and reads thus:

> "13. Laws inconsistent with or in derogation of the fundamental rights.—
> (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
> (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.
> (3) In this article, unless the context otherwise requires,—
> (a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;
> (b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.
> (4) Nothing in this article shall apply to any amendment of this Constitution made under article 368."

142. The first written safeguard, mentioned in Article 13, categorically prohibits the making of any law which contravenes the fundamental rights. The legislation passed in Parliament is not included in this definition but is covered separately in Articles 245 and 246. What is clear is that the structure of rule in India is duly codified by the makers. It primarily means a democratic rule based upon law as envisaged in the Constitution.

143. With passage of time, the word "law" has also been circumscribed by a plethora of safeguards, written and unwritten, thereby widening the array of rights which were not articulated by the founding fathers. For, the most remarkable features of a living and dynamic Constitution are its ability to grow and stay effective with the growth of socio-economic structures and vicissitudes. To elaborate further, the characteristics of reasonableness, non-arbitrariness and fairness have time and again shown direction to law and thus, to rule by such law.

144. The above discussion is instructive on at least three counts-*first*, Rule of Law requires law in existence; *second*, such law must qualify as law within the meaning of the Constitution and must satisfy the standards laid therein and third, legally applicable meaning of Rule of Law in India can be best understood as a democratic rule within the four corners of the Constitution, as originally envisaged and as is interpreted from time to time. The existence of democracy *per se* does not guarantee adherence to Rule of Law, but abidance of Rule of Law by one and all is the hallmark of a real thriving democracy.

145. The fact that all power flows from law and must be exercised in accordance with such law is easy to be theorized in a constitutional discourse, but difficult to be sustained in the aftermath of ever-expanding potpourri of the law itself. It is for this very reason the statement - 'Rule of Law' must encompass a dynamic concept albeit rooted in four corners of the Constitution. It provides a constant trigger to any state-citizen intercourse and calls upon this Court to strike a just balance between two entities, both equally bound by the same principle of superiority of law. A just and time-tested methodology to strike this balance lies in the end product of furthering the avowed goal of a democracy premised upon Rule of Law and not dragging it backwards.

146. The principle of Rule of Law runs as a common thread through the substantive as well as procedural laws. A democratic polity requires all organs of the state to

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attach equal importance to substance of law as well as to the procedure delineated to perform such substantive functions. That must be the constant endeavour to touch both ends as well as means.

DEMOCRATIC DUE PROCESS AND JUDICIAL REVIEW

147. The petitioners have called upon this Court to apply the scale of "democratic due process" for examining the validity of procedures adopted by the respondents at various stages. Before expressing our opinion on whether the concept of Rule of Law in India envisions something akin to a democratic due process or not, we must make an endeavour to understand the meaning of this phrase.

148. The phrase "democratic due process" is not privy to any reasonably acceptable definition and thus, it is relevant to understand it in substance. Rodney A. Smolla, in his seminal work "*Democratic Due Process : Administrative Procedure after Bishop* v. *Wood*"[236] explained this phrase in the form of a negative concept i.e., one that diminishes constitutional protections rather than enhancing them, as opposed to the petitioners' understanding. He couched it as a phenomenon wherein:

> "… the responsibility for defining, shaping and limiting administrative due process has been taken from the courts and given to the legislatures. By placing this responsibility in the hands of elected representatives, the Supreme Court has in effect created a "democratic due process clause….."

149. The background story leading upto the enunciation of this phrase can be understood by making a reference to *Bishop* v. *Wood*[237] wherein the US Supreme Court upheld the termination of Carl Bishop, a policeman in North Carolina, who was terminated without a prior hearing. The Court affirmed the decision on the ground that the applicable statutory employment laws did not mandate any prior hearing and the same could not be compelled by the invocation of the due process clause. Upon further examination, one would note that this decision was not an isolated one, rather, it was a culmination of prior decisions on terminations from public employment, as noted by Smolla in his work. Beginning from *Arnett, Director, Office of Economic Opportunity, Et. Al.* v. *Kennedy Et. Al.*[238] and *Board of Regents of State Colleges Et. Al.* v. *Roth*[239], the US Supreme Court made a conscious departure from the due process clause, as enshrined in 14th amendment of the US Constitution. The basis of this departure is reflected in the opinion of Justice Stewart, writing for the Court in *Roth*[240] wherein he observed that there are some processes in the Government wherein due process clause may not be imported. He relied upon the language of fourteenth amendment which lays down that no state shall "deprive any person of life, liberty, or property, without due process of law" to hold that due process clause would become operative only when a person's life, liberty or property is at stake. The underlying idea behind shifting the judicial eye from blanket application of due process to enforcement of specific processes under statutes is that, due process must be restricted to matters involving actual deprivation of life, liberty or property. Smolla, in the aforesaid work, notes that all administrative due process decisions were primarily marked by two characteristics:

> "….. first, a property interest is not an abstract expectation of a benefit, but a legitimately claimed entitlement; and second, in determining whether an asserted interest is a mere expectation or a matured entitlement, the Court will look not to the Constitution, but to an independent source of law, such as a state statute[241]."

150. This conscious judicial departure from blanket application of due process clause is understood in the American constitutional discourse as evolution of due process into democratic due process - as it restates giving effect to the mandate of statutes duly enacted by elected representatives.

151. Though the petitioners have used this phrase in a manner which is purportedly opposite to the way democratic due process is perceived in U.S., the

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above discussion is relevant to understand the thrust of the petitioners on acceptance of a procedural standard akin to "due process" in administrative matters. The above discussion irresistibly offers the following takeaways—

first, the requirement of due process is envisaged in matters involving deprivation of individual rights;

second, before asserting deprivation of a right, the claimant has to discharge the onus of proving the entitlement to such right;

third, such deprivation needs to be demonstrably proved in order to remedy it;

fourth, even in U.S., there is judicial acceptance of the tenet that the requirement of due process cannot be enforced in all Government processes;

fifth, there can be situations when existence of duly enacted and valid statutes may preclude the application of the principle of due process in adjudication.

152. Reverting to the Indian context, the inroad of due process clause in the Indian Constitution has a unique history of its own. When Pandit Shri Thakur Das Bhargava, in the Constituent Assembly, proposed an amendment to Article 15 (now Article 21) to substitute the words "*procedure established by law*" with "*due process of law*[242]", he was supported by many other stalwarts of the Assembly who, in one voice, considered that inclusion of the later expression would be much more effective in safeguarding personal liberty of persons. The proposed change, however, did not appeal to others including Dr. B.R. Ambedkar and Mr. Alladi Krishnaswami Ayyar. Drawing upon the origin and dubious acceptability of the doctrine in U.S., Ayyar said:

> "… Today, according to Professor Willis, the expression means, what the Supreme Court says what it means in any particular case. It is just possible, some ardent democrats may have a greater faith in the judiciary than in the conscious will expressed through the enactment of a popular legislature. **Three gentlemen or five gentlemen, sitting as a court of law, and stating what exactly is due process according to them in any particular case, after listening to long discourses and arguments of briefed counsel on either side, may appeal to certain democrats more than the expressed wishes of the legislature or the action of an executive responsible to the legislature**. In the development of the doctrine of 'due process', the United States Supreme Court has not adopted a consistent view at all and the decisions are conflicting. One decision very often reversed another decision. **I would challenge any member of the Bar with a deep knowledge of the cases in the United States Supreme Court to say that there is anything like uniformity in regard to the interpretation of 'due process'**. One has only to take the index in the Law Reports Annotated Edition for fifteen years and compare the decisions of one year with the decisions of another year and he will come to the conclusion that it has no definite import. **It all depended upon the particular Judges that presided on the occasion**. Justice Holmes took a view favourable to social control. There were other Judges of a Tory complexion who took a strong view in favour of individual liberty and private property…[243]"
>
> (emphasis supplied)

153. Before the amendment was negatived by voting, Dr. B.R. Ambedkar rose to sum up the controversy in the Assembly and noted as to how the distinction between "due process" and "procedure established by law" is essentially one of the extents and scope of judicial review that the Courts must be empowered to exercise in independent India. He said:

> "… The question now raised by the introduction of the phrase 'due process' is whether the judiciary should be given the additional power to question the laws made by the State on the ground that they violate certain fundamental principles.[244]"

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154. He went on to elaborate and, in a way, to reinforce the express negation of due process clause which was to follow his speech and said:

> "The question of "due process" raises, in my judgment, the question of the relationship between the legislature and the judiciary. In a federal constitution, it is always open to the judiciary to decide whether any particular law passed by the legislature is ultra vires or intra vires in reference to the powers of legislation which are granted by the Constitution to the particular legislature. If the law made by a particular legislature exceeds the authority of the power given to it by the Constitution, such law would be ultra vires and invalid. That is the normal thing that happens in all federal constitutions. Every law in a federal constitution, whether made by the Parliament at the Centre or made by the legislature of a State, is always subject to examination by the judiciary from the point of view of the authority of the legislature making the law. **The 'due process' clause, in my judgment, would give the judiciary the power to question the law made by the legislature on another ground**. **That ground would be whether that law is in keeping with certain fundamental principles relating to the rights of the individual**..."
>
> (emphasis supplied)

155. The above discussion vividly expounds that the makers of the Constitution expressly rejected the incorporation of a due process clause.

156. The express deletion of "due process" from the draft Constitution and replacement thereof by "procedure established by law" as noted by Jurist Granville Austin, is adverted to by this Court in *K.S. Puttaswamy (I)*[245] thus:

> "**276.** The third major change which the Constituent Assembly made was that the phrase "due process of law" was deleted from the text of the draft Constitution. Following B.N. Rau's meeting with Justice Frankfurter, the Drafting Committee deleted the phrase "due process of law" and replaced it with "procedure established by law". *Granville Austin* refers to the interaction between Frankfurter and B.N. Rau and the reason for the deletion [Granville Austin, *The Indian Constitution : Cornerstone of a Nation* (Oxford University Press, 1966) at p. 103.]:
>
> > "Soon after, Rau began his trip to the United States, Canada, Eire, and England to talk with justices, constitutionalists, and statesmen about the framing of the Constitution. In the United States he met Supreme Court Justice Felix Frankfurter, who told him that he considered the power of judicial review implied in the due process clause both undemocratic—because a few Judges could veto legislation enacted by the representatives of a nation—and burdensome to the Judiciary. Frankfurter had been strongly influenced by the Harvard Law School's great constitutional lawyer, James Bradley Thayer, who also feared that too great a reliance on due process as a protection against legislative oversight or misbehaviour might weaken the democratic process. Thayer's views had impressed Rau even before he met Frankfurter. In his *Constitutional Precedents*, Rau had pointed out that Thayer and others had 'drawn attention to the dangers of attempting to find in the Supreme Court—instead of in the lessons of experience—a safeguard against the mistakes of the representatives of people'."

157. Further, the whole idea of due process was meant to safeguard personal liberties of individuals by ensuring that the process to be used for taking away such liberty complies with certain standards. It was never meant to be used to circumscribe or to question the administrative decisions by applying higher bench mark than the statutory defined/articulated obligations. This is not to say that administrative action was left unchecked by the Constitution. The Constitution provides for a scheme wherein "law" is made subject to all the provisions of Part-III depending on the nature of action and nature of consequence on the rights. The test of *nature of action* and

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nature of consequence is essential to determine the *nature of remedy* that the Constitution can offer. For this purpose, a line must be drawn between executive action which has a direct bearing on personal liberty of individual; and executive action which comprises of ministerial/administrative functions with no direct impact on individual liberties.

158. The distinction is relevant to highlight a crucial aspect of the growth of constitutional law in India. As regards individual liberties, we have witnessed a wholehearted and rather expansive approach by the Court. One would note that it was during the review of an administrative action with bearing on personal liberty that this Court mandated the procedure in "procedure established by law" to be just, fair and non-arbitrary, as distinguished from fanciful, arbitrary and oppressive in *Maneka Gandhi*[246]. With unwinding of time, dimensions came to be added to increase the fairness of procedure so as to make it more exacting for the executive to put curbs on personal liberty of an individual. In *Mithu* v. *State of Punjab*[247] and *Sunil Batra*[248], standards of fairness and non-arbitrariness were held to inform the word "law" as well in the phrase "procedure established by law" because individual liberties were at stake. In *Sunil Batra*[249], Desai J. noted in para 228 thus:

> "228. … The word "Law" in the expression "procedure established by law" in Article 21 has been interpreted to mean in *Maneka Gandhi case* that the law must be right, just and fair, and not arbitrary, fanciful or oppressive. Otherwise it would be no procedure at all and the requirement of Article 21 would no be satisfied. If it is arbitrary it would be violative of Article 14…"

159. However, in *Rajbala* v. *State of Haryana*[250], this Court succinctly observed about the non-existence of the doctrine of substantive due process in the Indian Constitution thus:

> "**64.** From the above extract from *McDowell & Co. case* [*State of A.P.* v. *McDowell & Co.*, (1996) 3 SCC 709, para 43] it is clear that courts in this country do not undertake the task of declaring a piece of legislation unconstitutional on the ground that the legislation is "arbitrary" since such an exercise implies a value judgment and courts do not examine the wisdom of legislative choices unless the legislation is otherwise violative of some specific provision of the Constitution. **To undertake such an examination would amount to virtually importing the doctrine of "substantive due process" employed by the American Supreme Court at an earlier point of time while examining the constitutionality of Indian legislation. As pointed out in the above extract, even in United States the doctrine is currently of doubtful legitimacy. This Court long back in *A.S. Krishna* v. *State of Madras*, AIR 1957 SC 297 declared that the doctrine of due process has no application under the Indian Constitution** [*Municipal Committee, Amritsar* v. *State of Punjab*, (1969) 1 SCC 475]. As pointed out by Frankfurter, J., arbitrariness became a mantra.
>
> (emphasis supplied)

160. In *K.S. Puttaswamy (I)*[251], the Court was more categorical in noting the dichotomy between these two expressions and observed thus:

> "**290. The constitutional history surrounding the drafting of Article 21 contains an abundant reflection of a deliberate and studied decision of the Constituent Assembly to delete the expression "due process of law" from the draft Constitution when the Constitution was adopted.** In the Constituent Assembly, the Drafting Committee chaired by Dr. B.R. Ambedkar had included the phrase but it came to be deleted after a careful evaluation of the vagaries of the decision-making process in the US involving interpretation of the due process clause. Significantly, present to the mind of the Framers of our Constitution was the invalidation of social welfare legislation in the US on the anvil of the due process

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Clause on the ground that it violated the liberty of contract of men, women and children to offer themselves for work in a free market for labour. This model evidently did not appeal to those who opposed the incorporation of a similar phrase into the Indian Constitution ….”

(emphasis supplied)

161. It further noted the dangers of construing substantive due process as a rigid principle of constitutional interpretation in India and vagaries associated with it thus:

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

(emphasis supplied)

162. Therefore, the trajectory of our jurisprudence in review of matters involving personal liberties has been one of strict approaches. It is, however, a misnomer to propagate that we have gradually transformed from chosen “procedure established by law” into once consciously rejected “due process of law”. Indisputably, we are not dealing with a matter of personal liberty *per se*. The petitioners, despite their best of efforts, have not been able to demonstrate a case of deprivation of life or personal liberty of any individual on account of any of the impugned executive action. Whereas, it is essential for the petitioners to demonstrate a real and direct impact or restriction on their core fundamental rights due to the impugned executive action to invoke the due process argument. A cause-effect relationship is essential. Only then the burden would shift on the State to either show the absence of restrictions or justification of restrictions within the permissible exceptions of Part-III.

163. Concededly, we are sitting in review of the process of an administrative or so to say quasi legislative action which falls in the latter category, namely, with no direct impact on personal liberties as such. A judicial review is an exercise in reference to some existing rights and the reliefs and remedies prayed for. The Rule of Law, as accepted and settled in India, with regard to judicial interference in administrative and executive or policy matters is no more *res integra*. The duty enjoined upon the judiciary is to ensure checks and balances; and to place itself between the Government and citizens when they come face to face in a Court of law. It is meant to act as an equaliser and ensure that the flow of decisions from executive to citizens is overseen through the prism of well-established principles, as and when called upon to do so. The judicial organ is not meant to impose the citizens' or even its own version of good governance upon the Government in the name of Rule of Law in exercise of its power of judicial review.

164. In *Chief Constable of the North Wales Police* v. *Evans*[252], Lord Brightman very succinctly observed thus:

“Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.”

165. Benjamin Cardozo, in his seminal work “***The Nature of the Judicial Process***”

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elaborated as to how a Judge derives his strength from hallowed principles thus:

> "... The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life." Wide enough in all conscience is the field of discretion that remains...[253]."

166. In *Reliance Airport Developers*[254], this Court discussed the scope of judicial review in administrative action and noted thus:

> "**56.** One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. **It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary** (see *State of U.P.* v. *Renusagar Power Co.* [(1988) 4 SCC 59 : (1988) 4 SCC 59 : AIR 1988 SC 1737]). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor de Smith in his classic work *Judicial Review of Administrative Action*, 4th Edn. at pp. 285-87 states the legal position in his own terse language that the relevant principles formulated by the courts may be broadly summarised as follows. **The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner**. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. ..."
>
> (emphasis supplied)

167. The Court then summed up the principles into two broad categories thus:

> "**56.** ...These several principles can conveniently be grouped in two main categories : (*i*) failure to exercise a discretion, and (*ii*) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires."

168. The Court further added the grounds of non-application of mind to relevant factors and non-existence of facts and noted thus:

> "**57**. ...If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated ..."

169. In *Council of Civil Service Unions*[255], Lord Diplock attempted to sum up the grounds of judicial review of administrative action under three broad heads and noted thus:

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> "… Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. **The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.** That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice."
>
> (emphasis supplied)

170. Apart from noting that judicial review is warranted only in cases of illegality, irrationality and procedural impropriety, Lord Diplock prophetically noted that the categories of review could not be exhaustive in a society where administrative action is making inroads in all spheres of human activity and that "proportionality" could emerge as yet another ground of review in future.

171. This Court succinctly summed up the position in *Tata Cellular* v. *Union of India*[256] and observed thus:

> "**94.** The principles deducible from the above are:
>
> (1) The modern trend points to judicial restraint in administrative action.
>
> **(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.**
>
> (3) **The court does not have the expertise to correct the administrative decision**. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
>
> …"
>
> (emphasis supplied)

172. We must note that the scope, operation and extent of judicial review is dependent upon the nature of subject matter that a Court is dealing with. A constitutional Court cannot devise a uniform standard of interference particularly when nature of administrative action may involve expediency (in relative terms) in execution depending on the subject matter. In *Council of Civil Service Unions*[257], Lord Scarman observed thus:

> "… Just as ancient restrictions in the law relating to the prerogative writs and orders have not prevented the courts from extending the requirement of natural justice, namely the duty to act fairly, so that it is required of a purely administrative act, so also has the modern law, a vivid sketch of which my noble and learned friend Lord Diplock has included in his speech, extended the range of judicial review in respect of the exercise of prerogative power. **Today, therefore, the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject matter.**"
>
> (emphasis supplied)

173. Graham Aldus and John Alder in their book "Applications for Judicial Review, Law and Practice", as relied upon by the Court in *Reliance Airport Developers*[258], have identified two categories of national security and foreign affairs to demonstrate how judicial review can be restricted/moulded in light of the subject matter before the Court in following words:

> "**57.** …..**There is a general presumption against ousting the jurisdiction of the courts, so that statutory provisions which purport to exclude judicial**

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> **review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the Government's claim is bona fide**. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in *Council of Civil Service Unions* v. *Minister for the Civil Service* [[1985] A.C. 374 : [1984] 3 WLR 1174 (HL) : (1984) 3 All ER 935] this is doubtful. Lords Diplock, Scaman and Roskili appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject-matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest."
>
> (emphasis supplied)

174. It is noteworthy that even in *R* v. *Secretary of State for the Home Department, Ex Parte Daly*[259], a case wherein Lord Cooke criticised the Wednesbury decision by stating that it heavily restricts the power of judicial review of a court by targeting only those actions which can be termed as extremely unreasonable, he made it a point to categorically note that calling for a detailed judicial review can never be understood to translate it into a merit review of the administrative action. He observed thus:

> "[28] The differences in approach between the traditional grounds of review and the proportionality approach may therefore sometimes yield different results. **It is therefore important that cases involving convention rights must be analysed in the correct way. This does not mean that there has been a shift to merits review. On the contrary, as Professor Jowell has pointed out, the respective roles of judges and administrators are fundamentally distinct and will remain so (see [2000] PL 671 at 681).** To this extent the general tenor of the observations in *R (Mahmood)* v. *Secretary of State for the Home Dept*, [2001] 1 WLR 840 are correct. And Laws LJ (at 847 (para 18)) rightly emphasised in *Mahmood's case* '**that the intensity of review in a public law case will depend on the subject matter in hand'. That is so even in cases involving Convention rights. In law context is everything.**"
>
> (emphasis supplied)

175. We may usefully borrow the dictum of Frankfuter, J. in *Morey, Auditor of Public Accounts of Illinois Et. Al.* v. *Doud Et. Al.*[260], noted with approval by this Court in *R.K. Garg*[261] - "that the Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events - self limitation can be seen to be the path of judicial wisdom and institutional prestige and stability." In *Premium Granites*[262], even this Court restated that it is not the domain of the Courts to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities, as the case may be. The Court may interfere only when the case involves infringement of fundamental rights guaranteed by the Constitution or any other statutory right.

176. *A priori*, the prescription of procedure to be deployed by the administration in

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taking their decisions in the ordinary course of their business is not for the Court to decide. More particularly, in cases where decisions are taken in tune with a duly enacted statutory scheme, it is not open to a Court of law to disregard the same on the specious reasoning that the governing statutory scheme is deficient for the nature of or significance of the project. Even if a Court finds it debatable, that can be no ground for the Court to quash an action taken strictly in accord with the prescribed procedure.

177. Indubitably, Rule of Law is based on the concept of "expository jurisprudence" which requires exposition of contents of actual legal system as it exists[263]. To say that in a given case the statutory scheme laying down the procedure is not good enough and a new standard of democratic due process ought to have been deployed by the executive would be a classic way of abjuring the principle of Rule of Law which requires consistency and uniformity of approach by one and all and in particular, by a judicial forum. In matters which may appear to be wholesome for accomplishing ideals of administrative efficiency including democratisation of the decision-making process, even if a Court is of the opinion that a different procedure (in addition to the statutory scheme) would be more just and appropriate, it may not attempt to implement its ideal by way of judicial review, much less to strike it down[264]. In a judicial review, we do not sit in a discussion on idealism in Government actions, rather, our domain is to examine its legality on the touchstone of constitutional values and the procedure prescribed by law in that regard.

178. The import of an expression like democratic due process in an administrative matter is fraught with at least three serious consequences - *first*, in a manner of speaking non-enforcement of a statutory process without any declaration of its invalidity; *second*, import of a process which is not "due" as per the prescribed law but is deemed to be due as per the subjective notions of the Court (or if we may borrow the exposition of Mr. Alladi Krishnaswami Ayyar - three gentlemen or five gentlemen sitting as a Court deciding or accepting an argument against the expressed wishes of the legislature or the action of an executive responsible to the legislature); and *third*, withdrawing the task of governance from the democratically elected representatives including the executive thereby creating an illusory bar on the exercise of their power to function freely despite being within the four corners of the law.

179. We must note that neither the principle of Rule of Law nor of judicial review envisage such a scenario. Justice J.C. Shah, in his published lecture on "***The Rule of Law and the Indian Constitution***" rightly noted that:

> "The Rule of Law in a democratic society may, in its ultimate analysis, be reduced to the following broad propositions:—
>
> (1) Without regard to the content of the law, **all power in the State is derived from and must be exercised in accordance with the law**.
>
> (2) The law itself is based on the supreme value of the human personality. For that purpose (a) protection of the individual's rights is secured through the medium of an impartial judicial authority. By judicial it is not meant that the authority must have the paraphernalia of a trial in a civil court. An administrative tribunal infused with the requisite qualities for competently performing its functions consistently with the basic norms of the judicial process, acts judicially. When the tribunal departs from the basic norms of the judicial process or is swayed by irrelevant considerations or objects, the Rule of Law is violated; (b) the law must be designed to ensure for the individual equality of status and opportunity, in fields social, political and economic, and provide environment for development of his special forte and his capacities.[265]"
>
> (emphasis supplied)

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180. Thus, to add subjective notions of the Court in statutory processes would be antithetical to the fundamental tenet of Rule of Law which requires "all power in the State" to be exercised in accordance with the procedure established by law.

181. Another dimension to be kept in mind is the factum of subjective satisfaction of the executive. The law regarding the involvement of constitutional Courts in public interest in cases involving subjective satisfaction is well settled. The interference of Courts is neither warranted to look into the quality of material relied upon by the Government to approach a decision nor to adjudicate upon the sufficiency of such material. These matters are of a subjective character and if legislature permits subjective powers on one organ of the State, the other (in the name of judicial review) is not expected to substitute its own subjective opinion in its place. The sole concern of the Court is to look at the relevancy of the material relied upon to take a decision in order to see that the decision is not devoid of application of mind. It is based on the basic idea that the structure of a subjective decision stands on the foundation of objective reasons. The Court may interfere when a decision is devoid of any reason or affected by malafides or when the decision is reached in the aftermath of statutory violations. In *Barium Chemicals*[266], the Court while dealing with an order in the exercise of statutory powers, adverted to the exposition of Privy Council and observed thus:

> "(60) …Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation …"

182. This decision delineates the contours of judicial review, such as:

(i) The formation of the opinion/satisfaction by the Government was a purely subjective process and such an opinion could not be challenged on the ground of propriety, reasonableness or sufficiency;

(ii) However, the subjective opinion/satisfaction of the Government is required to be arrived at based on facts/circumstances, which the Government must be able to objectively establish to exist;

(iii) Mala fides, fraud or corruption would vitiate the formation of the opinion/satisfaction; and

(iv) If the opinion/satisfaction was reached in good faith it was immune from judicial review unless:

(a) it was shown that the objective facts/circumstances did not exist; or

(b) it was impossible for anyone to form the opinion/satisfaction based on those facts/circumstances,

for then the Government's opinion could be challenged on the ground of non-application of mind or perversity or on the ground that it was formed on grounds extraneous to the legislation and was beyond the scope of the statute.

183. The aforesaid principles are restated in *Rohtas Industries*[267] wherein this Court noted thus:

> "**11.** …For the reasons stated earlier we agree with the conclusion reached by Hidayatullah and Shelat, JJ. in Barium Chemicals case that the existence of circumstances suggesting that the company's business was being conducted as laid down in sub-clause(1) or the persons mentioned in sub-clause (2) were guilty of fraud or misfeasance or other misconduct towards the company or towards any of its members is a condition precedent for the Government to form the required

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opinion and if the existence of those conditions is challenged, the courts are entitled to examine whether those circumstances were existing when the order was made. In other words, the existence of the circumstances in question are open to judicial review though the opinion formed by the Government is not amenable to review by the courts. As held earlier the required circumstances did not exist in this case."

(emphasis supplied)

184. Be it noted that the Constitution provides an effective mechanism to review the law itself under which administrative power is being exercised. For, the "law" in the expression "Rule of Law" must be good law within the realm of the Constitution. Arguendo, if the law itself is challenged and consequently struck down, there would be no occasion for the Court to enforce such law and in the absence of law, the Court might be in a position to venture into areas of arbitrariness, justness and equity, so as to do complete justice in the cause before it. Such power is well ingrained in Article 142. However, in the absence of any challenge to an existing law enacted by the legislature prescribing the procedure, all actions taken thereunder and in substantial compliance thereof must continue to be valid and the Court would be duty bound to give true effect to it. In the present case, none of the enacted (statutory) procedures is subject matter of assail.

185. In India, what prevails is the "***constitutional due process***" i.e., the process which is due under the constitutional scheme. And what is due, as exposited above, is a principled judicial review wherein a "check" is maintainable without tilting the "balance". For, all organs of the state are constitutionally committed to and beholden by the common goal of giving effect to processes and procedure established by law, ideals, expectations, rights and duties due under the Constitution and no deviation can be permitted therefrom. We must, however, make it clear that we do not mean to signify a conflict between the concept of democratic due process, as envisaged by the petitioners and constitutional due process, as exposited by us.

NEED FOR HEIGHTENED JUDICIAL REVIEW

186. The petitioners have argued at length as to why the present case calls for a heightened judicial review. The underlying idea is not restricted to the aforesaid settled principles of judicial review in administrative decisions. The argument essentially stems from the principle of constitutionalism which informs all spheres of public activity. We are compelled to wonder as to what could be the circumstances, if at all any, wherein the Court not only surpasses the boundaries reserved for its oversight in the Constitution but also provides it an express recognition by acknowledging a heightened review. Would it be justified for the Court to innovate and elevate the standard of review after a decision has already been taken by the executive in accordance with the procedure established by law, in pursuance of a policy? If yes, what would be the basis or benchmark for the Court to identify the subject matters wherein such innovation or elevation is permissible?

187. The petitioners contend that standards may be heightened only for this project which is a *sui generis* one. Even the respondents have at one stage called for a *sui generis* treatment for this project. We must note at the very outset that we are impressed with none. To consider a particular subject matter as *sui generis* in common parlance is one thing, but to accord something with that character in a judicial proceeding is an altogether different thing. Concededly, exposition of any such jurisprudence would be fraught with unforeseen consequences and replete with uncertainties. Whether a particular development project calls for urgency or deserves special treatment or requires maximum attention of the Government or is to be deferred for budgetary reasons or requires authority 'A' to initiate the proposal and not authority 'B', is a matter of policy decision of the executive. Moreover, there is absolutely no legal basis to "heighten" the judicial review by applying yardstick

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beyond the statutory scheme and particularly when the Government has accorded no special status to the project and has gone through the ordinary route of such development projects as per law.

188. In a given project, the Government may well accord a *sui generis* status in its subjective wisdom provided it does not deviate from the prescribed procedural standards. Once the Government decides to construct a new space for its sitting or to construct a highway or water dam or school or university and follows the procedure prescribed under law commensurate with the nature of project, then the Court cannot act as a multiplier of regulations and add its own notion as to what ought to be additional essential procedure for going ahead with a particular project. When a legislature, in its wisdom, decides to enact a legal framework, it is expected to and must be so presumed that it has undertaken a thorough analysis as regards the involvement of stakeholders - experts and non-experts, institutions, procedures, timelines for approval, intra-departmental appeals, inter-department appeals etc. A Court sitting in review does not have this machinery available before it and the Constitution never wanted it to do so. Therefore, when a review is brought before the Court, it cannot choose to adopt a different (or the so-called heightened) approach for reviewing the administrative process involved in reference to a particular project. The role of Court is well defined and it must not leave the administration to grapple with multiplicity of alternate opinions by stepping into the shoes of policymakers.

189. A policy decision goes through multiple stages and factors in diverse indicators including socio-economic and political justice, before its final culmination. As per the nature of the project, the Government executes the project by taking certain steps - legislative, administrative etc. - and it is this which comes under the radar of the Court. The increasing transparency in Government functioning by means of traditional and modern media is reducing the gap between citizens and Government and Government actions are met with a higher level of scrutiny on a real-time basis.

190. In a democracy, the electors repose their faith in the elected Government which is accountable to the legislature and expect it to adopt the best possible course of action in public interest. Thus, an elected Government is the repository of public faith in matters of development. Some section of the public/citizens may have another view point if not complete disagreement with the course of action perceived by the elected Government, but then, the dispensation of judicial review cannot be resorted to by the aggrieved/dissenting section for vindication of their point of view until and unless it is demonstrated that the proposed action is in breach of procedure established by law or in a given case, colourable exercise of powers of the Government. Therefore, it is important for the Courts to remain alive to all the attending circumstances and not interfere merely because another option as in the perception of the aggrieved/dissenting section of public would have been a better option.

191. As noted earlier, the Courts do not sit in appeal over the decisions of the Government to do merit review of the subjective decision as such. In *Natural Resources Allocation*[268], this Court noted that Government decisions concerning public resources have an "intricate economic value" attached with them and to elevate the standard of review on the basis of a subjective understanding of the subject matter being extraordinary would be *dehors* the review jurisdiction. In *Narmada Bachao Andolan* v. *Union of India*[269], this Court observed that:

> "**229.** It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. **Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so**

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undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. **Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time**. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them."

(emphasis supplied)

192. The Government may examine advantages or disadvantages of a policy at its own end, it may or may not achieve the desired objective. The Government is entitled to commit errors or achieve successes in policy matters as long as constitutional principles are not violated in the process. It is not the Court's concern to enquire into the priorities of an elected Government. Judicial review is never meant to venture into the mind of the Government and thereby examine validity of a decision. In *Shimnit Utsch India*[270], this Court, in para 52, observed thus:

"**52.** … **The courts have repeatedly held that the government policy can be changed with changing circumstances and only on the ground of change, such policy will not be vitiated**. The Government has a discretion to adopt a different policy or alter or change its policy calculated to serve public interest and make it more effective. Choice in the balancing of the pros and cons relevant to the change in policy lies with the authority. But like any discretion exercisable by the Government or public authority, change in policy must be in conformity with *Wednesbury* [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, [1948] 1 K.B. 223 : (1947) 2 All ER 680 (CA)] reasonableness and free from arbitrariness, irrationality, bias and malice."

(emphasis supplied)

193. In *State of Madhya Pradesh* v. *Narmada Bachao Andolan*[271], the Court was dealing with an issue of rehabilitation of persons displaced due to the construction of the dam. It went on to observe that judicial interference in a policy matter is circumscribed, in the following words:

"**36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power**. (See *Ram Singh Vijay Pal Singh* v. *State of U.P.* [(2007) 6 SCC 44], *Villianur Iyarkkai Padukappu Maiyam* v. *Union of India* [(2009) 7 SCC 561] and *State of Kerala* v. *Peoples Union for Civil Liberties* [(2009) 8 SCC 46].)

37. Thus, it emerges to be a settled legal proposition that the Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions."

(emphasis supplied)

194. In *Tata Iron & Steel*[272], in paragraph 68, the Court noted that whenever the issues brought before the Court are intertwined with those involving determination of

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policy and a plethora of technical issues, the Courts are very wary and must exercise restraint and not trespass into policy-making. Similarly, in *Narmada Bachao Andolan* v. *Union of India*[273], in paragraph 228, the Court noted that a project may be executed departmentally or by an outside agency as per the choice of the Government, whilst ensuring that it is done according to some procedure or set manner. Further, the Court should be loath to assume that the authorities will not function properly and that the Court should have no role to play. Later in 2007, the Court restated the position in *Directorate of Film Festivals*[274], as follows:

> **16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate**. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review (vide *Asif Hameed* v. *State of J&K* [1989 Supp (2) SCC 364], *Sitaram Sugar Co. Ltd.* v. *Union of India* [(1990) 3 SCC 223], *Khoday Distilleries Ltd.* v. *State of Karnataka* [(1996) 10 SCC 304], *BALCO Employees' Union* v. *Union of India* [(2002) 2 SCC 333], *State of Orissa* v. *Gopinath Dash* [(2005) 13 SCC 495] and *Akhil Bharat Goseva Sangh (3)* v. *State of A.P.* [(2006) 4 SCC 162)].
>
> (emphasis supplied)

195. To sum up the above discussion, it may be noted that judicial review primarily involves a review of State action - legislative, executive, administrative and policy. The primary examination in a review of a legislative action is the existence of power with the legislature to legislate on a particular subject matter. For this purpose, we often resort to doctrines of pith and substance, harmonious construction, territorial nexus etc. Once the existence of power is not in dispute, it is essentially an enquiry under Article 13 of the Constitution which enjoins the State to not violate any of the provisions of Part-III in a law-making function. The review of executive action would depend upon the precise nature of the action. For, the domain of executive is wide and is generally understood to take within its sweep all residuary functions of the State. Thus, the precise scope of review would depend on the decision and the subject matter. For instance, an action taken under a statute must be in accordance with the statute and would be checked on the anvil of *ultra vires* the statutory or constitutional parameters. The enquiry must also ensure that the executive action is within the scope of executive powers earmarked for State Governments and Union Government respectively in the constitutional scheme. The scope of review of a pure administrative action is well settled. Since generally individuals are directly involved in such action, the Court concerns itself with the sacred principles of natural justice - *audi altrem partem*, speaking orders, absence of bias etc. The enquiry is also informed by the Wednesbury principles of unreasonableness. The review of a policy decision entails a limited enquiry. As noted above, second guessing by the Court or substitution of judicial opinion on what would constitute a better policy is strictly excluded from the purview of this enquiry. Under the constitutional scheme, the government/executive is vested with the resources to undertake necessary research, studies, dialogue and expert consultation and accordingly, a pure policy decision is not interfered with in an ordinary manner. The burden is heavy to demonstrate a manifest illegality or arbitrariness or procedural lapses in the culmination of the policy decision. However, the underlying feature of protection of fundamental rights guaranteed by the

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Constitution must inform all enquiries of State action by the constitutional Court.

CONSTITUTIONALISM

196. The principle of constitutionalism has been deployed by the petitioners to justify the alteration of aforesaid standards. The ideal of constitutionalism finds place in almost every constitutional discourse involving the state and the citizen and we need to reflect upon this ideal in the context in which it appears. "Constitutionalism", as an expression of political theory, holds the distinction of receiving diverse meanings and unlike most other concepts, the meanings are fundamentally distinct and inexplicable beyond the specific context in which they are used. The need for understanding this principle in its correct terminology gets multiplied in a country with a written Constitution. What, then, is the role of the principle of constitutionalism for a Court of law performing functions under the umbrella of a written Constitution?

197. A peculiar feature of the usage of this expression in constitutional matters is that one side tries to project it as an independent substantive rule, as opposed to it being a mere force behind the rule, and the other side brushes it down as a redundant theoretical concept. We must note that the true import of constitutionalism cannot be understood by treating it as a standalone concept of judicial application. Jurists across the world have given different meanings to this word. Whereas some have associated it with fundamental concepts of Rule of Law and judicial review as envisaged in the Constitution, others have considered it as a radical idea for transforming the Constitution over and above its true import. For some, judicial supremacy over functioning of executive and legislature is considered as essential to constitutionalism. For others, like Prof. Barendt[275], the ideal of separation of powers is the essence of constitutionalism. Building upon the subjectivity of this concept, Jo Eric Khushal Murkens, in "***The Quest for Constitutionalism in UK Public Law Discourse***" notes that the substantive content of any constitutional discourse is not likely to change due to this principle thus:

> "… Every scholar above is able to convey her message (the substantive concept of the rule of law, the legitimacy of government action, and the core institutional values) without requiring recourse to constitutionalism. **In other words, if constitutionalism were eliminated from constitutional discourses, their substantive content would remain unchanged**.[276]"

(emphasis supplied)

198. Constitutionalism, therefore, is a relative concept which envisages a constitutional order wherein powers and limits on the exercise of those powers are duly acknowledged. It is a tool which is used to reach upto the ultimate goal of constitutionalization of governance and it cannot be deployed to present an alternative model of governance. We must state that it would not only be absurd but also fraught with dangers of overreach and ambiguity if subjective principles of interpretation are applied by detaching them from the textual scheme of the Constitution, particularly when the textual scheme lays down an elaborate structure of administration. For, to do so would be to drag a duly elected Government on the edges as it would be under a constant fear of being adjudged wrong on the basis of undefined principles which appeal to "three gentlemen or five gentlemen sitting as a Court". And what will suffer is public interest in the form of public exchequer including sovereignty of the nation.

199. In this regard, we must recall the enunciation of this Court in *Keshavan Madhava Menon*[277], wherein it is observed that an argument on what is claimed to be the spirit of the Constitution is always attractive, for it has a powerful appeal to sentiments and emotion; but a Court of law has to gather the spirit of the Constitution from the language of the Constitution. For, one may believe or think to be the spirit of the Constitution cannot prevail if the language of the Constitution does not support that view.

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200. To conclude, the principle of constitutionalism is a work in progress which is meant to infuse life and blood into an existing scheme which has stood the test of constitutional validity and not to nudge with the scheme itself. It may only be deployed to evolve minimum standards of procedures prescribed by law. It is not to undermine or supplant the elaborate statutory regulatory schemes.

PARTICIPATORY DEMOCRACY IN INDIA

201. An argument has been advanced as regards the absence of sufficient public participation in the entire process. It stems from the understanding that India is a participatory democracy. Thereby citizens' participation must be provisioned at all stages of decision making. Rarely do we come across instances when the very nature of democracy in a country becomes a subject of debate in an administrative review action. It is, however, important to take this debate to a logical end, as enforceable participatory rights are alleged to flow from the nature of democracy. The question essentially is about the meaning of the phrase "*rule by the people*" as used in understanding the meaning of democracy.

202. Tracing the origin of mode of governance in India, one would invariably note that we have traversed a long journey beginning with the Indian Councils Act, 1861[278]. After the First War of Independence in 1857, Viceroy's Legislative Council was opened up to include "non-official" members for the first time, however, there was no representative character in the members. The limitations of this Council were noted by Mr. S.P. Verma in "***Parliamentary Democracy in India - The Genesis***" and the same is relevant to understand the journey of Parliamentary system in India:

> "…The functions of the Legislative Council at this time were of a very limited nature. 'It would meet only for legislative purposes and its members would have the right to speak only on some definite legislative projects. They would have no right to put questions to the members of the government and demand answers thereto. Nor would they have authority over the finances of the Government'[279]."

203. It was followed by Indian Councils Act, 1892[280] whereby indirect elections were introduced and members of local bodies were empowered to recommend members for the legislature. Mr. K. Raghu Ram Reddy, in "***Roots of Parliamentary System in India***", noted the objects of this Act of which the relevant extract reads thus:

> "… "to widen the basis and expand the functions of the government of India, and to give further opportunities to the non-official and native elements in Indian society to take part in the work of the government.""[281]

204. However, the same was not acceptable to the members of Indian National Congress and this disappointment came out in the words of Sir Chettur Sankaran Nair, a leading jurist and Congress President in 1897 session. He said thus:

> "From our earliest school days the great English writers have been our classics. Englishmen have been our professors in colleges. English history is taught in our schools. We live now the life of the English. To deny us the freedom of the press; **to deny us representative institutions**, England will have to ignore those very principles for which the noblest names in her history toiled and bled.[282]"
>
> (emphasis supplied)

205. A very significant takeaway from the aforesaid observation is that Sir Sankaran propagated what Indian freedom struggle was striving to achieve - *representative institutions*. The slow journey towards a democratic system then led to Indian Councils Act, 1909[283] *(popularly known as Morley-Minto Reforms)* whereby elections were introduced for 32 non-official members out of total 68 members and representative element was introduced. Thereafter, the Government of India Act, 1919[284] (in the aftermath of Montague-Chelmsford Reform) was introduced and this Act opened way for a representative democracy. On 20.8.1917, British Government

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made a declaration stating their policy. It read thus:

> "The policy of His Majestry's Government with which the Government of India are in complete accord, is that of increasing the association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire."

206. The 1919 Act was considered as the threshold point of commencement of a parliamentary culture in India. Mr. Reddy says that it was an important beginning in the "sense of transfer of power to the people". Afterwards, the Government of India Act, 1935[285] was introduced which provided for greater right to vote and provincial autonomy with elected representatives in the provinces. The journey finally culminated in the Constituent Assembly when the members deliberated upon the question of the form of Government to be devised for independent India. The members were certain that a democracy is desirable, however, the exact shape that such democracy would take was not pre-decided, as perceivable from the words of Pandit Jawaharlal Nehru who said thus:

> "Whatever system of government we may establish here must fit in with the temper of our people and be acceptable to them…. We stand for democracy but what form of democracy, what shape it might take is another matter … for this House to determine.[286]"

207. In the Constituent Assembly, when the question of mode of governance came up for deliberation, many ambitious proposals were made by the members to suggest varying democratic structures. Few of such proposals suggested to bring in a clause for "recall" so as to enable the voters to vote out an elected member owing to poor performance. Proposals for a direct democracy were also placed for deliberation so as to establish a Government directly run by the people. The Assembly negatived all such proposals and adopted a representative model of democracy. It is useful to refer to the motion moved by Pandit Jawaharlal Nehru on 21.7.1947 for the election of President. He said thus:

> "… Now Sir, one thing we have to decide at the very beginning is what should be the kind of governmental structure, whether it is one system where there is ministerial responsibility or whether it is the Presidential system as prevails in the United States of America; many members possibly at first sight might object to this indirect election and may prefer an election by adult suffrage. **We have given anxious thought to this matter and we came to the very definite conclusion that it would not be desirable**, first because **we want to emphasize the ministerial character of the Government that power really resided in the Ministry and in the Legislature and not in the President as such**. At the same time we did not want to make the President just a mere figure-head like the French President. We did not give him any real power but we have made his position one of great authority and dignity. You will notice from this draft Constitution that he is also to be Commander-in-Chief of the Defence Forces just as the American President is. Now, therefore, if we had an election by adult franchise and yet did not give him any real powers, it might become slightly anomalous and there might be just extraordinary expense of time and energy and money without any adequate result. **Personally, I am entirely agreeable to the democratic procedure but there is such a thing as too much of a democratic procedure and I greatly fear that if we have a wide scale wasting of the time, we might have no time left for doing anything else except preparing for the elections and having elections.** We have got enough elections for the Constitution. We shall have elections on adult franchise basis for the Federal Legislature. Now if you add to that an enormous Presidential election in which every adult votes in the whole of

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India, that will be a tremendous affair. In fact even financially it will be difficult to carry out and otherwise also it will upset most activities for a great part of the year. ....[287]"

(emphasis supplied)

208. The predicament exposited by him of preparing for the elections and having elections intermittently if not continually is so relevant even after passage of over 73 years.

209. Be that as it may, we must note that our founding fathers were limpid about their vision for the nature of democracy we need to inherit. Further, the members of the Assembly were aware of challenges, particularly administrative challenges, that may fall in the way of efficiency of administration due to "too much of a democratic procedure". Three days before the acceptance of the draft, on 23.11.1949, T.J.M. Wilson expressed a hope for increased public participation in future. He said thus:

"The most elementary requisite of democracy is the right of every citizen to vote and we have provided for it in our Constitution. But even this was questioned by some of our friends on the ground that they are not sufficiently educated to carry on the Government of the country. Their contention is that only intellect is necessary for the Government of the country. But the conditions and also the philosophy have changed. Government also has changed--the Government is not something meta-physical or something mytic. Government has to deal today with the actual conditions of people and the needs of people, whether they are of food and cloth or of health and education and how can anybody else claim to know these needs of people better than the people themselves? Thought is, of course necessary and intellect is really essential; but unless it is united with action, unless it is based upon the experience of the people, it will not achieve much. Therefore, the purpose of adult suffrage, the right of every person to vote is to bridge this gulf between action and thought. **But is this right to vote once in five years enough? The essence of democracy is not so much the existence of what are called political parties, etc., but the essence of democracy is the effective participation of the individual in the actual government of the country. The greater and more effective the participation of the individual in the government, the greater is the democracy, because democracy is still only an ideal which has yet to be reached by humanity. Decentralisation would have done something in that direction, if we had provided for it in our Constitution**.[288]"

(emphasis supplied)

210. Article 40 in Part-IV was then made part of Directive Principles, which reads thus:

"**40. Organisation of village panchayats.**—The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."

211. The above hope for more decentralisation and opening up of democracy was vindicated in 1992 with the introduction of 73rd and 74th amendments in the Constitution which resulted into the inclusion of local self-governance in rural and urban India. This opening up of democracy in India was a step towards enhanced participation. It was noted by this Court in *Bhanumati* v. *State of Uttar Pradesh*[289], wherein it was observed thus:

"**26.** What was in a nebulous state as one of the directive principles under Article 40, through the Seventy-third Constitutional Amendment metamorphosed to a distinct part of constitutional dispensation with detailed provision for functioning of panchayat. **The main purpose behind this is to ensure democratic decentralisation on the Gandhian principle of participatory democracy** so

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that the panchayat may become viable and responsive people's bodies as an institution of governance and thus it may acquire the necessary status and function with dignity by inspiring respect of common man. ….”

(emphasis supplied)

212. Furthermore, the Supreme Court in *K. Krishna Murthy* v. *Union of India (UOI)* [290], while observing on the participation through panchayats, had observed thus:

“**56.** The objectives of democratic decentralisation are not only to bring governance closer to the people, but also to make it more participatory, inclusive and accountable to the weaker sections of society. …”

213. In yet another post-independence judgment, this Court in *Mohinder Singh Gill* v. *Chief Election Commissioner, New Delhi*[291], while noting how the representative model serves as the minimum requirement of a participatory democracy, observed thus:

“24. Democracy is government by the people. It is a continual participative operation, not a cataclysmic, periodic exercise. The little man, in his multitude, marking his vote at the poll does a social audit of his Parliament plus political choice of his proxy. **Although the full flower of participative Government rarely blossoms, the minimum credential of popular government is appeal to the people after every term for a renewal of confidence.** So we have adult franchise and general elections as constitutional compulsions. ‘The right of election is the very essence of the constitution’ (Junius). It needs little argument to hold that the heart of the Parliamentary system is free and fair elections periodically held, based on adult franchise, although social and economic democracy may demand much more.”

(emphasis supplied)

214. In fact, the very basis of inclusion of administrative details within the Constitution, as opposed to leaving them to be determined by ordinary enactments, was to avoid a scenario wherein functioning of the administration is hindered by pressing for undeclared rights and standards. On 4.11.1948, when Dr. B.R. Ambedkar placed the draft Constitution before the Assembly, he spoke in unambiguous terms thus:

“As to the accusation that the Draft Constitution has produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. **Nobody holds any patent rights in the fundamental ideas of a Constitution**. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration. **I agree that administrative details should have no place in the Constitution. I wish very much that the Drafting Committee could see its way to avoid their inclusion in the Constitution. But this is to be said on the necessity which justifies their inclusion.**”

(emphasis supplied)

215. The above discussion has vital takeaways for the purpose of the present controversy. It reveals that a direct democracy was never envisaged by our founding fathers as an ideal model in light of the domestic socio-economic set-up. Right from the days of struggle for freedom to the debates of Constituent Assembly and afterwards in independent India, we have invariably embraced the representative model of democracy wherein political sovereignty vested in the People of India and legal sovereignty vested in the Constitution of India. The rule is by the people through their elected representatives at all levels of the Government - from village panchayats to the Parliament.

216. However, we must note that mere acceptance of a representative model did not seal the fate of the country once and for all. In fact, over a period of time, there

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has been a constant endeavour to encourage wider public participation, wherever possible and required, keeping in the view the efficiency of administration and Rule of Law. That, however, has been done by way of laws enacted by the legislature in that regard[292].

217. The introduction of local self-governance in 1992 could be seen as an acceptance of the above proposition. In the Indian scenario, it would be wholly wrong to say that public participation is limited to exercise of universal suffrage once in five years. Today, Government invites public to participate in a series of administrative processes as per the mandate of enacted laws envisaging public participation in the form of inviting representations against Government proposals. Besides, every citizen is vested with a guaranteed right to approach the constitutional Courts for seeking review of administrative action. We must note that Part III of the Constitution is the pivot around which democracy revolves as it creates an open market for diverse political and social ideas, expression of common interests and political associations. In *King* v. *Attorneys Fidelity Fund Board of Control*[293], the Supreme Court of South Africa noted the facets of public involvement thus:

> "22. … Public involvement might include public participation through the submission of commentary and representations : but that is neither definitive nor exhaustive of its content. The public may become 'involved' in the business of the National Assembly as much by understanding and being informed of what it is doing as by participating directly in those processes. **It is plain that by imposing on Parliament the obligation to facilitate public involvement in its processes, the Constitution sets a base standard, but then leaves Parliament significant leeway in fulfilling it**. …"
>
> (emphasis supplied)

218. Michael Walzer, in ***"Philosophy and Democracy"***, eloquently notes how the process involved in representative decision-making attaches immense moral value to those decisions. He notes thus:

> "For democratic theory, what makes governmental decisions morally binding is process : the people's freely choosing representatives, those representatives' debating and enacting policy and later standing for reelection, and administrators' enforcing that policy.[294]"

219. A holistic understanding of the dispensation envisaged under our Constitution would reveal that we are a representative democracy with strong elements of participatory democracy embedded in it. The element of participation, however, is regulated not only by statutes but also by the Constitution. The Constitution, if it would have envisaged every important decision to be flowing from the public in the manner proposed by the petitioners herein, would have clearly provided for that dispensation. It has not. Understood thus, the Constitution in our system plays twin role - *first*, Constitution as the guardian of fundamental rights and *second*, Constitution as the structure of governance[295].

220. The principle of participatory democracy has two integral elements - *first*, public participation in decision making and *second*, placing information regarding Government actions in public domain. As discussed above, the first element, no matter how desirable, is carefully circumscribed by the state of Rule of Law or procedure established by law, as present, and a fine balance has been struck between need for public participation and effective functioning of administration. The legislature has expressly provided for such public participation and the extent thereof in the governing enactments, referred to earlier[296].

221. The participation itself involves three features - *the stage, the extent* and *the nature of participation*. The extent and quality of permissible participation is dependent upon a multitude of factors including, but not limited to, the stage of

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procedure, nature of subject matter, number of affected persons, local conditions, geography, strategic importance of project, budgetary allocations for the project etc. The subject matter of a development project having no direct bearing on lives and livelihoods cannot be equated with a project which has a direct impact upon their lives and livelihoods.

222. Pertinently, this exercise cannot be undertaken in abstractness merely because participation is one of the facets of a democratic structure. Rather, it involves delicate analysis of a complex web of factors. Whether in a given case personal oral hearing is to be provisioned for or mere representations be invited or public discussion is called for, is a matter for the legislature to make a law in that regard.

223. We may very well have our own notion of participation and it could be radically different from the prescribed one. It may be possible that some people feel unheard in a direct manner, however, a democracy, in an ultimate analysis, is about prevalence of collective wisdom of citizens, which may or may not commend to individual wisdom of few. The sentiment also resonated in the words of Thomas Jefferson when he wrote to John Taylor on 28.5.1816 that "*the mass of the citizens is the safest depository of their own rights*"[297].

224. The citizens are completely free to advocate any notion along the Government policy or the manner of making it in their free exercise of right to speech and expression, but enforcement of such notion cannot be fructified by resorting to judicial review. The idea of public involvement in administrative matters is based upon the stage and extent of representation prescribed by the legislature. No country with a sizeable population like ours can give a promise of direct participation to every individual in the decision-making process (of the Government) in administrative matters unless the law so prescribes.

225. Having said thus, it must be borne in mind that such public participation is not to supplant the discretion of the Government or to retard the development work. It is only for inviting constructive suggestions/objections from all stakeholders for effective implementation of the policy of the Government, to subserve public interest.

226. The Supreme Court in *Janhit Manch* v. *The State of Maharashtra*[298], opined that consultative process is always helpful. However, it went on to caution that the perspective of elected bodies must give way to that of few individuals. The Court observed thus:

> "13. We have to keep in mind the principles of separation of powers. The elected Government of the day, which has the mandate of the people, is to take care of policy matters. There is a democratic structure at different levels, starting from the level of Village Panchayats, Nagar Palikas, Municipal Authorities, Legislative Assemblies and the elected Parliament; each of them has a role to perform. **In aspects, as presented in the instant case, a consultative process is always helpful, and is one which has already been undertaken. The philosophy of Appellant 2 cannot be transmitted as a mandatory policy of the Government, which is what would happen were a mandamus to be issued on the prayers made. Perspective of individuals may vary, but if the elected bodies which have policy formulation powers, is to be superseded by the ideals of each individual, the situation would be chaotic. The policies formulated and the legislations made, unless they fall foul of the Constitution of India, cannot be interfered with, at the behest of the appellants. The appellants have completely missed this point**"
>
> (emphasis supplied)

227. The reliance placed by the petitioners upon *Doctors for Life International*[299] and *Kiambu County*[300] may not be of much relevance in absence of statutory regime in Indian context mandating public participation before formulation of the policy, in the

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light of principles discussed above. Despite the great persuasive value of these decisions, we cannot escape some glaring differences which alter the character of these decisions. In *Doctors for Life International*[301], the Court, in para 75, clearly noted that its opinion is founded upon clear and express statutory provisions mandating the National Council to facilitate public involvement. It observed thus:

> "[75] The provisions of sections 72(1)(a) and 118(1)(a) ("the public involvement provisions") clearly impose a duty on the NCOP and the provincial legislatures to facilitate public involvement in their respective legislative processes. The question is what is the nature and scope of the duty comprehended by these provisions and to what extent is it justiciable."

228. Similar position existed before the Kenyan Court of Appeal in *Kiambu County*[302]. Secondly, the judgment of the Court examines scope of public involvement in legislative processes. In the introductory para, it notes thus:

> "… The first question concerns the nature and the scope of the constitutional obligation of a legislative organ of the state to facilitate public involvement in its legislative processes and those of its committees and the consequences of the failure to comply with that obligation. …"

229. The petitioners have adopted a position that this judgment is not restricted to the express public consultation provision and in respect of legislative processes but it derives strength from international and foreign instruments to which India is also a signatory. However, the Court, in para 95, lays down the correct proposition of law and observed thus:

> "[95] **The precise nature and scope of the international law right to participate in the conduct of public affairs is a matter for individual states to determine through their laws and policies**. …"
>
> (emphasis supplied)

230. In conclusion, it further expounded that international law right to political participation encompasses a "general right to participate" and "specific right to vote". It noted thus:

> "[105] **The international law right to political participation encompasses a general right to participate in the conduct of public affairs and a more specific right to vote and/or be elected into public office.** The general right to participate in the conduct of public affairs includes engaging in public debate and dialogue with elected representatives at public hearings. But that is not all; it includes the duty to facilitate public participation in the conduct of public affairs by ensuring that citizens have the necessary information and effective opportunity to exercise the right to political participation."
>
> (emphasis supplied)

231. As regards the nature of democracy envisaged in South Africa, the Court noted thus:

> "[115] In the overall scheme of our Constitution, the representative and participatory elements of our democracy should not be seen as being in tension with each other. They must be seen as mutually supportive. General elections, the foundation of representative democracy, would be meaningless without massive participation by the voters. The participation by the public on a continuous basis provides vitality to the functioning of representative democracy. It encourages citizens of the country to be actively involved in public affairs, identify themselves with the institutions of government and become familiar with the laws as they are made. It enhances the civic dignity of those who participate by enabling their voices to be heard and taken account of. It promotes a spirit of democratic and pluralistic accommodation calculated to produce laws that are likely to be widely accepted and effective in practice. It strengthens the legitimacy of legislation in the

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eyes of the people. Finally, because of its open and public character it acts as a counterweight to secret lobbying and influence peddling. Participatory democracy is of special importance to those who are relatively disempowered in a country like ours where great disparities of wealth and influence exist.

[116] Therefore our democracy includes as one of its basic and fundamental principles, the principle of participatory democracy. The democratic government that is contemplated is partly representative and partly participatory, is accountable, responsive and transparent and makes provision for public participation in the law-making processes. …"

232. We must note at the very outset, *Doctors for Life International*[303], barring the analysis on express provision on consultation, does not operate in conflict with the views expressed by us in this judgment. It duly recognises that precise contours of participation in the matter of governance are dependent upon local conditions, in particular existence of municipal laws in that regard and the nature of subject matter. Suffice it to note that in the cited decisions referred to above, the Court was not dealing with challenge to administrative processes in relation to a development project. It is justly urged by the respondents that the prosaic, bland, inapplicable metaphysical principles of constitutional theory, imported from foreign jurisdictions, cannot create an extra-constitutional standard of judicial review or to extend involvement of public at every level of governance absent any statutory regime in that regard. Thus, the scope of public involvement in Government processes is a matter dependent on legal framework of a country and the Court should be loath to venture into that area in the guise of eminence of the project under consideration.

233. It was also urged that like the approach adopted in Britain, with regard to upgradation or construction of a new Parliament, the Indian Parliament should enact a special legislation in that regard including to guarantee extensive public participation at all stages. Somewhat similar plea was dealt with in *Dr. Ashwani Kumar*[304], wherein the Court after adverting to the settled legal position including in reference to the principles of separation of powers of the three constituents of the State, negatived the same. We may usefully refer to exposition in paras 26 to 28 of this reported decision, the same reads thus:

"**26.** Legislating or law-making involves a choice to prioritise certain political, moral and social values over the others from a wide range of choices that exist before the legislature. It is a balancing and integrating exercise to give expression/meaning to diverse and alternative values and blend it in a manner that it is representative of several viewpoints so that it garners support from other elected representatives to pass institutional muster and acceptance. Legislation, in the form of an enactment or laws, lays down broad and general principles. It is the source of law which the judges are called upon to apply. Judges, when they apply the law, are constrained by the rules of language and by well identified background presumptions as to the manner in which the legislature intended the law to be read. Application of law by the judges is not synonymous with the enactment of law by the legislature. Judges have the power to spell out how precisely the statute would apply in a particular case. In this manner, they complete the law formulated by the legislature by applying it. This power of interpretation or the power of judicial review is exercised post the enactment of law, which is then made subject matter of interpretation or challenge before the courts.

27. Legislature, as an institution and a wing of the Government, is a microcosm of the bigger social community possessing qualities of a democratic institution in terms of composition, diversity and accountability. Legislature uses in-built procedures carefully designed and adopted to bring a plenitude of representations and resources as they have access to information, skills, expertise and knowledge of

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the people working within the institution and outside in the form of executive. Process and method of legislation and judicial adjudication are entirely distinct. Judicial adjudication involves applying rules of interpretation and law of precedents and notwithstanding deep understanding, knowledge and wisdom of an individual judge or the bench, it cannot be equated with law making in a democratic society by legislators given their wider and broader diverse polity. The Constitution states that legislature is supreme and has a final say in matters of legislation when it reflects on alternatives and choices with inputs from different quarters, with a check in the form of democratic accountability and a further check by the courts which exercise the power of judicial review. It is not for the judges to seek to develop new all-embracing principles of law in a way that reflects the stance and opinion of the individual judges when the society/legislators as a whole are unclear and substantially divided on the relevant issues. In *Bhim Singh* v. *Union of India*, while observing that the Constitution does not strictly prohibit overlapping of functions as this is inevitable in the modern parliamentary democracy, the Constitution prohibits exercise of functions of another branch which results in wresting away of the regime of constitutional accountability. Only when accountability is preserved, there will be no violation of principle of separation of powers. Constitution not only requires and mandates that there should be right decisions that govern us, but equal care has to be taken that the right decisions are made by the right body and the institution. This is what gives legitimacy, be it a legislation, a policy decision or a court adjudication.

28. It is sometimes contended with force that unpopular and difficult decisions are more easily grasped and taken by the judges rather than by the other two wings. Indeed, such suggestions were indirectly made. This reasoning is predicated on the belief that the judges are not directly accountable to the electorate and, therefore, enjoy the relative freedom from questions of the moment, which enables them to take a detached, fair and just view. The position that judges are not elected and accountable is correct, but this would not justify an order by a court in the nature of judicial legislation for it will run afoul of the constitutional supremacy and invalidate and subvert the democratic process by which legislations are enacted. For the reasons stated above, this reasoning is constitutionally unacceptable and untenable."

234. The other facet of participatory democracy is disclosure of information in public domain about the actions of Government. The petitioners' argument is that for effective participation, the citizens must know what they are participating in and why. This merits consideration. For, unless complete and relevant information about Government decision is placed in public domain, the public would be ill-equipped to engage with the Government in a meaningful manner. In a democracy, disclosure of full information is empowerment and acts as an enabler for meaningful participation. Granting open access to information also secures the goal of transparency to which all public institutions are wedded. In *S.P. Gupta* v. *President of India*[305], this Court discussed about the common thread running through information, transparency and accountability and observed as under:

"**63**. Now it is obvious from the Constitution that we have adopted a democratic form of Government. Where a society has chosen to accept democracy as its creedal faith, **it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct**. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is functioning that they can fulfill the role

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which democracy assigns to them and make democracy a really effective participatory democracy. "Knowledge" said James Madison, "will for ever govern ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. **A popular government without popular information or the means of obtaining it is but a prologue to a farce or tragedy or perhaps both**." The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world."

(emphasis supplied)

235. In *R.K. Jain* v. *Union of India*[306], the Court observed again:

"**41.** … It is only if the people know how the Government is functioning that they can fulfil their own democratic rights given to them and make the democracy a really effective participatory democracy. There can be little doubt that exposure to public scrutiny is one of the surest means of running a clean and healthy administration. **Disclosure of information in regard to the functioning of the Government must be the rule and secrecy can be exceptionally justified only where strict requirement of public information was assumed. The approach of the court must be to alleviate the area of secrecy as much as possible constantly with the requirement of public interest bearing in mind all the time that the disclosure also serves an important aspect of public interest**. …"

(emphasis supplied)

236. In *Central Public Information Officer, Supreme Court of India* v. *Subhash Chandra Agarwal*[307], this Court restated the governing legal position and highlighted the importance of an informed citizenry by drawing from the preamble of Right to Information Act, 2005[308] and observed thus:

"**120.** Before we proceed any further we need to have a brief reference to the scheme of the RTI Act. The Statement of Objects and Reasons envisage a noble goal of creating a democracy which is consisting of informed citizens and a transparent government. It also provides for a balance between effective government, efficient operations, expenditure of such transparent systems and requirements of confidentiality for certain sensitive information. It recognises that these principles are inevitable to create friction inter se and there needs to be harmonisation of such conflicting interests and there is further requirement to preserve the supremacy of democratic ideal. The recognition of this normative democratic ideal requires us to further expound upon the optimum levels of accountability and transparency of efficient operations of the Government. …"

237. The Court then highlighted how open access to information is crucial for the participatory element of democracy thus:

"**192.** Bhagwati, J. expanded on the socio-political background that must inform any approach in a "democratic society wedded to the basic values enshrined in the Constitution". He drew an interconnection between democracy, transparency and accountability to hold that a basic postulate of accountability, which is fundamental to a democratic government, is that information about the Government is accessible to the people. He held that participatory democracy is premised on the availability of information about the functioning of the Government. The right to know as a "pillar of a democratic State" imputes positive content to democracy and ensures that democracy does not remain static but becomes a "continuous process". Thus, a limitation on transparency must be supported by more than a claim to confidentiality — it must demonstrate that the public harm arising from disclosure is greater than the public interest in transparency. …"

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238. In *T.S.R. Subramanian* v. *Union of India*[309], a similar proposition could be traced in para 34 thus:

> "**39.** Democracy requires an informed citizenry and transparency of information. The Right to Information Act, 2005 ("the RTI Act") recognises the right of the citizen to secure access to information under the control of public authority, in order to promote transparency and accountability in the working of every public authority. …"

239. In *Anjali Bhardwaj* v. *Union of India*[310], this Court recognised that right to information was traceable from Article 19(1)(a) even before the 2005 Act came into force and observed thus:

> "10. Much before the enactment of RTI Act, which came on the statute book in the year 2005, this Court repeatedly emphasised the people's right to information to be a facet of Article 19(1)(a) of the Constitution. It has been held that the right to information is a fundamental right and flows from Article 19(1)(a), which guarantees right to speech. This right has also been traced to Article 21 which concerns about right to life and liberty. There are umpteen number of judgments declaring that transparency is the key for functioning of a healthy democracy …"

240. It is right to say that the 2005 Act has empowered the citizen to obtain information from the Government but it would be absolutely untenable to say that there is no duty on the Government to be open. In a democratic setup where the citizen has entrusted abundant governance to the Government, it is bounden obligation of the Government to keep the citizens well informed about its actions, as a prudent trustee would.

241. It must be noted that the principle of "political justice" is meant to inform all institutions of national life and is essential for securing a just social order. Further, securing political justice is envisioned as a step towards "welfare of the people". The term "political justice" is of utmost importance, for it is not just fundamental to governance of the country owing to its positioning in the Directive Principles and being prominently expounded in the PREAMBLE of the Constitution which strives

> ""…to secure to all its citizens:
>
> JUSTICE, social, economic and political;
>
> …"

242. In *Raghunathrao Ganpatrao* v. *Union of India*[311], the Court attempted to provide a meaning to the term political justice and observed thus:

> "96. …Political justice relates to the principle of rights of the people, i.e. right to universal suffrage, **right to democratic form of Government** and right to participation in political affairs …"
>
> (emphasis supplied)

243. The idea of political justice is not constrained to an orthodox understanding of a democratic form of Government. We are in an information age and political justice would be incomplete without informational justice which essentially requires the decision makers to consider the subjects of their decisions as rightful recipients of all information that may have an impact on their lives. Furthermore, open availability of information would also advance the objective of education and empowerment. Article 51(h) provides for the fundamental duty "*to develop the scientific temper, humanism and the spirit of inquiry and reform*". The furtherance of spirit of inquiry and reform is largely dependent on the availability of information. It is nothing but a duty which enjoins the citizens to participate in good governance.

244. Notably, the respondents in the present case have recognised the importance of openness and have placed elaborate data before us to demonstrate how all steps of the project including all permissions, orders, invitations, approvals etc. were made

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available for direct public access online from time to time at the earliest available opportunity. We shall be examining the same at an appropriate stage.

245. Having thoroughly discussed the import, scope of application and substantial value of the aforesaid principles for the purpose of this case, we may now advert to specific challenges.

CHANGE IN LAND USE

246. In order to address the challenge against change in land use, three broad questions arise for consideration, namely:

(i) Whether the change in land use of the subject plots is permissible in law?

(ii) If permissible, to what extent can such change be made within the contours of law?

(iii) Whether the parameters, procedural or otherwise, to be followed for effecting such change have been duly followed by the respondents?

WHAT IS MASTER PLAN AND ZONAL PLAN

247. We may first advert to the legal framework relating to Master Plan, Zonal Plans and modifications therein, as envisaged in the 1957 Act and the Master Plan (master plan presently in force). Admittedly, thus far three Master Plans have been made for Delhi. Before the present plan, two master plans were in force - Master Plan, 1962 (in force for 20 years from 1962-1981), Master Plan, 2001 and now Master Plan, 2007 (in force from 1981-2021). Section 7 of the 1957 Act provides for the preparation of a master plan and reads thus:

> **"7. Civic survey of, and master plan for, Delhi. —**
>
> (1) The Authority shall, as soon as may be, carry out a civic survey of, and prepare a master plan for, Delhi.
>
> (2) The master plan shall—
>
> (a) define the various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and
>
> (b) **serve as a basic pattern of frame-work** within which the zonal development plans of the various zones may be prepared.
>
> (3) The master plan may provide for any other matter which is necessary for the proper development of Delhi."
>
> (emphasis supplied)

248. Primarily, the Master Plan is meant to delineate various territorial zones within Delhi and the manner of land use in each zone. It also acts as a basic framework or presaging for the consequent preparation of zonal plans. Sub-Section (3) is of a residuary character. It predicates that the master plan may also provide for any other matter (in addition to specified in earlier part of the same section) which is necessary for the proper development of Delhi.

249. To effectuate the master plan, the 1957 Act mandates preparation of zonal plans for each zone created under the master plan. A zonal plan for the concerned zone must contain a site plan and use plan for the development of the zone in conformity with the land use prescribed therefor in the master plan, including other particulars referred to in sub-Section (2) of Section 8, for ensuring proper development. It is a subset of the master plan. Section 8 provides thus:

> **"8. Zonal development plans.—** (1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development plan for each of the zones into which Delhi may be divided.

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(2) A zonal development plan may—

(a) contain a site-plan and use-plan for the development of the zone and show the approximate locations and extents of land-uses proposed in the zone for such things as public buildings and other public works and utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces and other categories of public and private uses;

(b) specify the standards of population density and building density;

(c) show every area in the zone which may, in the opinion of the Authority, be required or declared for development or re-development;

(d) in particular, contain provisions regarding all or any of the following matters, namely:—

(i) the division of any site into plots for the erection of buildings;

(ii) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets and other public purposes;

(iii) the development of any area into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out;

(iv) the erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and height and character of buildings;

(v) the alignment of buildings on any site;

(vi) the architectural features of the elevation or front age of any building to be erected on any site;

(vii) the number of residential buildings which may be erected on any plot or site;

(viii) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection of buildings and the person or authority by whom or at whose expense such amenities are to be provided;

(ix) the prohibitions or restrictions regarding erection of shops, workshops, warehouses or factories or buildings of a specified architectural feature or buildings designed for particular purposes in the locality;

(x) the maintenance of walls, fences, hedges or any other structural or architectural construction and the height at which they shall be maintained;

(xi) the restrictions regarding the use of any site for purposes other than erection of buildings; and

(xii) any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for preventing buildings being erected haphazardly in such zone or area."

250. A notable feature of the zonal plan is that it manifests multiple micro aspects of decentralized planning depending on the type of zone. It may provide for conditions and restrictions on development as may be needed for the proper development of the zone.

251. An understanding of the relationship between master plan and zonal plan is relevant for further analysis. Whereas the master plan lays down a broad vision of development for a region, the zonal plan is meant to provide specificity to the vision expressed in the master plan for facilitating the execution of the vision in specified zones. A zonal plan is meant to further the vision of the master plan. In Master Plan, a zonal plan is defined thus:

"2(2) Zonal Development Plan means a plan for one of the zones (divisions) of

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the National Capital Territory of Delhi containing detailed information regarding provision of social infrastructure, parks and open spaces, circulation system, etc."

252. Chapter 16 of Master Plan titled "Land Use Plan" throws light on the substance of a zonal plan as:

"16.1 …**The Zonal plans shall detail out the policies of the Master Plan 2021 and act as link between the Layout Plan and Master Plan. The development schemes and layout plans indicating various use premises shall conform to the Master Plan/Zonal Plans.** The Zonal Plans of the areas shall be prepared under Section 8 and processed under Section 10 and simultaneously the modifications of land uses shall be processed under Section 11 (A) of the Delhi Development Act, 1957. **Already approved Sub Zonal (earlier Zonal) Plans in conformity with the Master Plan shall continue for the areas where the Zonal Plans have not been approved.** The Zonal Plans in the form of structure plans shall be prepared within 12 months of the approval of the MPD-2021.

In absence of Zonal Plan of any area, the development shall be in accordance with the provisions of the Master Plan. No urban activity shall be permitted in the proposed Urban Extension without change of land use/modification to the Master Plan as per the Delhi Development Act, 1957"

(emphasis supplied)

253. The zonal plan, as exposited above, acts as a link between layout plan[312] and master plan. It is also relevant to note that preparation of a zonal plan in accordance with Section-8 is not a pre-requisite for the operationalization of a master plan. It is clearly stated in clause 16.1 (quoted above) that earlier zonal plan if in conformity with the prevailing master plan, may continue in areas where a new zonal plan has not been approved. Further, in absence of zonal plan of any area, the development can proceed in accordance with the contours specified in the master plan - for the specified zone. The underlying reason is to ensure that the pace of development does not come to a standstill in absence of a zonal plan and at the same time is for proper development of the concerned zone and in particular whole of Delhi. Therefore, the scope and direction of development as envisaged in the master plan shall remain unhindered, irrespective of whether or not it is complemented with a new zonal plan or not.

MODIFICATION OF PLANS

254. We may now examine the statutory scheme concerning the modification of plans. The thrust of the challenge necessitates us to analyse the provisions for modifying the plan.

255. Section 11A of the 1957 Act is the primary provision enabling modifications to plan. It falls under a separate chapter titled "MODIFICATIONS TO THE MASTER PLAN AND THE ZONAL DEVELOPMENT PLAN". The same reads thus:

"**11A. Modifications to plan.—**(1) The Authority may make any modifications to the master plan or the zonal development plan as it thinks fit, being modifications which, in its opinion, do not effect important alterations in the character of the plan and which do not relate to the extent of land-uses or the standards of population density.

(2) **The Central Government may make any modifications to the master plan or the zonal development plan whether such modifications are of the nature specified in sub-section (1) or otherwise.**

(3) Before making any modifications to the plan, the Authority or, as the case may be, the Central Government shall publish a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the proposed modifications before such date as

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may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the Central Government.

(4) Every modification made under the provisions of this section shall be published in such manner as the Authority or the Central Government, as the case may be, may specify and the modifications shall come into operation either on the date of the publication or on such other date as the Authority or the Central Government may fix.

(5) When the Authority makes any modifications to the plan under sub-section (1), it shall report to the Central Government the full particulars of such modifications within thirty days of the date on which such modifications come into operation.

(6) If any question arises whether the modifications proposed to be made by the Authority are modifications which effect important alterations in the character of the plan or whether they relate to the extent of land-uses or the standards of population density, it shall be referred to the Central Government whose decision thereon shall be final.

(7) Any reference in any other Chapter, except Chapter III, to the master plan or the zonal development plan shall be construed as a reference to the master plan or the zonal development plan as modified under the provisions of this section."

(emphasis supplied)

256. Section 11A is a repository of both power and procedure of modification. It bestows two entities with such power - Authority (DDA) and the Central Government. The power of modification vested in the Authority, is circumscribed, as specified in sub -Section (1); but wider discretion has been given to the Central Government in that regard. The extent of power granted to the two entities is dissimilar and disparate. Section 11A(1) empowers the Authority to make modifications in the master plan or the zonal plan subject to three express fields:

(i) such modifications do not effect important alterations in the character of the plan;

(ii) such modifications do not relate to the extent of land-uses;

(iii) such modifications do not relate to the standards of population density.

257. Whereas, in a marked progression from the mandate of Authority, sub-Section (2) empowers the Central Government to effect modifications to the master plan or zonal plan irrespective of whether such modifications are of the nature specified in sub -Section (1) or any other modification as may be deemed necessary in public interest. The language used by the legislature is explicit and commends no other meaning. In other words, sub-Section (2) is widely worded and bestows expansive power upon the Central Government. It is not constricted by placing restrictions regarding not to alter the character or extent of the master plan or zonal plan specified in sub-Section (1), in case the Central Government intends to do so in public interest including for the proper development of Delhi. This literal understanding of the provision is in complete harmony with the text of Master Plan, as we shall see, which also acknowledges the need for modifications in cases of necessity based upon public interest. That, however, can be done by following procedure prescribed for carrying out such modification. Sub-Section (6) of the provision is also instructive. It empowers the Central Government to decide whether the Authority has violated the three express limitations under sub-Section (1) while effecting modifications and that decision is final. Let us understand the scheme further.

258. Section 41 of the 1957 Act provides for the control of the Central Government over the Authority and advances the view that a superior role is attributed to it under the Act. It reads thus:

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"**41. Control by Central Government.—**(1) **The Authority shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.**

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the Authority under this Act, **any dispute arises between the Authority and the Central Government the decision of the Central Government on such dispute shall be final.**

(3) The Central Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order passed by the Authority for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit:

Provided that the Central Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard."

(emphasis supplied)

259. The same intent was reflected in the unamended Delhi Development (Master Plan and Zonal Development) Rules, 1959[313]. Rule 12 provided for amendment of the Master Plan by the Authority and predicated that the Authority may carry out amendments upon the expiry of every five years in accordance with the procedure prescribed in the 1957 Act. The requirement of acting "in accordance with the procedure" prescribed in the 1957 Act signified that the Authority is not supposed to deviate from the three stipulations under Section 11A(1). Rule 12 reads thus:

"12. Amendment of Master Plan.— The Authority may amend the whole or any part of the master plan, if necessary, at the expiry of every five years in accordance with the procedure prescribed by the Act and these rules as if the proposed amendment were new master plan.

Provided that if the Authority is of opinion that having regard to the circumstances prevailing at any particular time it is necessary so to do, it may amend the master plan or any part thereof at any time prior to the expiry of the said period, in accordance with the aforesaid procedure.

Provided further that the Authority may, without following the aforesaid procedure, but with the prior approval of the Central Government, permit on receipt of an application in this behalf, any change in the size of public parks and recreation grounds not exceeding ten per cent either way of the approved size."

260. Rule 13 being supplemental to Rule 12 mandated that every amendment of the master plan by the Authority was subject to approval by the Central Government. The relevant extract thereof reads thus:

"**13. Approval of Central Government to Amendment of Master Plan.**— (1) Amendment of the master plan shall not take effect unless approved by the Central Government.

….

Indeed, Rules 12 and 13 came to be deleted [vide Delhi Development (Master Plan and Zonal Development Plan) Amendment Rules, 1966[314]]. However, they are useful in understanding the intent of the law-making bodies as well as to ascertain the relationship between the Central Government and Authority in planning activities. A collective reading of Rules 12 and 13 signifies that the Authority is subservient to the Central Government as far as modifying the master plan is concerned. Its powers are controlled by the Central Government. At the same time, a key takeaway from a conjoint reading of the aforesaid Rules is that in the entire scheme (Act and Rules), there is no restriction - be it of minimum time period after

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which amendments could be made or of seeking approvals from a superior body - on the Central Government's power of modification of the master plan/zonal plan. Therefore, in order to determine the validity of a modification, it is of utmost importance to ascertain the entity which has initiated the modification exercise. We may consider this in the light of facts of this case at a later stage, after delineating the law clearly.

261. The permissibility of modifications in the master plan/zonal plan includes modifications in any part of these plans. There is no restriction on the Central Government on the scope of modifications. For a qualitative examination of the *extent* of permissible modifications, however, we may now advert to the meaning of the word "modification" as envisioned in the applicable provisions of Master Plan and the 1957 Act.

Modification : Meaning

262. The Master Plan, as noted above, was notified in 2007 to guide the direction of development in the National Capital Territory of Delhi till 2021. In the section comprising of "Major Highlights of the Plan", planned development of new areas and rejuvenation of old areas are stated to be parallel aims. Point 18 reads thus:

> "18. The Master Plan incorporates several innovations for the development of the National Capital. A critical reform has been envisaged in the prevailing land policy and facilitating public - private partnerships. **Together with planned development of new areas, a major focus has been on incentivising the recycling of old, dilapidated areas for their rejuvenation.** The Plan contemplates a mechanism for the restructuring of the city based on mass transport. The Perspective Plans of physical infrastructure prepared by the concerned service agencies should help in better coordination and augmentation of the services."
>
> (emphasis supplied)

263. Point 19 indicates that the Master Plan, once freezed, is not going to stagnate the scope of development until the completion of duration and changing requirements of the society may call for a modification/review of the plan. It reads thus:

> "19. The Master Plan envisages vision and policy guidelines for the perspective period upto 2021. **It is proposed that the Plan be reviewed at five yearly intervals to keep pace with the fast changing requirements of the society.**"
>
> (emphasis supplied)

264. The vision of the Master Plan, as specified in the plan, succinctly notes that blending heritage with modern patterns of development is a key feature. It reads thus;

> "**VISION**
>
> 3. Vision-2021 is to make Delhi a global metropolis and a world-class city, where all the people would be engaged in productive work with a better quality of life, living in a sustainable environment. This will, amongst other things, necessitate planning and action to meet the challenge of population growth and in-migration into Delhi; provision of adequate housing, particularly for the weaker sections of the society; addressing the problems of small enterprises, particularly in the unorganized informal sector; dealing with the issue of slums, up-gradation of old and dilapidated areas of the city; provision of adequate infrastructure services; conservation of the environment; **preservation of Delhi's heritage and blending it with the new and complex modern patterns of development;** and doing all this within a framework of sustainable development, public private and community participation and a spirit of ownership and a sense of belonging among its citizens."
>
> (emphasis supplied)

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265. What emerges from the above extracts of Master Plan is that the Master Plan presents a dynamic vision of development which duly acknowledges the need for suitable modifications in light of emergent circumstances. The dynamic nature of the plan is further reflected in Chapter 18 titled "Plan Review and Monitoring" which specifies that phased monitoring of the functioning of the plan is essential to take care of emerging socioeconomic changes. It further notes that periodic review of the plan is essential for effective implementation. It reads thus:

> "**18.0 PLAN REVIEW AND MONITORING**
>
> Plan Monitoring is essential to evaluate the changes required to improve the quality of life in the city. Properly phased monitoring makes the plan responsive to the emerging socio-economic forces. Implementation of the plan can be effective only when monitored and reviewed at appropriate periods."

266. Resultantly, such review can take place by way of suitable modifications in the plan. This is succinctly reflected in point 18.5 which reads thus:

> "**18.5 REVIEW**
>
> Timely review of the plan with the help of above groups and monitoring unit **shall ensure mid-term correction and modifications if needed in the Plan Policies as well as the implementation procedures, which will help to readjust the events in the plan that could not be foreseen or anticipated during the Plan Formulation.** If the plan is timely monitored and appropriately reviewed, **the policies can be moulded in the right direction according to the present needs of the people of the city.**"
>
> (emphasis supplied)

267. The above point is a reinforcement of the view that the plans can undergo mid-course corrections and modifications to mould the policies in the right direction for the proper development of Delhi. The character of modifications and permissibility thereof as envisaged in the master plan can be articulated amongst others as:

> *first*, modification to be necessary for meeting the present needs of the people including for better governance and proper development of Delhi;
>
> *second*, modifications can be effected in the wake of unforeseen and unanticipated circumstances;

268. The aforesaid points are not exhaustive. For, the Master Plan lays down framework for development of the zones in prescribed manner. It does not operate as a controlling force upon the statutory powers of modification of the Central Government or Authority within their respective mandates under the 1957 Act. The idea of organic development in consonance with the evolving needs of time is explicitly reflected in the Master Plan. The basic principle behind the Master Plan is to tread the path of development in the specified manner including with a purposeful transformation perceived by the policy makers. The primary consideration before the Central Government while undertaking a modification exercise in Section 11A(2) is public interest. A pro-development enactment cannot be read in a pedantic manner, as the underlying purpose of all laws is to act in aid of the larger goal of provisioning for improving quality of life of the citizens and meaningful governance.

269. To understand further, it would be relevant to note that development and planning enactments often carve out a distinction between major and minor modifications. In *Manohar Joshi*[315], this Court analysed the provisions of Maharashtra Regional and Town Planning Act, 1966[316] and observed that a distinction exists between major and minor modifications under that Act. It observed thus:

> "**55.** There are only two methods by which modifications of the final development plan can be brought about. One is where the proposal is such that it will not change the character of the development plan, which is known as minor modification and

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for which the procedure is laid down under Section 37 of the Act. The other is where the modification is of a substantial nature which is defined under Section 22-A of the Act. In that case the procedure as laid down under Section 29 is required to be followed …"

270. It then observed that when modifications are permissible subject to not changing the character of the plan, it would be a case of minor modification. In para 58, it was observed thus:

> **"Minor modifications**
>
> **58.** Section 37 of the MRTP Act, reads as follows:
>
> "**37. Modification of final development plan**.—(1)
>
> **Where a modification of any part of or any proposal made in, a final development plan is of such a nature that it will not change the character of such development plan**, the Planning Authority may, or when so directed by the State Government shall, within sixty days from the date of such direction, publish a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any), to the State Government for sanction.
>
> ….
>
> ….
>
> **59. As seen from this section, the minor modification under Section 37(1) has to be such that it will not change the character of the development plan.** The section indicates that for setting the procedure under Section 37 into motion, the Planning Authority has to firstly form an opinion that the proposed modification will not change the character of the development plan. Such an opinion has to be formed by the Planning Authority meaning the general body of the Municipal Corporation, since this function is not permitted to be delegated to anybody else under Section 152 of the Act. Thereafter the Planning Authority has to publish a notice in the Official Gazette inviting the objections and suggestions from the public with respect to the proposed modification. It is also required to give a notice to all the persons affected by the proposed modification.
>
> (emphasis supplied)

271. The Court then considered "modifications of a substantial nature" and procedure in that regard stipulated in Sections 22A and 29 of the 1966 Act and observed thus:

> **"66. As seen from Section 22-A, it treats modifications of six types as substantial modifications.** They are as follows:
>
> (a) If a plot is admeasuring more than 0.4 ha (i.e. 4000 sq m) in the Municipal Corporation area or an A class municipal area a reduction of more than 50% would be considered as a substantial modification. In B and C class municipal areas such a plot has to be of 1 ha;
>
> (b) Secondly, under clause (b) all changes which result in the aggregate to a reduction of any public amenity by more than ten per cent of the area provided in the planning unit are considered a substantial change;
>
> (c) Where there is an actually existing site reserved for a public amenity, except for marginal area up to two hundred square metres required for essential public amenities or utility services their reduction will be a substantial modification;
>
> (d) Shifting of the allocation of use of land from zone to zone which results in

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increasing the area in the other zone by ten per cent in the same planning unit will be a substantial modification;

(e) Any new reservation made in a draft development plan which is not earlier published will be a substantial modification; and

(f) Alternation in the floor space index beyond ten per cent will be a substantial modification."

(emphasis supplied)

272. The exposition in *Manohar Joshi*[317] does reveal that town planning legislations contemplate various levels of modifications. Depending on the nature of modification, minor or substantial, separate procedure is prescribed under the 1966 Act. A notable takeaway from the aforesaid analysis is that even substantial modification, *per se*, is not an out-of-bounds of executive action as long as the applicable law permits such modification. Unlike the 1966 Act applicable to Maharashtra, the 1957 Act does not expressly use the expression "substantial modification". However, Section 11A provides for a similar scheme of minor and major modification. Under the scheme of the 1957 Act read with Master Plan, minor modifications would refer to changes within a zone demarcated as per the master plan; and major modifications may involve substantial modifications such as changing the zone itself from one category to another or altering the territorial expanse of a zone. Section 22A of the 1966 Act considers a variation of ten percent in the area allocated to a particular zone as a substantial variation. We reproduce the relevant extract thus:

"(d) Shifting of the allocation of use of land from zone to zone which results in increasing the area in the other zone by ten per cent in the same planning unit will be a substantial modification;"

273. In *Machavarapu Srinivasa Rao* v. *Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority*[318], this Court considered the Andhra Pradesh Urban Areas (Development) Act, 1975 and found a similar distinction between minor and substantial modifications and observed that the Development Authority did not possess the power to effect substantial modifications to the plan, however, the State Government possessed that power. In para 20, it noted thus:

"**20.** An analysis of the abovenoted provisions shows that once the master plan or the zonal development plan is approved by the State Government, no one including the State Government/Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building, etc. or use of land for a purpose other than the one specified in the master plan/zonal development plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be made only by the State Government and that too after following the procedure prescribed under Section 12(3)."

274. Bearing in mind the underlying principles in aforementioned expositions, it may be safely held that sub-Section (1) of Section 11A of the 1957 Act contemplates minor modifications by the Authority as it prohibits changing the character of the plan. Whereas, sub-Section (2) contemplates both minor as well as substantial modifications of the plan in accordance with the procedure prescribed therefor.

275. Ordinarily, the sanctity of the plan has to be preserved whilst exercising the power of modification or else it would no longer qualify as a modification. In Black's Law Dictionary, 11th Edition, the word "modify" is defined as:

"To make somewhat different; to make small changes to (something) by way of improvement, suitability, or effectiveness."

276. Moreover, in *Puranlal Lakhanpal*[319], this Court provided meaning to the word

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"modification" on similar lines and observed thus:

> "(4) …In the Oxford English Dictionary (Vol. VI) the word "modify" means inter alia "to make partial changes in; to change (as object) in respect of some of its qualities; to alter or **vary without radical transformation**." Similarly the word "modification" means "the action of making changes in an object without altering its essential nature or character; the state of being thus changed; partial alteration". …"
>
> (emphasis supplied)

277. The legislature has consciously used the term "modification". It implies that the changes contemplated under Section 11A must not qualitatively alter the original identity of the plan. Indeed, any modification entails a deviation from the prevailing plan, but it has been permitted by the legislature as long as it coalesces with the spirit of the original plan. The expression "or otherwise" occurring in sub-Section (2) needs to be so construed. The deviation must not be of a nature that virtually leads to the replacement of the original plan. The distinctiveness, fundamental identity and basic features of the plan must be preserved in a modification exercise as far as possible. The real test is that the broad vision of development envisaged in the plan stays intact. The modification may become necessary to infuse improvement, suitability or effectiveness into the governing plan, due to supervening circumstances including to address the dynamic factors and contemporary overlapping needs of the public and effective governance. That, however, in a country governed by Rule of Law must be exercised in public interest and meet the tests of reasonableness, non-arbitrariness and fairness. It is not an untrammelled power in that sense. This hallowed promise is so cardinal to the sustenance of Rule of Law that the legislature hardly considers it essential to make it express in every enactment.

278. We may now see whether change in land use forms part of permissible modifications under the 1957 Act. As noted above, master plan and zonal plans contain a land use plan. Rule 4 of the 1959 Rules titled "Form and contents of Master Plan" specifically provides that a land use plan forms part of the master plan. Since Section 11A categorically allows modifications in both these documents, it naturally signifies that such modifications can relate to land-use as well, apart from modifications in other elements of the plan.

279. It is well established by now that existence of power and exercise of power are two different things. Having found that the change in land use, in principle, is permissible, we now proceed to examine the changes effected in the present case and the procedure adopted therefor.

280. The proposal for change in land use of seven plots involved in the Project was initiated by the Deputy Land and Development Officer, MoHUA, Government of India i.e., by the Central Government. Thus, we note at the very outset that modifications in the present case are carried out under sub-Section (2) of Section 11A of the 1957 Act and therefore, any reliance upon the stipulations of sub-Section (1) to control the power of modification is wholly misplaced and out of purview of our examination. As per the proposal, the details of plots and corresponding changes therein can be enumerated thus:

A. Plot No. 1 is located on Church road near DTC Central Secretariat Bus Terminal, New Delhi. As per Master Plan, the Land Use of the Site is under Transportation (Bus Terminal/Parking). The proposed land use of the site is Government Office.

B. Plot No. 2 is located opposite to the Parliament House, New Delhi. As per Master Plan, the land use of the site is under Recreational (District Park). The proposed land use of the site is Government Office.

C. Plot No. 3 is located on Dr. Rajendra Prasad Road and houses National Archives. As per Master Plan, the land use of the site is under Public and Semi-Public

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facilities. The proposed land use of the site is Government Office and Recreational (District Park).

D. Plot No. 4 is located on Dr. Rajendra Prasad Road and is occupied by Indira Gandhi National Centre for Art and Culture. As per Master Plan, the land use of the site is under Public and Semi-Public Facilities (SC). The proposed land use of the site is under Government Office and Recreational (District Park).

E. Plot No. 5 is located between Man Singh Road, Ashoka Road and India Gate Hexagon in a Triangular formation. As Master Plan, the land use of the site is under Public and Semi-Public facilities. The proposed land use of the site is Government Office.

F. Plot No. 6 is located on Maulana Azad Road and Consists of VP house, Vigyan Bhavan and National Museum. As per Master Plan, the land use of the site is under Public and Semi-Public facilities (SC). The proposed land use of the site is under Government Office.

G. Plot No. 7 is located on Dara Shikoh Marg. As per Master Plan the land use of the site is under Government office. The proposed land use of the site is Residential.

H. Plot No. 8 is located on Lucknow Road near Timarpur and part of Planning Zone C. As per Master Plan the land use of the site is under Public and Semi-Public Facilities. The proposed land use of the site is recreational (District Park).

281. In order to comprehensively understand the impact of the proposed changes, it is necessary to pitch deeper and examine the extent of changes proportionally. This must be understood in light of the entire master plan which has been divided into 15 zones (divisions) of the National Capital Territory of Delhi. The said zones along with their respective area can be delineated thus:

ZONE	NAME OF ZONE	AREA (Ha.)
A	Old City	1159
B	City Extn. (Karol Bagh)	2304
C	Civil Line	3959
D	New Delhi	6855
E	Trans Yamuna	8797
F	South Delhi-I	11958
G	West Delhi-I	11865
H	North West Delhi-I	5677
J	South Delhi-II	15178
K	K-I West Delhi-II K-II Dwarka	5782 6408
L	West Delhi-III	22840
M	North West Delhi-II	5073
N	North West Delhi-III	13975
O	River Yamuna/River Front	8070
P	P-I Narela P-II North Delhi	9866 8534

282. The Land Use Plan identifies 27 land use zones across the capital territory which have further been clubbed into 9 categories namely:

i. Residential;

ii. Commercial;

iii. Industrial;

iv. Recreational;

v. Transportation;

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vi. Utility;
vii. Government;
viii. Public & Semi - Public Facilities; and
ix. Agriculture & Water Body.

283. The proposed plan herein caters only to two territorial zones i.e., Zone-D[320] (plots no. 2-7) and Zone-C[321] (plot no. 8) out of 15 zones and broadly touches upon three land use categories - recreational, government and public & semi-public facilities. The total area of Zone D is 6855 Ha. which roughly translates to 16938.71 acres (using the equivalent of 1 Ha. = 2.471 acres), and the total area under consideration in this project is 86.1 acres.

284. Therefore, it is incomprehensible as to how the proposed changes could be termed as substantial enough to alter the basic identity of the plan or for that matter, of the zone concerned. The effect is negligible in contrast to the expanse of the zone. The word "plan" represents a wider area and is not represented by one or two zones of the city much less individual plots therein. The case on hand is certainly not one of a wholesale changes so as to be called as drastically or radically altering the existing plan. The determination of the true character of a development plan is to be judged on the basis of facts and circumstances of each case. The public interest in holistic and orderly development cannot be undermined by taking a pedantic view of the phrase "character of the plan". By its very nature, character of the plan manifests its identity as a whole and not portion of one of the elements therein. Even from the perspective of land allocated for a particular usage, the proposed plan does not affect the extent of land allocated for different uses in any material sense and overall nature and extent of respective usages in the central vista area remains the same, as already discussed above. Moreover, the proposed changes are essentially in the nature of swapping of the uses of the concerned Government plots. It does not pertain to any private ownership plot at all.

285. Pertinently, Plot no. 8, which is a part of Zone C, is not a part of the central vista region. Furthermore, it is crucial to note that there is a marked distinction between central vista region and central vista precincts. The central vista region, wherein all seven plots except plot no. 8 fall, refers to the entire regional expanse as per the master plan. Within the central vista region, there is a listed space (for heritage purpose) referred to as "Central Vista Precincts at Rajpath". The demarcation is clear and central vista precincts at Rajpath have been accorded a special status in the list of heritage buildings/precincts. Out of the subject plots involved in the project, plot no. 3 (National Museum) is the only plot which forms part of the central vista precincts. The remaining plots, despite being a part of the central vista region, are not a part of the listed heritage precincts.

286. Further, it is common knowledge that plot no. 2 admeasuring 10.5 acres (for proposed Parliament House) earlier shown as for Recreational use (District Park) is inaccessible to the public for the last 44 years (since 1976), due to logistical and security reasons. Post Parliament attack in 2001, the security arrangements have been intensified and public access to this space has been restricted. It is quite evident that despite the official earmarked purpose, the objective of recreation and availability of the said space as a public park is not being fulfilled. Thus, it is important to underscore that the change in land use of this plot from recreational use to Government use is not going to result in any actual reduction of area available for public usage. Nevertheless, to compensate this change, the proposed change in land use provides for recreational space at three different locations in the neighbourhood. In Zone D, three pockets of 1.88 acres each at plots no. 3, 4 and 6 have been earmarked for recreational use. Additionally, land use of 3.5 acres of space at plot no. 8 is being altered from Public and Semi-Public Facilities to Recreational (District Park)

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use. The underlying idea is to provision recreational spaces in a diversified manner at locations where public can actually access such spaces meaningfully. Recreational use entails use of public space by common public for amusement, relaxation and leisure. The proposed recreational spaces, therefore, not only fully compensate for the loss of recreational space of plot No. 2, but also provide for accessible recreational spaces elsewhere in the surrounding vicinity, thereby ensuring meaningful public access to green spaces.

287. Upon further examination, it can be noted that the proposed plan seeks to change the land use of certain Government plots in the central vista area in order to use them for similar purposes - Government offices, public and semi-public use and recreation. The underlying nature of usage of land in this area is not being altered in any substantial manner. By its very nomenclature, Public and Semi-Public use refers to the usage of space for a legitimate public purpose including for official use, something which is antithetical to private use. Such public use could be effected in multiple ways. No doubt, Government use and semi-public use may overlap in certain circumstances. For, Government use is one of the facets of public use itself. It will depend upon specific facts and circumstances of the case. It was in this spirit that S.O. 3348(E) dated 17.10.2017 permitted the usage of PSP spaces for Government offices. In the subject region, various spaces earmarked for Public and Semi-Public Use are already being used for Government purposes and this overall pattern of use is preserved with broadly the same character.

288. Notably, the challenge to above noted S.O. dated 17.10.2017 needs to be negatived for the reasons already mentioned while testing the validity of notifications regarding change in land use, as being repetitive. In any case, the challenge to this S.O. is being raised by the petitioners after the expiry of three years, that too after it was relied upon by the respondents in their reply. This particular challenge must fall on the ground of laches itself. It is not the case of the petitioners that the impugned notification was beyond access for the period of three years and they could not have assailed it at any prior stage. Merely because the notification has now come handy in favour of the responding party, the petitioners cannot jump upon it and multiply the scope of challenge without any sound basis. Strictly speaking, it is not in consonance with the principle of good faith. In *Prabhakar* v. *Joint Director, Sericulture Department*[322], the Court rightly noted thus:

> "**38.** It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities"."

289. A substantive writ petition is entertained by the Court in the light of certain specific facts and circumstances and it is not an occasion for the petitioners to call upon the Court to reopen remote government decision taken in the past. Even on merits, as already noted above, the challenge deserves to be negatived. For, the procedure followed meets statutory requirements and does not warrant judicial interference.

290. The total area of plots being subjected to change in land use is 86.1 acres, out of which 61.6 acres of area involves change from public and semi-public use to Government use. In light of the above, as actual usage of spaces earmarked for PSP Use, the proposed changes cannot be treated as a substantial deviation from the nature of land use in the region. Furthermore, use of plot no. 7 presently earmarked for Government office alone would be converted to residential in place of Government

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office to provide official quarters - which again is public premises (Government owned). The remaining proposed changes are largely in tune with the usage generally followed in this region. Taking any view of the matter, the exercise of power by the Central Government is in conformity with the purport of sub-Section (2) of Section 11A, enabling "modification" as no change of a substantial or radical character is envisaged as far as land use is concerned.

291. The petitioners have raised concerns regarding the change in standards of population density. However, the test of alteration in standard of population density is applicable to modifications initiated by the Authority under sub-Section (1). The same falls outside our consideration. Further, the subject area caters to a floating footfall of employees and visitors who may visit for attending to their responsibilities/work in the Government offices situated herein. Except plot no. 7, no residential usage is being contemplated in this area and the petitioners have not demonstrated any special circumstance which points towards the fact that standards of population density would stand immensely altered as a result of the proposed plan. We need not dilate further on this aspect.

292. Before parting with this point, we may gainfully advert to Point 8.2 titled "Optimum Utilization of Government Land" of Master Plan which reads thus:

> **"8.2. OPTIMUM UTILIZATION OF GOVERNMENT LAND**
>
> Government of India, Govt. of NCTD and local bodies are occupying prime land in Delhi for their offices. Most of the offices have been setup immediately after Independence. **Large areas are underutilized and have completed their economic life. Due to downsizing of government employment and need for generation of resources by the ministries, optimum utilization of existing government offices/land could be achieved by the following measures:**
>
> **i) Intensive utilization of existing government offices/land.**
>
> **ii) Utilization of Surplus land by the government for residential development.**
>
> iii) Utilization of 10% of total FAR for commercial uses to make the restructuring process financially feasible. This shall be subject to approval of land owning agency and concerned local body."

(emphasis supplied)

293. What emerges from the aforesaid extract of Master Plan is that the master plan itself envisages intensive utilization of existing Government land and utilization of surplus land by the Government as essential components of optimum utilization of Government land resource. The public trust doctrine obligates the Government to use the available resources prudently and to subserve the common good. The proposed use is not to bestow largesse on private persons but for assets creation and for public use. Naturally, if such optimum utilization requires changing the land use of Government lands, that must follow in public interest. Further, the afore-quoted extract of the master plan is in line with the objectives stated by the L&DO while proposing change in land use and more so there is no basis to label the proposed changes as contravening the master plan. On a comprehensive understanding of the plan, we are of the view that the proposed changes fully gel with the vision of the master plan including the zonal plan. Modernity, technological advancements and protection of historicity are subjects of parallel concern today. They can neither overstep or dispense each other nor prohibit each other's advance. This is the shared spirit of the master plan and the subject project.

294. We now advert to the final assail regarding the procedure followed while effecting the change in land use. Our enquiry at this point would traverse through the procedure to be followed for effecting the subject changes - before decision making process begins, during the process of decision making until the final notification to

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bring the changes in force.

PROCEDURE BEFORE DECISION

295. Before the decision, a proposal was floated by the landowning agency (Central Government) on 4.12.2019 for change in land use regarding eight plots located within the Central Vista area. The same was considered by the Technical Committee in a meeting attended by the Chief Town Planner (TCPO), Chief Architect (NDMC), Town Planner (MCD), representatives from all stakeholders like DDA, DUAC, Delhi Metro Rail Corporation, Delhi Police, Fire Department, Delhi Electric Supply Undertaking etc. We deem it apposite to highlight the composition of the broad-based Technical Committee:

"DDA

i. Vice Chairman - Chairman
ii. Engineer Member
iii. Principal Commissioner
iv. Commissioner (Plg)
v. Commissioner (LD)
vi. Commissioner (LM)
vii. Chief Architect
viii. Chief Engineer (Electrical)
ix. Additional Commissioners (Planning)- I, II, III & MPMR
x. Director (Landscape)
xi. Director (Building)

OTHER GOVERNMENT DEPARTMENTS

i. Chief Town Planner (TCPO)
ii. Chief Architect, NDMC
iii. Town Planner, MCD
iv. Secretary, DUAC
v. Land & Development Officer L&DO
vi. Sr. Architect, H&T Nirman Bhawan
vii. Dy. Commissioner of Police (T) MSO Building
viii. Chief Engineer (Plg.), DESU
ix. Representative of Delhi Metro Rail Corporation (DMRC)
x. Representative of Fire Department
xi. Director PPR"

296. The Technical Committee recommended the proposal with the following observation:

"After detailed deliberation, the proposal as contained in Para 4.0 of the agenda with the above modification in landuse for Plot No. 1 was recommended by the Technical Committee for further processing under Section-11A of DD Act, 1957. With the following conditions:

(i) The clearances from the PMO, Heritage Conservation Committee and Central Vista Committee shall be taken by L&DO.

(ii) The heritage buildings shall be dealt as per the relevant heritage provisions."

(emphasis supplied)

297. After the approval of the Technical Committee, the proposal was considered by the Authority in its meeting dated 11.12.2019. The purpose of this meeting was to consider the issuance of public notice inviting objections from general public and commence the decision-making process. The meeting was attended by the following members of the Authority in accordance with Section 3 of the Act:

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"CHAIRMAN
Shri Anil Baijal
Lt. Governor, Delhi
VICE CHAIRMAN
Shri Tarun kapoor
MEMBERS
1. Shri K Vinayak Rao Finance Member, DDA
2. Shri Shailendra Sharma Engineer Member, DDA
3. Shri Vijender Gupta, MLA & Leader of Opposition in the Legislative Assembly of NCT of Delhi
4. Shri Somnath Bharti, MLA
5. Shri SK Bagga, MLA
6. Shri OP Sharma, MLA
7. Shri Manish Aggarwal, Municipal Councillor, South Delhi Municipal Corporation
8. Smt. Bhawna Malik, Municipal Councillor, East Delhi Municipal Corporation
SECRETARY
Shri D Sarkar, Commissioner-cum-Secretary, DDA
SPECIAL INVITEES
1. Dr. Rajesh Kumar, Principal Commissioner (Housing, CWG and Sports), DDA
2. Shri Manish Kumar Gupta, Principal Commissioner (LD, LM, Systems & Coordination), DDA
3. Dr. Rajeev Kumar Tiwari, Principal Commissioner (Pers., Hort. & Landscape), DDA
4. Smt. Varsha Joshi, Commissioner, North Delhi Municipal Corporation
5. Shri Amit Kataria, Land & Development Officer, MoHUA, Govt. of India
LT. GOVERNOR'S SECRETARIAT
1. Shri Vijay Kumar
Principal Secretary to Lt. Governor
2. Smt. Chanchal Yadav
Special Secretary to Lt. Governor"

298. The subject proposal was considered in this meeting as Item No. 130/2019 along with seventeen other proposals in ordinary course of business and was approved thus:

"Item No. 130/2019

Regarding proposed change of land use of Plot Nos. 1, 2, 3, 4, 5, 6, 7 and 8.

F.20(12)2019/MP

The proposal contained in the agenda item was approved. Public notice inviting objections/suggestions under Section 11 A of DD Act, 1957 be issued."

PROCEDURE DURING DECISION-MAKING PROCESS AND PUBLIC HEARING UNDER SECTION 11A

299. As a result of the approval accorded by the Authority, a public notice came to be issued on 21.12.2019. The same reads thus:

"DELHI DEVELOPMENT AUTHORITY
(Master Plan Section)
PUBLIC NOTICE
New Delhi, the 21st December, 2019

S.O. 4587(E).— The following modification which the **Delhi Development**

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Authority/Central Government proposes to make to the Master Plan-2021/Zonal Development Plan of Zone 'D' (for Plot No. 1 to 7) and Zone 'C' (for Plot No. 8) under Section 11-A of DD Act, 1957, is hereby published for public information. Any person having any objection/suggestion with respect to the proposed modification may send the objection/suggestion in writing to the Commissioner-cum-Secretary, Delhi Development Authority, 'B' Block, Vikas Sadan, New Delhi-110023 within a period of thirty (30) days from the date of this Public Notice. The person making the objection or suggestion should also give his/her name and address in addition to telephone No./contact number and e-mail ID which should be legible.

Proposed Modification:

S. No.	Location	Area (in acres)	Land use as per MPD 2021/ZDP 2001	Land use Changed to	Boundaries
1.	Plot No. 1 Located on Church Road near DTC Central Secretariat Bus Terminal, New Delhi	15	MPD-2021 - Transportation (Bus Terminal/Parking) ZDP Zone-D, 2001 Part-Recreational (Neighbourhood Play Area) Part-Transportation (Bus Terminal/Parking)	Govt. Office	North : Church Road South : Rashtrapati Bhavan and North Block East : Part of North Block West : Rashtrapathi Bhavan
2.	Plot No. 2 Opposite to Parliament house	9.5	Recreational (District Park)	Parliament House	North : Red Cross Road South : Raisina Road West : Parliament of India
3.	Plot No. 3 Located on south of Dr. Rajendra Prasad Road and houses National Archives	7.7	Public and Semi Public Facilities	Govt. Office (5.8 acres) and Recreational (District Park) (1.88 acres)	North : Dr. Rajendra Prasad Road South : Green area and Rajpath East : Janpath West : Shastri Bhavan
4.	Plot No. 4 Located on South of Dr. Rajendra Prasad Road and East of Janpath	24.7	Public and Semi Public Facilities (SC)	Govt. Office (22.82 acres) and Recreational (District Park) (1.88 acres)	North : Dr. Rajendra Prasad Road South : Green area and Rajpath East : Man Singh Road West : Janpath
5.	Plot No. 5 Located on east of Man Singh Road and south of Ashoka Road	4.5	Public and Semi Public Facilities (SC)	Govt. Office	North : Ashoka Road South : Green area and Rajpath East : C-Hexagon West : Man Singh Road
6.	Plot No. 6 Located on North of	24.7	Public and Semi Public Facilities	Govt. Office (22.82	North : Green area and Rajpath

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	Maulana Azad Road and East of Janpath		(SC)	acres) and Recreational (District Park) (1.88 acres)	South : Maulana Azad Road East : Man Singh Road West : Janpath
7.	Plot No. 7 Located on North of Dalhausi Road near South Block	15	MPD-2021 - Government office ZDP Zone-D-2001 Recreational (Neighbourhood Play Area)	Residential	North : South Block South : Dara Shikoh Road East : Part of South Block West : Rashtrapati Bhavan
8.	Plot No. 8 Located on Lucknow Road near Timarpur (Falls in Zone-C)	3.9	Land Use as per ZDP of Zone-C-2021 Public and Semi Public Facilities	Recreational (District Park)	North : CGHS Dispensary South : Government Land East : Lucknow Road West : Government Land

The text/Plan indicating the proposed modifications shall be available for inspection at the office of Deputy Director (MP), Delhi Development Authority, 6th Floor, Vikas Minar, I.P. Estate, New Delhi on all working days during the period referred above. The text/plan indicating the proposed modifications is also available on DDA's website i.e. www.dda.org.in.

[F. No. F.20(12)2019/MP]
D. SARKAR, Dy. Secy."
(emphasis supplied)

300. The land-owning agency later submitted a revised proposal to the Authority in respect of plot No. 1 (out of the eight plots), vide communication dated 31.1.2020. Be that as it may, the issuance of public notice by the Authority commences the statutory process under Section 11A of the 1957 Act. In the present case, the respondents have adopted the procedure analogous to one under Chapter-III of the 1959 Rules along with Section 11A for effecting the subject modifications in the master plan and therefore, we may consider the same in our analysis.

301. Sub-Section (3) of Section 11A of the Act (produced above) specifies the procedure to be followed before the final decision. We reproduce sub-Section (3) for easy reference:

"(3) **Before making any modifications to the plan, the Authority or, as the case may be, the Central Government shall publish a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the proposed modifications** before such date as may be specified in the notice and **shall consider all objections and suggestions** that may be received by the Authority or the Central Government."

(emphasis supplied)

302. It mandates publication of a notice in prescribed form and manner ***under the rules made in that regard*** in order to invite objections and suggestions from any person with respect to the proposed modifications. It further enjoins the Authority to "consider" all objections and suggestions that may be received.

303. Incontrovertibly, no rules have been framed in furtherance of Section-11A(3)

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to prescribe the form and manner of notice. However, on 28.5.1966, the Ministry of Works Housing & Urban Development (as it then was) released a notification to amend the 1959 Rules in exercise of powers under Section-56 of the 1957 Act. By way of this notification, Chapter V titled "Modification to the Master Plan and the Zonal Development Plan" was inserted in the 1959 Rules. Rule 16 was inserted with the headnote "Form of notice under Section 11A(3)" and it reads as:

> "16. The notice referred to in sub-section (3) of section 11A of the Act shall be in Form B appended to these rules."

304. Form B appended with the notification clearly specifies that public notice shall be issued under the signature of "Secretary, Delhi Development Authority". Furthermore, form and manner of notice can also be determined as per Section 44 which is the general provision in this behalf. Section 44 specifies the manner of publishing the public notice and requires that "*every public notice given under this Act shall be in writing under the signature of the secretary to the Authority*". It reads thus:

> "**44. Public notice how to be made known. —** Every public notice given under this Act shall be in writing over the signature of the secretary to the Authority and shall be widely made known in the locality to be affected thereby by affixing copies thereof in conspicuous public places within the said locality, or by publishing the same by beat of drum or by advertisement in local newspaper or by any two or more of these means, and by any other means that the secretary may think fit."

305. No challenge has been set up qua any of these statutory provisions. Further, to supplement this provision, on 24.9.2012, a gazette notification was published by the Ministry of Urban Development (as it then was) whereby the Central Government directed that "*the power exercisable by it under sub-section 11A of the said Act for the purpose of review/modification of Master Plan for Delhi, 2021 shall also be exercisable by the Vice-Chairman, Delhi Development Authority in so far as it relates to issuing public notice for inviting objections and suggestions*". Furthermore, Rule 6 of the 1959 Rules also requires the public notice to be published by the Authority in accordance with Section 44. It reads thus:

> "**6. Mode of Publication of Public Notice**.— The Authority shall cause the said notice to be published in the manner prescribed by section 44 of the Act and may also cause it to be published in the Official Gazette."

306. In this backdrop, the notice under sub-Section (3) was issued by the Authority on 21.12.2019 under the signature of the Deputy Secretary with a chart disclosing the proposed modifications with locations of all the plots to be subjected to change in land use and the specific change in usage. This was, indisputably, at the behest of and for and on behalf of the Central Government to take the modifications proposed to its logical end. The notice called upon to send all objections/suggestions to the specified authority within a period of 30 days i.e., till 20.1.2020. The stated public notice was in conformity with the prescribed format for such notice as in the 1959 Rules (post 1966 amendment); and the DDA was well within its powers to issue such notice for inviting objections as per amended rules. The petitioners' submission that the Authority had no jurisdiction to issue the notice is *ex facie* tenuous.

307. The notice further stated that the plan indicating the proposed modifications would be available for inspection at the Office of Deputy Director (MP), DDA as well as on the official website of the Authority. We are impelled to re-extract the relevant part of public notice dated 21.12.2019 thus:

> "The text/Plan indicating the proposed modifications shall be available for inspection at the office of Deputy Director (MP), Delhi Development Authority, 6th Floor, Vikas Minar, I.P. Estate, New Delhi on all working days during the period referred above. The text/plan indicating the proposed modifications is also available

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on DDAs website i.e. www.dda.org.in."

308. The availability of proposal for inspection by general public is in line with the mandate of Rule 5 of 1959 Rules. That Rule ensures general public participation and opportunity to raise objections, if any, after carefully studying the proposed changes. Relevant extract of Rule 5 reads thus:

> **"5. Public Notice regarding preparation of Master Plan.—** (1) As soon as may be after the draft master plan has been prepared, the Authority shall publish a public notice stating that—
>
> (a) the draft Master Plan has been prepared and may be inspected by any person at such time and place may be specified in those notice;
>
> (b) suggestions and objections in writing, if any, in respect of the draft master plan may be filed by any person with the secretary of the Authority within 90 days from the date of first publication of the notice."

309. The public notice was followed by receipt of 1292 objections and constitution of the BoEH for considering the said objections. The appointment of BoEH was in accordance with Rule 8 of the 1959 Rules which states thus:

> **"8. Appointment of Board for enquiry and hearing.—** (1) **The Authority shall, for hearing and considering any representation, objection and suggestion to the draft master plan, appoint a Board consisting of not less than 3 and not more than 5 members of the Authority.**
>
> Provided that such Board shall have powers to co-opt not more than 2 members from amongst the members of the Advisory Council.
>
> (2) No business of the Board shall be transacted at any meeting unless at least three members are present from the beginning to the end of the hearing."
>
> (emphasis supplied)

310. Intimation was sent to the objectors regarding the date of hearing before the BoEH. In addition, paper publication was also done on 5.2.2020, regarding the hearing scheduled on 6/7.2.2020 at the specified place and time. The public notice reads thus:

> "DELHI DEVELOPMENT AUTHORITY PUBLIC NOTICE
>
> Delhi Development Authority issued public notice vide Gazette notification S.O. 4587 (E) dated 21.12.2019 and also published in the newspapers for inviting objections/suggestions from the public regarding proposed change of land use of Plot No. 1 to 7 (Zone-D) and Plot No. 8 (Zone-C).
>
> As per procedure all the objections/suggestions received within the stipulated time period of 30 days i.e. up to 19.1.2020, will be placed before the Board of Enquiry and Hearing (BoEH). The Board Hearing will be held on 06.02.2020 (Thursday) & 07.02.2020 (Friday) from 10.30 A.M. onwards at DDA Office, Conference Hall, 8-Block, Ground Floor, Vikas Sadan, INA.
>
> Any person who has filed objection/suggestion and wants to present his/her oral evidence in person before the Board, may come to the abovementioned venue on 06.02.2020 & 07.02.2020 to present his/her views, as per the proposed scheduled, which shall be available on the DDA website i.e. www.dda.org.in (under head 'HOTLINKS'/'PUBLIC NOTICES') on 05.02.2020 (12 pm). Concerned persons shall also be informed through E-mail/SMS as per details provided in their representations.
>
> In case any person who has filed objection/suggestion but does not find his/her name in the schedule or has not received any e-mail/SMS, may present his/her oral submission before the Board on the said date i.e. 07.02.2020 (Friday) from 1 : 00 P.M. to 1 : 30 P.M. All persons are requested to carry a valid Identity Proof."

311. As notified to all concerned, the hearing was conducted in accordance with Rule 9 for considering any suggestion/objection by the general public. Rule 9 reads

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thus:

> **"9. Enquiry and hearing.—** The secretary shall, after the expiry of the period allowed under these rules for making objections, representations and suggestions **fix a date or dates for hearing by the Board of any person, or local authority in connection with any objection, representation or suggestion made by such person or local authority in respect of the draft master plan and shall serve on the local authority or any person who may be allowed a personal hearing in connection with such representation, objection or suggestion to the draft master plan, a notice intimating the time, date and place of the hearing.**
>
> Provided that the Board may disallow personal hearing to any person, if it is of the opinion that the objection or suggestion made by such person in inconsequential, trivial or irrelevant."

(emphasis supplied)

312. After the hearing, the recommendations of BoEH were submitted to the Authority in accordance with Rule 10 which reads thus:

> **"10. Report of Enquiry.—** The Board shall after the conclusion of its enquiry, submit to the Authority a report of its recommendations."

313. The BoEH took note of all the suggestions/objections of the concerned representationist and after interacting with those in attendance (42 objectors), made its recommendations as follows:

> "i. Regarding proposal of change of land use of Plot No. 1, it is recommended that the revised proposal for change of land use must be taken afresh under Section 11-A of DD Act, 1957.
>
> **ii. Among the respondents, majority of whom are Planners/Architects, there appears to be a feeling that authentic technical information on this iconic project of Centra Vista is not available in public domain, which is leading to avoidable misgivings. Board recommends that all concerned departments need to address this concern.**
>
> iii. Keeping in view the strong reservation of the respondents, it is suggested that impact assessment studies on traffic, environment and heritage may be commissioned at the earliest.
>
> iv. From the responses received during public hearing, it appears that the present project has not been referred to the Central Vista Committee, although in the past any such project has always been referred to the Central Vista Committee. Authority may like to take a view on this issue and make suitable recommendations to Government of India."

(emphasis supplied)

314. Needless to underscore that the role of BoEH is limited to submitting its report to the Authority of its recommendations. There is nothing in the Act and Rules mandating the BoEH to record reasons or for accepting and rejecting the objections received by it. As per the prescribed procedure, the decision in that regard is that of the Authority. Notably, there is no statutory requirement obligating Authority/Central Government to give personal hearing to the objectors before taking final decision. The competent authority, however, is obliged to take into account the objections and the recommendations of BoEH before taking final decision.

315. Accordingly, the recommendations of BoEH were considered by a committee of the Authority comprising of Lt. Governor, expert members from various agencies, elected representatives of the Government as well as of the opposition, along with Special Invitees from the MoHUA. This meeting held on 10.2.2020, was organized in accordance with Rule 11 with the purpose of finalizing the plan for the approval of the

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Central Government. Rule 11 reads thus:

> **"11. Preparation of final draft Master Plan and its submission to Central Government.—** The Authority shall, after considering the report of the Board and any other matter it thinks fit, finally prepare the master plan and submit it to the Central Government for its approval."

316. The Authority in its meeting held on 10.2.2020, after due deliberations, accorded approval to the proposal regarding change in land use of plot nos. 2 to 8 only, on following terms. The minutes of the meeting read thus:

"Item No. 18/2020

Regarding proposed change of land use of Plot Nos. 1, 2, 3, 4, 5, 6, 7 and 8.F.20 (12)2019/MP

a) The proposal was presented by Joint Secretary (L&E), MoHUA, In-charge of Central Vista Development/Redevelopment Project, who was present as Special Invitee. She apprised the details of the Project to the members of the Authority.

b) JS, MoHUA informed that during the planning of Capital City-New Delhi, the architects and urban designers - Edward Lutyens and Herbert Baker had prepared an urban design plan for entire New Delhi in such a way that all the important Government offices would come along the Central Vista (Rajpath). However, by the year 1931, when Delhi officially became capital of India, only five (05) buildings were constructed namely, Rashtrapati Bhawan, Sansad Bhawan, North and South Blocks and first building of the National Archives. **She assured that the heritage buildings in the Central Vista shall be conserved**.

c) She further informed that for this Project, the following measures are being taken up:

i. No trees shall be cut during the implementation of the project. However, some trees may be transplanted for which techniques are available.

ii. Total tree cover shall increase with new plantation.

iii. 100% C&D waste shall be re-cycled and utilized within the project.

iv. All the green building features will be followed by making most efficient use of resources and adopting modern day construction technologies.

v. Rain Water Harvesting (RWH) structures and water conservation measures will be undertaken.

vi. Proposed development has been integrated with two metro stations in the Vista namely, Udyog Bhawan and Central Secretariat for commuting public/government employees through an underground shuttle.

vii. In the proposed scheme, the Central Government Ministries/Offices will be moved to the Central Vista thereby cutting down large scale travel across 47 Central Government Ministries/Offices' Buildings spread in different parts of Delhi. The proposal, once implemented shall result in easing traffic flow in Lutyens' Bunglow Zone (LBZ) and in the city. This will result in reduction of vehicular trips thereby reducing carbon footprint, congestion, pollution and accidents.

d) The recommendations of Board of Enquiry & Hearing (BoE&H) and the issues raised by the public in the meeting held on 06.02.2020 and 07.02.2020, were deliberated in the Authority meeting. Member Engineering, DDA-cum-Chairman or BoE&H explained that as has been clarified by JS, MoHUA, the proposed project addresses all issues

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raised by the public in a comprehensive manner. He informed that all objections and suggestions given by the public were duly considered by the BoE&H. Various objections and suggestions which were pertaining to L&DO and Planning Department of DDA were replied to by the representatives of these respective agencies and the details are available on the record. Based on the detailed deliberations, BoE&H has recommended for issuing public notice for plot no. 1 and consideration of allowing change of land use with respect to plot no. 2 to 8.

e) The following facts were further elaborated by JS, MoHUA:

i. Under the proposed Development/Redevelopment, total public space in the Central Vista is increasing by almost 100 acres. This constitutes the following:

A National Bio-diversity Arboretum in 48.6 acres land on the western end of the President's Estates is proposed to house 1,236 endangered species in 11 different phytological zones. This facility will be open to the researchers as well as to the public.

North and South Blocks which cover nearly 27 acres is proposed to be converted into National Museums showcasing India prior to and after 1857. Nearly 25 acres of land on the Western Bank of River Yamuna is proposed to be developed as New India Garden with an iconic structure to commemorate 75 years of India's independence.

ii. The project also proposes to develop/re-develop the Central Vista with proper public utilities, green spaces, water bodies, landscaping etc. whose total area will be more than the existing area as 5.6 acres from the existing buildings will be added to the greenspace. Further, plot no. 8 located at Timarpur in Planning Zone-Chaving an area of 3.9 acres is also being added to green spaces of Delhi.

iii. The area of over 90 acres currently under Hutments will be properly planned and developed into organized urban spaces.

iv. All necessary approvals for buildings and the facilities will be taken from the competent authorities as and when required.

f) Vice Chairman, DDA apprised that a notification number SO 3348 (E) has been issued by the Government of India on 17/10/2017, whereby as per Master Plan for Delhi (MPD) - 2021, 'Central Government Offices' are permitted use premise in 'Public and Semi Public facilities' (PSP) land use zones. Therefore, Authority is competent to allow Plot No. 3, 4, 5, & 6 which are currently under PSP land use for housing 'Central Government Offices' with 1.88 acres each in the plot no. 3, 4 and 6 earmarked as Recreational (District Park).

g) Additional Secretary (D), MoHUA and Member, Delhi Development Authority, explained that the Authority is competent to make the proposed modification in the Master Plan for the land uses as these will not alter the character of the Master Plan since they are in line with the Lutyen & Bakers' plan of housing Government buildings in the Central Vista. Further, the proposal does not impact the extent of the land uses and the standards of population density as has been envisaged in the Master Plan for Delhi, (MPD) - 2021. Hence, Section 11(A) (1) or Delhi Development Act, 1957, empowers the Authority to make proposed changes under consideration. Vice-Chairman DDA further corroborated this and stated that only after being satisfied that the Authority is competent under 11(A)(1) of the Act, that the proposal has been considered and submitted for Authority's approval.

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Decision : After detailed deliberations, the proposal is approved as follows:

i. A public notice shall be issued for change of land use for plot number 01 from 'Transportation' (Bus Terminal/parking) and 'Recreational' to 'Residential' and to be processed under Section 11-A of DD Act 1957.

ii. With respect to plot Nos. 02 to 07; the proposal of land use change of L&DO is approved. The proposal be submitted to MoHUA for approval/notification.

iii. Change of Land Use for plot No. 8 is approved and the proposal be forwarded to MoHUA for approval/notification."

(emphasis supplied)

317. As the proposal had originated from the land-owning agency (Central Government), the minutes were forwarded to the Central Government for its further consideration. Upon receipt of the same, the Central Government processed the proposal and after considering all aspects of the matter proceeded to notify the modification of change in land use vide notification dated 20.3.2020. The same reads thus:

"MINISTRY OF HOUSING AND URBAN AFFAIRS
(Delhi Division)
NOTIFICATION
New Delhi, the 20th March, 2020

S.O. 1192(E).— Whereas, certain modifications which the Central Government proposed to make in the Master Plan for Delhi-2021/Zonal Development Plan of Zone-D (for Plot No. 02 to 07) and Zone-C (for Plot No. 08) regarding the area mentioned here under were published in the Gazette of India, Extraordinary, as Public Notice vide No. S.O. 4587(E) dated 21.12.2019 by the Delhi Development Authority in accordance with the provisions of Section 44 of the Delhi Development Act, 1957 (61 of 1957) inviting objections/suggestions as required by sub-section (3) of Section 11-A of the said Act, within thirty days from the date of the said notice;

2. Whereas, 1,292 objections/suggestions received with regard to the proposed modifications have been considered by the Board of Enquiry and Hearing, set up by the Delhi Development Authority and the proposed modifications were recommended in the meeting of Delhi Development Authority held on 10.02.2020.

3. Whereas, the Central Government have after carefully considering all aspects of the matter, have decided to modify the Master Plan for Delhi-2021/Zonal Development Plan of Zone-D & Zone-C;

4. Now, therefore, in exercise of the powers conferred under Sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modifications in the said Master Plan for Delhi-2021/Zonal Development Plan of Zone [*sic*]-D & Zone [*sic*]-C, with effect from the date of Publication of this Notification in the Gazette of India.

Modifications:

The land use of the following area of land falling in Zone-D and Zone-C is changed as per description listed below:

S. No.	Location	Area (in acres)	Land use as per MPD 2021/ZDP Zone D 2001	Land use Changed to	Boundaries
1.	Plot No. 2	9.5	Recreational	Government	North : Red Cross

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	Opposite to Parliament House		(District Park)	(Parliament House)	Road South : West : Raisina Road Parliament of India
2.	Plot No. 3 Located on south of Dr. Rajendra Prasad Road and houses National Archives	7.7	Public and Semi Public Facilities	Govt. Office (5.88 acres) and Recreational (District Park) (1.88 acres)	North : Dr. Rajendra Prasad Road South : Green area and Rajpath East : Janpath West : Shastri Bhavan
3.	Plot No. 4 Located on South of Dr. Rajendra Prasad Road and East of Janpath	24.7	Public and Semi Public Facilities (SC)	Govt. Office (22.82 acres) and Recreational (District Park) (1.88 acres)	North : Dr. Rajendra Prasad Road South : Green area and Rajpath East : Man Singh Road West : Janpath
4.	Plot No. 5 Located on East of Man Singh Road and South of Ashoka Road	4.5	Public and Semi Public Facilities (SC)	Govt. Office	North : Ashoka Road South : Green area and Rajpath East : C-Hexagon West : Man Singh Road
5.	Plot No. 6 Located on North of Maulana Azad Road and East of Janpath	24.7	Public and Semi Public Facilities (SC)	Govt. Office (22.82 acres) and Recreational (District Park) (1.88 acres)	North : Green area and Rajpath South : Maulana Azad Road East : Man Singh Road West : Janpath
6.	Plot No. 7 Located on North of Dalhausi Road near South Block	15	MPD-2021 - Government office ZDP Zone-D-2001 Recreational (Neighborhood Play Area)	Residential	North : South Block South : Dara Shikoh Road East : Part of South Block West : Rashtrapati Bhavan
7.	Plot No. 8 Located on Lucknow Road near Timarpur	3.9	Public and Semi Public Facilities	Recreational (District Park)	North : CGHS Dispensary South : Government Land East : Lucknow Road West : Government Land

[F. No. K-13011/6/2019-DD-I]
VIRENDRA KUMAR KUSHWAHA, Under Secy."
(emphasis supplied)

318. On bare perusal of this notification, it is evinced that the final decision is taken by the Central Government and it is so notified in exercise of its powers under sub-Section (2) of Section 11A of the 1957 Act. Being a case of minor modification and as we have held, it does not alter the character of the plan in question including it does

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not relate to the extent of the land-uses or the standards of population density. The Authority itself could have given effect to its approval in terms of Section 11A(1) of the 1957 Act, as it was competent to do so in that regard and report to the Central Government within thirty days of the date on which such notification came into force as provided by Section 11A(5). However, since the proposal had originated from the land-owning agency (Central Government) as mentioned in the public notice dated 21.12.2019 and was of national importance, the Authority opted to forward the proposal along with its approval to the Central Government for taking appropriate decision. This step taken by the Authority is ascribable to Section 11A(6) of the 1957 Act, which predicates that if any question arises whether the modifications proposed to be made by the Authority are likely to effect important alterations in the character of the plan or whether they relate to the extent of land-uses or the standards of population density, it shall be referred to the Central Government whose decision thereon shall be final. The Central Government then took the proposal forward and acted upon it by issue of notification which it did in exercise of powers under Section 11A(2) of the 1957 Act. For that, there was no need for the Central Government to issue public notice itself or to constitute its own BoEH to grant hearing to the objectors. As that process had already been completed by the Authority and the Central Government had acted upon the proposal received by it from the Authority, in exercise of powers vested in it ascribable to Section 11A(6) and notified its decision thereon under Section 11A(2) in due course. Under the legislative scheme predicated in Section 11A for modification of plans, the Central Government has the complete authority including to disapprove the decision of the Authority taken under sub-Section (1) and to issue directions under sub-Section (6). The Central Government has ample power to take a decision on all aspects covered by the subject of modifications of plans in terms of Section 11A. Further, its decision under sub-Section (6) is final. Pertinently, Section 11A is an enabling provision giving limited power to the Authority and complete power to the Central Government in respect of modifications of the plans. The procedure adopted in the present case, considering the totality of the scope of Section 11A of the Act would be legitimate exercise of power by the Central Government including under sub-Section (2) of Section 11A of the 1957 Act. By no standards, it can be labelled as having been taken in violation thereof or failure of the authorities to follow the prescribed procedure under Section 11A of the Act. There is substantial compliance of the prescribed procedure and the final decision is the consequence or outcome of involvement of all the planning authorities referred to under the 1957 Act. These steps taken by the State authorities and the Central Government in collaboration and after due consideration of all the objections cannot be undermined much less labelled as an illegality. It is not a case of exercise of power by an Authority not competent to do so. At best, it can be said that because of the nature of the project of national importance, a guarded procedure had been adopted by the Authorities concerned albeit within the framework of Section 11A of the Act. Suffice it to observe that the final decision of the Central Government as manifested in the notification dated 20.3.2020 clinchingly points towards substantial compliance of the procedure prescribed for effecting such modifications under the 1957 Act and the 1959 Rules framed thereunder.

319. The land-owning agency had simultaneously referred the proposal to CVC, who in turn, had already accorded its approval thereto on 9.3.2020 in its 4th meeting. It noted thus:

> "After detailed deliberation the Committee decided to accord approval in principle as the process of change of land use had been taken up by the competent authorities. Accordingly, the final approval of change of land use may be communicated to the Committee."

320. For clarity of record, we note that CVC was engaged on another occasion as

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well when the proposal for obtaining "no objection" to the Parliament project was sent for its consideration on 11.04.2020. The said "no objection" was granted by CVC on 23.4.2020 in its 5th meeting. We shall be dealing with the challenge even to this "no objection" of CVC a little later.

321. Before proceeding further, we deem it pertinent to note that the petitioners' argument that the Parliament was kept out of the purview of consultative exercise is unfounded on facts. In fact, the proposal regarding the new Parliament Building was placed before the GPC at the inception stage. The GPC, of which the Speaker of the Lok Sabha is the Chairman, is constituted by Members of Parliament being representatives of major national political parties having presence in the Parliament. The committee had met on 19.3.2020 to witness the presentation given by the case proponent through the consultant wherein the members interacted and gave diverse suggestions to be incorporated in the proposal. Detailed presentations explaining the concept as well as the need for the Project were made for all the members. The members made suggestions/comments relating to design, central hall, interiors, access to public, auditorium, lounge rooms, rainwater harvesting etc. The members were also apprised of various formal developments relating to the Project. Thereafter, budgetary estimate and concept plan were also placed before the Lok Sabha Secretariat and approved by it, as already noted above. We need not dilate on this aspect any further.

322. Reverting to the issue under consideration, the procedure prescribed under Chapter III of the 1959 Rules is applicable to preparation of new master plan/zonal plan. The expression "draft master plan", used throughout in this chapter, makes it amply clear and leaves nothing to be imagined. The distinction between the two is clear. Strictly speaking, Chapter III does not apply to procedure for modification of plans under Section 11A. In the absence of Chapter III, only Section 11A would determine the procedure for modification of master plan and the procedure under Section 11A is less cumbersome and merely envisages publication of notice and inviting objections for being considered before taking a final decision. It does not prescribe personal hearing to the objectors as such, much less by the Authority or the Central Government, as the case may be. Whereas, even Rule 9 provisions for hearing before BoEH only. Despite this clear position of law, the respondents followed the extensive procedure analogous to under Chapter III of the 1959 Rules even for the subject modifications. It was certainly not a case of preparation of new master plan or a draft master plan. The compliance with building byelaws shall be dealt later.

323. Notably, on 7.4.2015, a letter captioned as "DDA's proposal for amendment to MPD-2021 and change of land use cases-reg." was addressed by MoHUA to Vice Chairman, DDA requiring the Authority to provide separate information on a set of parameters while sending any proposal for amendment to the master plan. The subject proposal contained all the information as per the aforesaid letter and is found to be in accordance thereof. No procedural infirmity is found on this count. The aforesaid letter is reproduced for ready reference:—

> "To
>
> Dated 7th April, 2015
>
> The Vice Chairman,
> Delhi Development Authority, Vikas Sadan, INA,
> New Delhi
>
> Subject : DDA's proposal for amendment to MPD-2021 and change of land use cases-reg.
>
> Sir,
>
> DDA has been sending proposals for amendment to MPD-2021 and change of land use cases for final notification under Section 11-A of DD Act 1957. It is being observed that DDA has been sending proposals without self contained

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note/proposals and certain necessary documents such as recommendations of Board of Enquiry & Hearing, Site Map, details of enquiry, details of any ongoing Court Cases etc. are also found missing. As a result, it takes considerable time for examining these cases and extracting the relevant details from the documents annexed to such proposals.

2. Therefore, in order to minimize the time taken for disposal of such cases, DDA is directed to send the proposals containing a self contained note/proposal alongwith the justification which should be complete in all respects. While sending the proposals following information under separate headings should definitely be provided:

(i) Whether the land is government or private and who is the land owning agency?

(ii) On whose request the change of land use case or modification to MPD-2021 has been initiated?

(iii) Whether a responsible officer from DDA (give details) was deputed for inspection of site and a copy of inspection report be provided.

(iv) What is the public purpose proposed to be served by modification of MPD and/or change of land use?

(v) What will be impact of proposal on the ZDP/MPD and whether the changes are in consonance with the approved plans and policies?

(vi) What will be proposal's impact/implications on general public eg. Law & Order etc.?

(vii) Whether any court cases are ongoing on the land mentioned in proposal? Full details be attached.

3. It is, therefore, requested that the proposals should contain above stated information otherwise the proposals would not be considered.

4. There instruction will came into force with immediate effect.

Yours faithfully,
(Sunil Kumar) Under Secretary (DD-I)"

324. It is not the case of the petitioners that the proposal submitted by the project proponent was not in accord with the stated requirements.

325. The procedure followed by the respondents in the present case for change in land use can be delineated in the following chart furnished by the respondents:

PROCEDURE FOLLOWED FOR CHANGE IN LAND USE			
S. NO.	**REQUIREMENT**	**RELEVANT PROVISION**	**DATE**
1.	Proposal by L&DO, Ministry of Housing & Urban Affairs, Government of India	Section-11A, DD Act, 1957	04.12.2019
2.	Meeting and consideration of proposal by Technical Committee of DDA	Section-5A, DD Act, 1957	05.12.2019
3.	DDA meeting chaired by Lt. Governor, Delhi	Section-5, DD Act, 1957	11.12.2019
4.	Inviting public objections and suggestions by DDA	Section-11A, DD Act, 1957	21.12.2019
5.	Consideration of objections and	Section-11A, DD Act, 1957	06.02.2020

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	suggestions by Board of Enquiry & Hearing		
6.	Recommendations by Board of Enquiry and Hearing	Rule 10, 1959 Rules	07.02.2020
7.	Consideration of recommendations by DDA	Rule 11, DD Act, 1957	10.02.2020
8.	Recommendation to Central Government for notifying the changes	Rule 11, 1959 Rules	10.02.2020
9.	Notification of change in land use in Official Gazette	Section-11A, DD Act, 1957	20.03.2020

326. According to the petitioners, the entire process followed is replete with undue haste, particularly in calling for personal/public hearing. However, the facts reveal otherwise. Taking legitimate steps/actions swiftly and as per the timelines because of the nature of the proposal cannot be termed as having been done in a haste. Concededly, no allegation of mala fide in fact has been set out nor the facts of this case commend us to hold it as a mala fide in law. Further contrary to the petitioner's argument that the window of objections/suggestions was closed before the period of 30 days specified in the notice, upon enquiry of the original records supplied by the respondents, we found that despite 20.1.2020 being the last date for receiving objections/suggestions, the same were received even beyond the period of 30 days. The last recorded objection was received on 21.1.2020 and entered into diary on 22.1.2020. Each one of these objections/suggestions were duly proceeded as if filed in time.

327. We may now examine the legal position as regards the requirement of personal/public hearing. As noticed earlier, sub-Section (3) merely requires the Authority "to consider" the objections and suggestions received from the public. The legislature has not thought it fit to specify any particular manner of consideration in the governing provision of modification. No strict proposition can be laid down in an enquiry of this nature when the legislature has consciously chosen not to provision for personal/public hearing during consideration of the proposal. But only in the form of written suggestions/objections. The petitioners have stated that personal/public hearing is usually given in such cases.

328. We wonder whether such a requirement can be read in this provision by way of necessary implication. The test of necessary implication usually comes into the picture when there is a danger that failure to so infer would necessarily render the provision otiose. It is not a tool used to substitute an opinion out of convenience or out of an uncontrolled exercise of the power of the judicial pen, rather, it is used to preserve an enactment from reaching an unconscionable conclusion. In *Superintendent and Remembrancer of Legal Affairs, West Bengal* v. *Corporation of Calcutta*[323], a nine-Judge bench of this Court examined the usage of the interpretative tool of necessary implication and observed thus:

> "(51)… In *Sri Venkata Seetaramanjaneya Rice and Oil Mills* v. *State of Andhra Pradesh*, (1964) 7 SCR 456 this Court held that an inference of necessary implication binding the State may be drawn if "the conclusion that the State is not bound by the specific provision of a given statute would hamper the working of the statute, or would lead to the anomalous position that the statute may lose its efficacy". …"

329. It further observed:

> "(57) … If the application of the Act leads to some absurdity, that may be a

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ground for holding that the State is excluded from its operation by necessary implication. …"

330. To read a strict and absolute requirement of personal/public hearing in a particular form and manner in the present case would be to rewrite the provisions altogether. That is uncalled for. The power of judicial review cannot be converted into a power to legislate and the law as regards this proposition is settled. No doubt, had it been a case of preparation of new master plan, Chapter III of the 1959 Rules explicitly denotes the need for hearing the objections and thus mandatory. That is not the requirement for modification of the plan in exercise of powers under Section 11A.

331. The true import of the phrase "shall consider" used in sub-Section (3) of Section 11A, would be to decide the manner of public consultation in accordance with the quantum and quality of changes being proposed strictly on a case-to-case basis. The legislature has entrusted this duty on the executing body so as to enable it to mould the manner of consideration as per the prevailing ground realities of a project. The word "consider" is a phrase mandating the competent authority to look into the objections received post public notice, and then take appropriate decision. The designated authority may determine the manner of consideration in accordance with the nature of changes being proposed. Convention is the true guide in such matters. And in the present case, admittedly personal/public hearing was provided in tune with the convention. But the Court need not elevate the convention to a statutory requirement of affording personal hearing to every objection.

332. In *Cynamide India*[324], this Court has had an occasion to examine the purport of expression "such enquiry by the government as it thinks fit" in reference to the Drug (Prices Control) Order. It went on to observe that such a provision is only an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody other than the subordinate legislating body. That process is an enquiry leading to a legislative activity, and no implications of natural justice can be read into it unless it is a statutory condition to afford personal hearing.

333. *A priori*, we are of the view that no uniform formula can be evolved by the Court on its own in matters like these where larger aspects of town planning and infrastructure are involved, and concerns of geography, economy, social conditions, time-frame etc. pose variable challenges across the national spectrum. It is precisely in the same spirit that even in the process of preparation of new master plan, the proviso to Rule 9 of the 1959 Rules empowers the BoEH to deny personal hearing to any person if it is considered to be irrelevant or trivial in light of the objection raised by that person. It reads thus:

"9. Enquiry and hearing -

…

…

Provided that the Board may disallow personal hearing to any person, if it is of the opinion that the objection or suggestion made by such person in inconsequential, trivial or irrelevant."

334. An argument has been advanced by the petitioners that Rules 8 and 9 of Chapter III of the 1959 Rules, which provide for appointment of BoEH and personal hearing are part of the mandatory procedure of modification. We have already made it clear that Chapter III of the 1959 Rules applies to preparation of "new master plan" and not to modifications under Section 11A.

335. The stated Rules have been framed in furtherance of Section 56(1) and are divided into five chapters. Chapter III relates to the "Procedure for Preparation of Master Plan" and Chapter V, which was inserted vide 1966 amendment of the 1959 Rules, relates to "Modification to the Master Plan and the Zonal Development Plan".

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The subject of modifications, therefore, is dealt under a separate chapter i.e., Chapter V. In the Act also, preparation of master plan is dealt under Chapter III and modifications are dealt under Chapter IIIA which was added later by Act 56 of 1963 by way of an amendment.

336. Thus, the legislature has demarcated the subjects of preparation and modification in two separate chapters, both in the Act as well as the Rules. And there is a clear distinction between the two in terms of procedure. More importantly, the provisions regarding modification were added later by way of amendments in 1963 (in the Act) and 1966 (in the Rules) and we cannot lose sight of the fact that the legislature was well aware of the pre-existing requirements of personal/public hearing in case of preparation of new plan. Despite such knowledge, it chose not to extend the same standard of public consultation in the process of modification and confined itself to the expression "shall consider all objections and suggestions" as used in Section 11A. No other manner of consultation is prescribed in the 1959 Rules.

337. It has been stated by the petitioners that even the act of preparation of a new master plan is done by way of a modification and therefore, the requirement of personal/public hearing would be implicit at the time of modification as well. As discussed, it is beyond doubt that the Act as well as the Rules treat these two subjects in separate compartments and it is also beyond doubt that the objective of such separate treatment is to ensure that the process of modification is not subjected to the same rigours as the process of preparing a new plan. Moreover, the language deployed in the notification S.O. 141 dated 7.2.2007 for the new Master Plan and that deployed in S.O. 1192(E) dated 20.3.2020 (the impugned notification for modification) is also of guiding value to answer the argument under consideration. While preparing the new master plan, the expression used is "extensive modifications", whereas while notifying the present changes (which we have held as minor in nature and not substantive or radical changes to the master plan or for that matter to the zonal plan), the expression used is simpliciter "modification". The usage of the word "extensive" signifies that despite being modification, the preparation of new master plan proposes extensive changes as it is meant to replace the previous plan once and for all. Accordingly, the scrutiny is higher and is placed in a separate chapter. The same cannot be said about a modification under Section 11A unless it is shown to be substantial or radical which is not the case here.

338. A case of replacement of the original plan with a new one and that of modification in an existing plan cannot be placed on the same footing. This carefully crafted scheme cannot be turned on its head by accepting the submission under consideration.

339. The counsel for the petitioner, owing to inadvertence or lack of research, had built up his case by placing reliance on the deleted Rules 12 and 13 of the unamended 1959 Rules to support their argument as regards the requirement of personal/public hearing in case of modification. We are pained to note that the said rules were deleted by 1966 amendment dated 28.5.1966 and no reliance whatsoever can be placed on the said rules in the present subject matter. Rather, the deletion is indicative of legislative intent of doing away with the dispensation provided thereunder for the purposes of modification. The relevant extract of the said notification reads thus:

> "2. In the Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959,—
>
> (a) rules 12 and 13 shall be omitted;
>
> …
>
> …"

340. The petitioners have placed reliance upon a decision of the High Court of Delhi on Section-11A in *Friends of Rajouri Garden Environment* v. *South Delhi Municipal*

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Corporation[325]. The judgment merely explains the intent behind the provision and lays out the requirement of inviting objections and suggestions from "any person", particularly locally affected persons. In this case, the said objections and suggestions have been invited. Furthermore, that case involved construction activity of a nature different from the use zone of the area without effecting the change in land use prior thereto. The reliance, therefore, is of no significance in this case. Similarly, the decisions relied upon by the petitioners in support of the argument under consideration including *Syed Hasan Rasul Numa*[326] does not take the matter any further. Indeed, decision in *Syed Hasan Rasul Numa*[327] pertains to the 1957 Act. It was, however, a case of objection(s) taken by the concerned person having gone unnoticed by the BoEH and also the Authority. The Court found as of fact that the objection taken by the appellants was not listed in the agenda of the meeting convened for consideration and any justification given by the Authority cannot validate the final decision which otherwise suffered from the vice of principles of natural justice *qua* the appellants. Further, in that case the appellants were directly affected by the proposed modification.

341. *Arguendo*, a personal/public hearing was strictly mandated, the relevant query here would be to see whether sufficient opportunity was given, and if not, whether any case of actual prejudice has been made out by the petitioners. It is seen that on 3.2.2020, personal communication was sent to all the objectors. Out of 1292 objectors, 1171 successfully received the emails, 62 emails bounced back due to technical errors and 59 objectors had not provided their email addresses. Additionally, 92 objectors were informed about the scheduled hearing via SMS. Across the span of two days of hearing, 42 objectors were heard including some of the petitioners before this Court. The minutes of the meeting of the Board dated 7.2.2020 succinctly noted the stand of the applicants/objectors in 13 points. Even before us, identical points were repeated by most of the objectors in a stereotype manner, and it has been conceded by the petitioners herein that their grievances were also a part of these 13 points. No other grievance was pointed out to us which was not taken on record and adverted to during the personal/public hearing. Thus, the absence of petitioners or similarly placed persons during public hearing for whatever reasons mentioned, would be of no consequence. Therefore, the contention that short notice led to denial of fairness or opportunity cannot be accepted. It is no doubt a settled proposition that wherever public consultation is prescribed, it must be done in an effective manner, both quantitatively and qualitatively, so as to make it a meaningful participatory process. And in order to make it meaningful, the requirement of reasonable time is of fundamental importance. But what is reasonable time in a given factual scenario cannot be stated as a general proposition and would depend on the circumstances of each case. In the present case, despite there being no express requirement of personal/public hearing, the same was provided for after keeping the window of sending objections/suggestions open for 30 days and sending personal intimation regarding hearing 3 days prior to the scheduled date. It is not the case of the petitioners that they had not received such communication.

342. Thus, no case of prejudice whatsoever has been made out by the petitioners in the process of public consultation. It is well settled that principles of natural justice are not an unruly horse. It would be an empty formality to permit large number of persons to raise same 13 objections multiple times. An attempt was made to impress upon us that due to pandemic situation most of the objectors were unable to remain present on the specified day and time for hearing. As aforesaid, none of the petitioners have invited our attention to any objection taken by them in writing which was different than the 13 points/questions noted by the Authority which were common in all the objections received by it. Hence, even this plea raised by the petitioners is of no avail. In other words, though the petitioners have vehemently argued about denial of

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natural justice, the same has not been demonstrated sufficiently to meet the basic standards of judicial conscience so as to warrant our interference.

343. Indeed, principles of natural justice infuse life and blood into legal processes both judicial and administrative. However, the occasion of their application is not uniform and it cannot be stated as a proposition of blanket application that all administrative exercises are subject to unalterable and absolute standards of natural justice. In *Kailash Chandra Ahuja*[328], this Court in para 36, observed thus:—

> "36. … Even in those cases where procedural requirements have not been complied with, the action has not been held ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant."

344. In *Canara Bank*[329], this Court highlighted the fundamental premise of natural justice and observed thus:—

> "9. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence."

345. Reference could also be had to *State Bank of Patiala* v. *S.K. Sharma*[330] wherein this Court had noted thus:

> "**32.** … Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise."

346. In *Karnataka State Road Transport Corporation*[331], this Court observed thus:

> "24. ….The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. **The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality**…."
>
> (emphasis supplied)

347. In *Secretary, Andhra Pradesh Social Welfare Residential Educational Institutions* v. *Pindiga Sridhar*[332], the Court reiterated the settled position and observed thus:

> "7. …By now, it is well settled principle of law that the principles of natural justice cannot be applied in a straitjacket formula. Their application depends upon the facts and circumstances of each case. To sustain the complaint of the violation of principles of natural justice one must establish that he was prejudiced for non-observance of the principles of natural justice …"

348. In *Jagjit Singh*[333], this Court had observed that:

> "44. … However, the principles of natural justice cannot be placed in a straitjacket. These are flexible rules. Their applicability is determined on the facts of each case."

349. Further, in *Chairman, Board of Mining Examination*[334], the Court was more categorical in its approach and observed thus:

> "13. … Natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being

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conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. …"

350. In short, the petitioners have not been able to demonstrate any case of denial of natural justice. For, the prescribed procedure, both by statute and convention, seems to have substantially been followed. In fact, in circumstances when challenge is raised to a project of immense national importance which is not limited to any particular city or state or intended to give benefit to any private individual, impediments cannot be induced by reading in requirements which are not mandated by law. The principle of "Rule of Law" requires rule in accordance with the law as it is, and not in accordance with an individual's subjective understanding of law. Substantial justice is the core of any such inquiry and it is in this direction that processes are to be understood and adjudicated upon. The Court needs to be conscious of all aspects in a non-adversarial public interest litigation where public interest is the sole premise of enquiry.

QUASI-LEGISLATIVE FUNCTION

351. Learned Solicitor General has also commended us that the nature of power exercised in the present case falls in the realm of legislative or quasi-legislative exercise and not an administrative exercise of power *per se* and therefore, the standards of natural justice and judicial review would be restricted. The submission deserves consideration. Reliance has been placed upon *Cynamide India*[335], wherein price fixation was considered as a legislative act, *Tulsipur Sugar*[336], wherein notification extending limits of town area under Section 3 of U.P. Town Areas Act, 1914 was considered as legislative exercise, *Sundarjas Kanyalal Bhatija*[337], wherein the merging of municipal areas was considered as legislative exercise, *Aircraft Employees' Cooperative Society*[338], wherein preparation of comprehensive development plan, comprehensive zoning of land use, demarcating areas for new housing etc. were considered as legislative exercise and *Pune Municipal Corporation*[339] wherein the power of the State Government of making or amending Development Control Rules was held to be a part of delegated legislation, thereby rejecting any requirement of natural justice over and above what is provided under the statute.

352. We have carefully traversed through the cases relied upon by the respondents. In *Cynamide India*[340], the Court while holding price control fixation as a legislative measure, observed thus:

"7. …… It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. **Any attempt to draw a distinct line between legislative and administrative functions, it has been said, is "difficult in theory and impossible in practice"**. Though difficult, it is necessary that the line must sometimes be drawn as different legal rights and consequences may ensue. The distinction between the two has usually been expressed as "one between the general and the particular". ….."

(emphasis supplied)

353. The Court went on to define a legislative and administrative act as:

"… "A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy". "**Legislation is the process of**

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formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases." It has also been said:"Rule-making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class" while, "an adjudication, on the other hand, applies to specific individuals or situations". …"

(emphasis supplied)

354. The Court further observed the uncertainty of such distinction and observed:

"…**But, this is only a bread distinction, not necessarily always true.** Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. …"

(emphasis supplied)

355. In *Lachmi Narain* v. *Union of India*[341], when called upon to adjudge whether a certain exercise of power was that of delegated legislation or conditional legislation, this Court observed:—

"49. …In our opinion, no useful purpose will be served to pursue this line of argument because the distinction propounded between the two categories of legislative powers makes no difference, in principle. In either case, the person to whom the power is entrusted can do nothing beyond the limits which circumscribe the power; he has to act — to use the words of Lord Selbourne — "within the general scope of the affirmative words which give the power" and without violating any "express conditions or restrictions by which that power is limited". There is no magic in a name. Whether you call it the power of "conditional legislation" as Privy Council called it in *Burah case* [(1877-78) 5 IA 178 : ILR 4 Cal 172] or "ancillary legislation" as the Federal Court termed it in *Choitram* v. *CIT* [1947 FCR 116 : AIR 1947 FC 32 : ILR 26 Pat 442] or "subsidiary legislation" as Kania, C.J. styled it, **or whether you camouflage it under the veiling name of "administrative or quasi-legislative power" — as Professor Cushman and other authorities have done it— necessary for bringing into operation and effect an enactment, the fact remains that it has a content, howsoever small and restricted, of the law-making power itself**. …"

(emphasis supplied)

356. It is no doubt true that the classification of legislative or administrative functions can no more be done like a pigeon-holes classification. It was because of this reason that the phrases "quasi-legislative" and "quasi-administrative" have made inroads in the modern administrative law. In fact, in practical parlance, even quasi-legislative functions are treated as falling under the wider ambit of administrative functions. Illustratively, in *Ganesh Bank of Kurundwad Ltd.* v. *Union of India*[342], the two-Judge Bench of this Court delineated the ambit of administrative actions and observed thus:—

"**51.** "*13*. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. **Administrative action is stated to be referable to the broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature**. …"

(emphasis supplied)

357. However, the same cannot be accepted as a general proposition in all cases. The demarcation of an executive function as legislative/quasi legislative or administrative has a direct bearing on the aspect of public participation in the decision -making process and thus, the classification becomes imminent in certain cases. It is settled law that public participation is permissible to the limited extent of what is

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provided in the statute in case of a legislative exercise of power. As regards *Tulsipur Sugar*[343], the relevant provision (Section 3) dealt with fresh declaration of areas or for defining limits of areas. Such functions undoubtedly have a general character. Similarly, in *Sundarjas Kanyalal Bhatija*[344], no standards of procedure to be followed during the decision-making process were prescribed, contrary to the present case where inviting objections/suggestions and consideration thereof is a statutory requirement.

358. The reliance on *Pune Municipal Corporation*[345] may not assist us in the present enquiry as in that case, the function performed was of amending the "rules" and not a development plan. Amendment of rules which would have the effect of creation of new rules would most certainly qualify as a legislative function, however, limited modification of an existing development plan may not attract a similar observation. Moreover, the said action was taken under a provision which called for "*such inquiry as it may consider necessary*" by the relevant authority. This phrase is of a very wide import and clearly grants wide powers to the authority as it does not even provide for a specified method of inquiry. On the contrary, in the present case in Section 11A(3) of the 1957 Act, the method of inquiry is expressly specified i.e. "*inviting objections and suggestions from any person*" and further the Authority herein is mandated to consider the objections/suggestions by way of a "shall" provision. The broad requirement of public consultation, no matter how limited, is explicit here. And as observed already, manner of consideration may vary from case to case.

359. We now discuss the case of *Aircraft Employees' Cooperative Society*[346] which comes closest to the present enquiry. The precise challenge therein was regarding excessive delegation of legislative powers. The Court recognised that it was not a case of excessive delegation as legislative functions like preparation of comprehensive development plan and zoning of land in different use zones could be delegated by the legislature to the development authorities for various reasons. Strictly speaking, the Court in that case did not enter upon an examination of whether the function of town planning was of an administrative character or legislative. The Court took it to be of a legislative character and answered accordingly. The present question was not in issue in that case. Therefore, it cannot be stated as a direct authority upon the enquiry before us. However, the fact that broad activities of town planning involved in that case are synonymous with the activities involved in the present case is of guiding value.

360. In the present case, what is being modified is the master/zonal plan already in existence. True that is not an action that creates new zones or new parameters as was the case in *Aircraft Employees' Cooperative Society*[347]. However, the underlying nature of activity being performed here is of town planning and change in land use of one or couple of plots in a given zone. It is a modification which will provide direction to all future development of the subject plots. We have noted that there is a distinction between modifying the use of land in a given zone and demarcating fresh boundaries for various zones of land. The change of usage of Government land is of a general nature. It is certainly not a purely routine administrative work. That means that the function of change in land use has a quasi-legislative hue to it.

POST CHANGE IN LAND USE DECISION

361. The Project had two independent components - expansion/renovation of Parliament and common Central Secretariat with separate timelines for each of them as per the nuanced policy decision at the appropriate level. The project proponent thus had initiated the process of seeking approval of CVC regarding the former. Accordingly, only the component of expansion/renovation of Parliament is a part of this *lis.* Thus, no other aspect of the Central Secretariat project and the remaining project arises for our consideration.

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362. We may now advert to the challenge against clearances/approvals granted by CVC and DUAC. The primary examination pertains to the mandate of these bodies, respective stages of consideration and requirements of application of mind.

CVC CLEARANCE

STATUS OF CVC AND PROCEDURE ADOPTED FOR GRANT OF "NO OBJECTION"

363. In light of the submissions advanced by the parties, the following questions emerge for our consideration in this part:—

(i) What is the status of CVC?

(ii) Is the Government bound by the opinion of CVC?

(iii) Whether CVC has failed to exercise its mandate while granting "No Objection" to the subject proposal?

(iv) Whether the clearance by CVC stands vitiated due to absence of reasons and non-application of mind?

364. At the outset, we may deal with the status of the CVC and legal force of its opinion on the government. The central vista region has been of immense importance for the Government of India from the time it took control after independence. To ensure that development in this area is regulated and continues to be so, various stakeholders were involved in the process who joined in differing capacities to further that cause. Amongst others, a Specialized Study Group of architects and town planners to advice the Government came to be constituted on 4.9.1962 vide O.M. No. 6/11/62-WI. The relevant portion thereof reads thus:

> "The question of development of the Central Vista and Secretariat Complex has been engaging the attention of this Ministry for some time. In view of the national importance of the area and the need for its planned development, it has been decided to bring the entire area under strict architectural control. …"

365. It then specifies the limitations on development and states that no development is permissible except with its specific approval. The O.M. states thus:

> "… No construction or development in the area extending from the Rashtrapati Bhavan to the hexagon around the India Gate will take place without the specific approval of the Govt. of India in the Ministry of WH&S. It has also been decided to set up a Specialised Study Group of architects and town planners, to advise Govt. on such aspects of the development of the Central Vista and the Secretariat Complex as may be referred to it from time to time. …"

366. What emerges from the above discussion is that the CVC was created by an Office Memorandum (executive fiat) by the Government at that time as an advisory body to advice the Government on matters sent for its consideration. It was not created by an Act of Parliament. This distinction is crucial in understanding the character of the body. Had it been a statutory body, its functioning and mandate would have been governed by the legislation and any deviation therefrom would have been a case of illegality. However, this cannot be the case when the body is an outcome of an executive order. Executive orders, in the absence of a statutory backing, are passed by the government for improving day to day governance. If the government, in its wisdom, felt the need to constitute a body for advising it on certain matters as and when they are submitted for its consideration, the Court cannot elevate its status to a platform where it becomes an impediment in the functioning of the government itself. The constitution of CVC was a purely internal matter of the government and a government can choose to incorporate as many steps in the process of decision making as it deems fit. The responsibility of the Court would be to check the status of the body and see whether it has failed to exercise its mandate or has transgressed its mandate altogether. The creation of CVC was to have the benefit of an additional scrutiny over the development of the central vista region in the form of

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approval. It has no binding authority on Government action and in case of conflict, the decision of the Government must prevail. There is no ambiguity in this regard. Over the course of time, no matter how institutionalised CVC has become in the process of decision making, its inherent character remains the same and in no circumstance, can it override the very institution that created it. The argument as regards the applicability of procedural legitimate expectation is dealt with a little later.

367. Furthermore, it can be seen that the study group was constituted to "advice" the Government and that too on certain aspects of development of the region as may be referred to it from time to time. The expression "such aspects" categorically signifies that the study group is not meant to approve or reject an entire proposal of development. Instead, its mandate is limited to advising the Government on certain features of the project as and when it is called upon to express its views. The study group was, as originally constituted was chaired by Chief Architect and Town Planner, CPWD. On 17.9.2002, the composition of the group was altered and ADG (Arch.), CPWD was designated as the Chairman. The group was further reconstituted on 14.10.2019 owing to the change in nomenclature of designations of certain members of the committee. The Office Memorandum notes thus:

> "… The nomenclature of designations of the Chairman and some Members of the Special Advisory Group has undergone change. In this regard, Chairman, ADG (Arch.), CPWD has been renamed as ADG (Works) and Member Secretary, CA (NDR), CPWD has been renamed as CA (PRD). Besides this, Chairman, Indian Institute of Architects has also been renamed as President, Indian Institute of Architects and Chairman, Institute of Town Planners, India has been renamed as President, Institute of Town Planners, India."

368. On 11.4.2020, Mr. Ashwani Mittal, Executive Engineer, Central Vista Project Division-I, CPWD sent a communication to Chief Architect (Planning & Design), CPWD titled "Construction of New Parliament Building Plot No. 118. Approval by CVC - regarding" for consideration and approval of CVC. The communication categorically notes that the Committee was supplied with architectural drawings and documents in respect of the project before the date of this communication. It reads thus:

> "The architectural drawings and documents in respect of Parliament Building have already been submitted to your good office for accord of local body approval."

369. The communication further notes that the selected consultant M/s HCP Designs was also asked to place before the Committee hard and soft copies of presentation, relevant drawings, brief project report and 3D views of the proposal. It reads thus:

> "This office is asking the consultants M/s HCP Design to provide the hard and soft copy of presentation and the relevant drawings including brief report of the project and 3-D views of the proposal in this regard by Monday 13.04.2020. Soft copy of the same shall be shared with you at your office email id delca-prd@cpwd.gov.in accordingly,"

370. The communication further requested the Chief Architect to invite Senior Architect, CPWD as a special invitee for the CVC meeting wherein the subject proposal was to be considered. It notes thus:

> "It is kindly requested to invite Shri Vijay Prakash Rao, Senior Architect, CPWD, Senior Architect (DR), CPWD, as a special invitee for the CVC meeting …"

371. The notice of 5th CVC meeting was circulated to all the members on 16.4.2020 wherein the case proponents were requested to present their proposals along with all other necessary documents and drawings. It reads thus:

> "Case proponents are requested to present their proposal in the meeting by way of PPT/Drawings and all other necessary documents and material along with their Architects/Team."

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372. Owing to the outbreak of COVID-19, the notice also communicated the possibility of an online meeting on the same day and ensured that electronic means for online conference facility may be issued to attend the meeting. It noted thus:

> "Keeping in view the Guidelines for COVID 19 as issued by the GOI from time to time it is possible and desired that as far as possible the electronic means for online conference facility may be issued to attend and participate in the meeting."

373. The minutes of the meeting expressly note that detailed presentations were made by the consultant. We must note at the very outset that allegations of mala fide in reconstitution of the Committee are devoid of merit. For, the reconstitution was done not to replace an expert member but only to correct the nomenclature of certain designations in light of the changes that must have taken place in respective organisations. For instance, the office of ADG (Arch.) is now known as ADG (Works) in CPWD and accordingly, the change of this nomenclature in the membership of CVC was warranted to avoid any confusion. This change of nomenclature was a prior administrative decision and the corresponding correction in the CVC membership was merely an incidental step to such change. There is no basis to say that the said change was done solely for perpetuating some foul play in the working of CVC, as is urged before us.

374. Incontestably, the original decision of change of nomenclature has not even been challenged by the petitioners and it would be nothing but absurd to accept a challenge to an incidental step in the absence of any challenge to the main decision that resulted in the incidental step. Even otherwise, we need not probe into the mental frame of the executive to understand the thought behind a decision, on the basis of surmises and conjectures and especially when the decision is taken by the competent authority and is untainted. Similar line of argument was adopted to challenge the absence of some members and representation of some members through their delegates. The delegates were none else but authorised officials of the same department as that of the designated members. Upon further examination, we find that even in CVC meeting dated 18.10.2018 for "Construction of Reception Building for Rashtrapati Bhawan near Gate No. 37, President Estate, New Delhi" and dated 12.3.2018 for "Construction of National War Museum, New Delhi", various authorised officials participated in a representative capacity which reinforces the respondents' submission that this method of participation is a part of ordinary course of business in functioning of Government bodies.

375. The petitioners have gone to the extent of saying that ADG (Works), Chairman of CVC, not being an architect by profession, was not competent to chair this Committee. We must note that it is one thing to allege an illegality in a process, but it is another to question the professional competency of the office holder who is occupying such position owing to his designation (*ex-officio*) and not in his personal capacity or by virtue of his qualifications. It is noticed that the post of Chairman is not a qualification-based position, rather, it is a designation-based office. For, the Chairman is supposed to discharge multiple functions involving but not limited to offering his views on a proposal submitted for the Committee's consideration. The Committee comprises of various other members who bring their respective expertise onboard and in consideration of a proposal, the Chairman enjoys no special powers or veto to turn down the suggestions of expert members. In other words, the Chairman is entrusted with administrative functions which do not vest in the entire Committee, whereas the function of tendering advice on the subject proposal vests equally in all the members. Therefore, it is a broad-based administrative Committee, which is the amalgam of designated office holders (*ex-officio*) and of experts. They come together to advise the Government on certain aspects of a given project. Illustratively, the subject meeting was attended by representatives from DUAC, Chief Architect, Chief

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Planner, Town & Country Planning Organisation and Senior Architect, CVC, CPWD. Thus, merely because the Chairman was not an architect by profession, it could not be assumed that the Committee itself became incompetent to consider the subject proposal.

376. The broad structure of administration and governance of State is premised on the notion that the task of administration is not the sole virtue of a select few who are experts in a particular field of study. Multiple factors come into play when administration is entrusted to a particular office and it is not for the Court to prescribe a qualifying criterion for discharging the functions assigned to a particular office, particularly when it is sitting in a judicial review of a decision and not in a quo warranto proceeding to challenge the appointment of office holder. The nature of office, nature of functions to be performed, composition of team, mandate of office etc. are some of the considerations that come into play.

377. As regards the absence of some members, we must note that the notice of meeting was communicated to all the members on 16.4.2020 and they were asked to make the requisite arrangements in advance. Furthermore, the members who lacked in technical know-how to interact virtually were given the option of necessary assistance for the purpose of meeting. In such a scenario, it is inconceivable to say that the members were deliberately kept out of the meeting. None of the members was required to go out for the meeting and the arrangements in place were sufficient for them to register their presence in the meeting and participate in the decision-making. If they failed to join the meeting for reasons best known to them, the outcome of the meeting cannot be assailed by alleging motives. Further, the minutes of meeting were mailed to all the members on 30.4.2020 and even then, no word of discord or dissatisfaction was received from any of these members. It must follow that their absence cannot be equated to an irregularity, much less an illegality. The Committee was not expected to sit over the proposal merely because some members were unwilling to join virtually despite all arrangements being in place. Indisputably, none of the absent members is before us in this case and we have no occasion whatsoever to consider them as being aggrieved in any manner, for no grievance at their instance has come on record.

378. We may broadly revisit the procedure followed by CVC in reference to proposal for expansion and renovation of Parliament Building, in the following order:

(a) Communication by Chief Architect (Planning & Development), CPWD for consideration by CVC - 11.4.2020;

(b) Submission of presentations, drawings, project report and other documents for consideration of members - 11.4.2020;

(c) Request for invitation to Senior Architect (CPWD) to participate in the meeting as special invitee - 11.4.2020;

(d) Notice of meeting to all the members - 16.4.2020;

(e) Request to case proponents for presenting the proposal - 16.4.2020;

(f) Communication conveying the possibility of online meeting to all the members and suitable arrangements regarding video conferencing were proposed - 16.4.2020;

(g) Conclusion of Meeting - 23.4.2020;

(h) Minutes of meeting communicated to all the members for their approval - 30.4.2020;

(i) Minutes approved on 30.4.2020.

379. Thus, the statement of minutes and preceding steps duly reflect that the committee ensured that all elements of the project are in order. While approving, the committee duly noted the requirement of ensuring that the project is in sync with the

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flavour of the region. A decision reached by the advisory Committee (which is indisputably an administrative committee and not statutory) after following such an elaborate process is to be seen in the light of its substance and not its form. Seeing such a decision in isolation from the above order of proceedings would be to miss out on substance for the form. Such is not the standard of scrutiny in judicial review.

NON-APPLICATION OF MIND

380. We may nevertheless advert to the asseveration of non-application of mind. Upon examination of the minutes of meeting dated 23.4.2020 as approved on 30.4.2020 and notice of meeting dated 16.4.2020, we have observed that all documents, presentations, designs etc. were placed before all members of the Committee well in advance and they were equipped enough to examine the subject project within their mandate and advise the Government. In Committee's observation, the grant of no objection is an in-principle approval coupled with a suggestion that "*the features of the proposed parliament building should be in sync with the existing parliament building*". This observation is indicative of the due awareness on part of the Committee of heritage requirements relating to Grade-I precincts. Merely because the minutes do not advert to any specific documents already placed before the members of the Committee, it does not follow that the members did not discharge their duty properly. Indisputably, the relevant documents were placed before all the members at least a week before the Committee meeting and understandably, a week's time was granted to all the members for examining the documents. In such circumstances, it cannot be assumed that the documents and presentations escaped the minds of the Committee members until and unless a demonstrable infirmity is shown.

381. It is noticed that the argument of non-application of mind has been invoked by the petitioners, irrespective of the nature of body whose decision has come to be assailed. The requirement of due application of mind is one of the shades of jurisprudential doctrine that justice should not only be done but seen to be done. It requires a decision-making body, judicial or quasi-judicial, to abide by certain basic tenets of natural justice, including but not limited to the grant of hearing to the affected persons. Rules of natural justice are not embodied rules. They are means to an end and not end in themselves. The goal of these principles is to prevent prejudice. It is from the same source that the requirement of application of mind emerges in decision making processes as it ensures objectivity in decision making. In order to ascertain that due application of mind has taken place in a decision, the presence of reasons on record plays a crucial role. The presence of reasons would fulfil twin objectives of revealing objective application of mind and assisting the adjudicatory body in reviewing the decision. The question that arises here is, whether the statement in the recorded minutes of the CVC meeting ("the features of the proposed Parliament building should be in sync with the existing Parliament building") is or is not indicative of application of mind.

382. In cases when the statute itself provides for an express requirement of a reasoned order, it is understandable that absence of reasons would be a violation of a legal requirement and thus, illegal. However, in cases when there is no express requirement of reasons, the ulterior effect of absence of reasons on the final decision cannot be sealed in a straightjacketed manner. Such cases need to be examined from a broad perspective in the light of overall circumstances. The Court would look at the nature of decision-making body, nature of rights involved, stakeholders, form and substance of the decision etc. The list is not exhaustive for the simple reason that drawing a conclusion of non-application of mind from mere absence of reasons is a matter of pure inference and the same cannot be drawn until and unless other circumstances too point in the same direction. The aforesaid factor of nature of rights has been considered by this Court in *E.G. Nambudiri*[348] thus:

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> "**8**. The question is whether principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of natural justice, **and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions**. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for its decision as there is no general rule that reasons must be given for administrative decision. **Order of an administrative authority which has no statutory or implied duty to state reasons or the grounds of its decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice that reasons should be given for decisions**. See : *Regina* v. *Gaming Board for Great Britain, ex p. Benaim and Khaida*, [1990] 2 Q.B. 417 at 431.
>
> ..."
>
> (emphasis supplied)

383. It is settled that in cases where individual rights are affected by the decision, an opportunity of being heard and application of mind couched in the form of reasons form part of the jurisprudential doctrine. Such cases need to be distinguished from cases which do not impinge upon individual rights and involve ordinary administrative processes. For, similar standards cannot be deployed to decide both these cases. When petitioners allege illegality on a ground such as absence of reasons in a pure administrative process, they must bear the burden to demonstrate the requirement of reasons in the first place. It is not as if reasons are mandatory in all decisions. What we are dealing with is the opinion of an advisory (administrative) body which is appointed by the same Government which calls for its advice and not to adjudicate upon rights of individuals. Even if we assume that the no objection by an advisory body would have the effect of affecting the objectivity of the final decision, the fact remains that it does not take the final decision. It is meant to invoke its expertise in light of the subject proposal placed before it and advise the Government as regards the feasibility of the proposed development in connection with the existing central vista region. The final decision would be that of the competent authority of the concerned department. Furthermore, what purpose would it serve to entangle an advisory body into rigidity of recording elaborate reasons when its advice is not going to affect any stakeholder whatsoever nor can be made the basis to challenge the final decision of the competent authority. Not being a statutory body, its opinion has no finality attached to it nor could be appealed against to superior forum. Undeniably, in the process of decision-making, the Government may choose to consult as many bodies and agencies as it desires and opinion of every such advisory body cannot be assailed by supplying fictional standards without keeping in view the nature of body and context of advice.

384. In *E.G. Nambudiri*[349], this Court noted as to how mere absence of reasons may not render the decision to be illegal thus:

> "**6**. … Ordinarily, courts and tribunals, adjudicating rights of parties, are required to act judicially and to record reasons. Where an administrative authority is required to act judicially it is also under an obligation to record reasons. But every administrative authority is not under any legal obligation to record reasons for its decision, although, it is always desirable to record reasons to avoid any suspicion. Where a statute requires an authority though acting administratively to record

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reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal. **But in the absence of any statutory or administrative requirement to record reasons, the order of the administrative authority is not rendered illegal for absence of reasons. If any challenge is made to the validity of an order on the ground of it being arbitrary or mala fide, it is always open to the authority concerned to place reasons before the court which may have persuaded it to pass the orders**. ...”

(emphasis supplied)

385. Had it been a case of any other administrative committee required to adjudicate upon the rights of individuals, merely because it is not mandatory to record reasons would not absolve it of the requirement of objective consideration of the proposal. The ultimate enquiry is of application of mind and a reasoned order is merely one element in this enquiry. In a given case, the Court can still advert to other elements of the decision-making process to weigh the factum of application of mind. The test to be applied in such a case would be of a reasonable link between the material placed before the decision-making body and the conclusion reached in consideration thereof. The Court may decide in the context of overall circumstances of the case and a sole element (of no reasons or lack of elaborate reasons) cannot be enough to make or break the decision as long as judicial mind is convinced of substantial application of mind from other circumstances. Even in common law jurisprudence, there is no absolute requirement of reasoned order in all decisions. In *Lonrho plc* v. *Secretary of State for Trade and Industry*[350], it was contended that the decision is not based on convincing reasons and therefore, must be declared as illegal. The House of Lords refused to entertain this contention and noted that mere absence of reasons would not render the decision as irrational. Lord Keith, in his opinion, noted that the only significance of absence of reasons would be that if circumstances overwhelmingly point towards a different conclusion that the one reached by the body, it would be fatal. He noted thus:

> “The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker who has given no reasons cannot complain if the court draws the inference that he had no rational reason for his decision.”

386. In ***Administrative Law***, P.P. Craig notes that it is relevant to consider the context in which decision operates thus:

> “The court will consider the nature of the decision maker, the context in which it operates and whether the provision of reasons is required on grounds of fairness.[351]”

387. Mr. Craig also refers to *R.* v. *Ministry of Defence, Ex p. Murray*[352] wherein certain principles relating to duty of reasons were elaborated. Lord Chief Justice Bingham, in his opinion, observed that the requirement of giving reasons may be outweighed by concerns of public interest in certain cases, for instance, when it would unduly burden the decision maker. We are not importing any rider of public interest to negate the requirement of reasons; however, the above exposition is useful to understand the effect of absence of reasons on an otherwise legal, rational and just decision.

388. Notably, this Court in *Maharashtra State Board*[353] and in *Mahabir Jute Mills*[354] noted that if the function/decision of the Government is administrative, in law, ordinarily there is no requirement to be accompanied by a statement of reasons unless there is an express statutory requirement in that regard. Again, in *Sarat Kumar Dash*[355], the Court observed that in the field of administrative action, the reasons are

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link between maker of the order or the author of the decision and the order itself. The record can be called to consider whether the author had given due consideration to the facts placed before him before he arrives at the decision.

389. Therefore, the requirement of reasons in cases which do not demand it in an express manner is based on desirability and the same is advised to the extent possible without impinging upon the character of the decision-making body and needs of administrative efficiency.

LEGITIMATE EXPECTATION

390. The petitioners would contend that CVC performs functions akin to statutory bodies and has acted in contravention of legitimate expectations of public. It has been rightly pointed out to us that Zonal Plan for Zone D and tender conditions require consultation with CVC as an essential step. However, it is not the petitioners' case that no consultation has taken place in furtherance thereof. The argument is ripe with ambiguity. We hold that CVC cannot be given the status of a statutory body when its mandate and origin, as envisaged in the relevant Office Memoranda, have been duly discussed above.

391. As regards legitimate expectations, it is settled that legitimate expectations may arise in administrative matters depending on the factual matrix of a case. However, it is necessary to understand the basic import of this doctrine. Legitimate expectations may arise in cases when the decision-making body deviates from a set standard, thereby impinging upon the rights of those who are subjected to the decision. In the present case, had the project proponent entirely skipped the step of consultation with CVC, enforcing such consultation by operation of legitimate expectation may have come into play. We need not record our final view in that regard, as it does not arise in this case. In *Punjab Communications Ltd.* v. *Union of India*[356], this Court had noted that the requirement of legitimate expectation is not based on mere hope or wish or anticipation. Referring to *Union of India* v. *Hindustan Development Corporation*[357], it observed thus:

> "**33**. …This Court then observed that legitimate expectation was not the same thing as anticipation. It was also different from a mere wish or desire or hope. Nor was it a claim or demand based on a right. A mere disappointment would not give rise to legal consequences. This Court held (p.540) as follows:
>
> "The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. … Such expectation should be justifiably legitimate and protectable."
>
> …"

392. In *Ram Pravesh Singh* v. *State of Bihar*[358], this Court noted the dimensions of this doctrine and we quote the same with approval thus:

> "**15**. What is legitimate expectation? **Obviously, it is not a legal right**. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. **The expectation should be legitimate, that is, reasonable, logical and valid**. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or

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if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle an expectant : (*a*) to an opportunity to show cause before the expectation is dashed; or (*b*) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation". The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognised legal relationship with the authority. **A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly**."

(emphasis supplied)

393. Suffice it to say that this expression does not convey a tangible right. Instead, it is a mere expectation of fair and reasonable treatment and the legitimacy of that expectation would strictly depend upon the facts and circumstances of a case, particularly on whether or not the absence of a procedural step had led to failure of fairness. Legitimate expectation is a locus-based principle and it is not meant to assuage the expectations of those whose interests are unaffected by a decision. It is easy to form an expectation but difficult to find a legitimate basis for such expectation.

394. Importantly, such expectation gets developed only on the basis of an established practice in context of the decision being taken and in context of the body taking the decision, and the petitioners have not demonstrated any established practice which has been deviated from in the present case. At any rate, reading in an additional procedural requirement on the basis of legitimate expectations is not a standard judicial review function and the Court must bear a heavy burden by demonstrating the need as well as an established basis for such an action. The petitioners' insistence on this doctrine is wholly out of context and in fact has no application to the case under consideration. In such circumstances, any further deliberation on this count would be an exercise in futility.

DUAC APPROVAL

STAGE FOR STATUTORY APPROVAL BY DUAC

395. The proposal for DUAC approval pertained only to the "New Parliament Building, Plot No. 118, N.A., New Raisina Road, New Delhi." It was not for the entire Central Vista Project as such. Thus, what is under consideration is the validity of DUAC approval for the Parliament project and not the remaining central secretariat project. In light of the submissions detailed above, the following questions emerge for our consideration in this part:

(i) Whether the approval of DUAC was essential even before the release of Consultation Services NIT?

(ii) Whether DUAC acted in an arbitrary manner while considering the proposal thereby vitiating the approval granted by it?

396. DUAC has been constituted as a statutory body under the DUAC Act for the purpose of maintaining the aesthetic quality of urban design. The Preamble to the

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DUAC Act reads thus:

"An Act to provide for the establishment of the Delhi Urban Art Commission with a view to preserving, developing and maintaining the aesthetic quality of urban and environmental design within Delhi."

397. In ***Objectives, Jurisdiction and Guidelines*** of DUAC, the intent behind the formation of this Commission becomes clear. It is stated thus:

"While developing/redeveloping, maintaining and preserving various parts of the city, there has hardly been any emphasis on the quality of the physical environment and visual character of the city. The aesthetic and visual character of Delhi at least the better part of it leaves much to be desired. In fact certain beautiful areas have been ruined due to sheer negligence and indifference. The need for a high-powered Design Re-view Board/Commission to guide and control the aesthetic quality of urban and environmental design of the city and its cultural values has been felt for some time past."

398. Section 11 of the DUAC Act specifies the functions of the Commission. It reads thus:

11. Functions of the Commission. — (1) It shall be the general duty of the Commission to advise the Central Government in the matter of preserving, developing and maintaining the aesthetic quality of urban and environmental design within Delhi and to provide advice and guidance to any local body in respect of any project of building operations or engineering operations or any development proposal which affects or is likely to affect the sky-line or the aesthetic quality of surroundings or any public amenity provided therein.

(2) Subject to the provisions of sub-section *(1)*, it shall be the duty of the Commission to scrutinise, approve, reject or modify proposals in respect of the following matters, namely:—

(a) development of district centres, civic centres, areas earmarked for Government administrative buildings and for residential complexes, public parks and public gardens;

(b) re-development of the area within the jurisdiction of New Delhi Municipal Committee including Connaught Place Complex and its environs, Central Vista, the entire bungalow area of Lutyen's New Delhi, and such other areas as the Central Government may, by notification in the Official Gazette, specify;

(c) plans, architectural expressions and visual appearance of new buildings in the centres, areas, parks and gardens specified in clauses (a) and (b) including selections of models for statues and fountains therein;

(d) re-development of areas in the vicinity of Jama Masjid, Red Fort, Qutab, Humayun's Tomb, Old Fort, Tuglakabad and of such other places of historical importance as the Central Government may, by notification in the Official Gazette, specify;

(e) conservation, preservation and beautification of monumental buildings, public parks and public gardens including location or installation of statues or fountains therein;

(f) under passes, over-passes and regulations of street furniture and hoardings;

(g) location and plans of power houses, water towers, television and other communication towers and other allied structures;

(h) any other projects or lay-out which is calculated to beautify Delhi or to add to its cultural vitality or to enhance the quality of the surroundings thereof;

(i) such other matters as may be prescribed by rules.

Explanation.—For the purposes of this sub-section,—

(i) "civic centre" means the headquarters of a local body comprising therein its

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office buildings and buildings intended for cultural activities;

(ii) "Connaught Place Complex" means the area comprising Connaught Place and its extension measuring approximately 140 hectares, being the area described as Zone D-I (Revised) in the Delhi Master Plan;

(iii) "district centre" means a self-contained unit created in the Delhi Master Plan comprising areas for retail shopping, general business, commercial and professional offices, forwarding, booking and Government offices, cinemas, restaurants and other places of entertainment."

399. A perusal of Section 11 reveals that the Commission (DUAC) is invested with twin duties—

first, to advise the Central Government in matter of preserving, developing and maintaining the aesthetic quality of urban and environmental design;

second, to provide advice and guidance to any local body in respect of any project …… which affects or is likely to affect the skyline or aesthetic quality of surroundings.

400. Sub-Section 2 of Section 11 states that the Commission (DUAC) is duty bound to scrutinize, approve, reject or modify proposals in respect of "*re-development of the area within the jurisdiction of New Delhi Municipal Committee including Connaught Place Complex and its environs, Central Vista*….". Furthermore, sub-Section 3 bestows powers upon the Commission (DUAC) to act *suo motu* to secure its objectives in case the proposal is not submitted to it by the local authority. It states thus:

"(3) Without prejudice to the provisions contained in subsection (1) and sub-section (2), the Commission may suo motu promote and secure the development, re-development or beautification of any areas in Delhi in respect of which no proposals in that behalf have been received from any local body."

401. Section 12 obligates every local authority, undertaking building/engineering operations, to refer to the Commission (DUAC) for its scrutiny. Further, the decision of the Commission (DUAC) in that regard would be binding upon the local authority. It reads thus:

"12. Duty of local bodies to refer development proposals, etc., to the Commission. —

Notwithstanding anything contained in any other law for the time being in force, every local body shall, before according approval in respect of any building operations, engineering operations or development proposals referred to in sub-section *(1)* of section 11 or intended to be undertaken in any area or locality specified in subsection *(2)* of that section, refer the same to the Commission for scrutiny and the decision of the Commission in respect thereof shall be binding on such local body."

402. Furthermore, in Section 14,

"**14. Power to revise decision in certain cases.—**

Nothing contained in this Act shall preclude the Central Government from calling for and examining, on its own motion, if it considers it necessary so to do in the public interest, any case in which a decision has been made by the Commission under section 12 but no appeal lies thereto, and passing such order thereon as it thinks fit:

Provided that no such order shall be made prejudicially affecting any person except after giving him an opportunity of making a representation in the matter."

403. The aforesaid scheme of the DUAC Act succinctly reveals that the mandate of DUAC is to offer its advice in matters of preservation, development, re-development and maintenance of aesthetic quality of urban and environmental design within Delhi. Such advice is not rendered in context of each and every aspect of the proposal,

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rather, it only ensures that overall aesthetic quality of the concerned region is not being disturbed. Over and above the concern of aesthetics, there is no other aspect on which the Commission's (DUAC's) approval is mandated. It is also noteworthy that the Act draws a clear distinction between local bodies and Central Government insofar as the binding value of the advice of Commission (DUAC) is concerned. Section 12 categorically binds the local bodies with the advice of the Commission (DUAC). This distinction is further strengthened by Section 14 which incorporates a saving clause providing for an overriding power bestowed upon the Central Government to call for and examine the advice of the Commission (DUAC) if public interest so demands and pass "*such order thereon, as, it thinks fit*".

404. As regards the stage of consultation with DUAC, Section 12 enjoins the local bodies to consult before according approval in respect of any building operations, engineering operations or development proposals. Section 2(b) defines "**building operations**" as:

> "(b) "building operations" includes rebuilding operations, structural alterations of, or additions to, buildings and other operations normally undertaken in connection with the construction of buildings;"

405. Section 2(f) defines "**engineering operations**" as:

> "(f) "engineering operations" includes the formation or laying out of means of access to a road or the laying out of means of water supply;"

406. Section 2(e) defines "**development**" as:

> "(e) "development" with its grammatical variations means the **carrying out of building, engineering, mining or other operations in, on, over or under, land or the making of any material change in any building or land and includes re-development**;"

(emphasis supplied)

407. The meaning of the expression "development" offers guidance as regards the stage of consultation. It specifies that development means "carrying out of building …… operations" on land or "making material change" in any building. The words "carrying out" and "making", when harmoniously read, lay out a clear position that approval of Commission must be sought before actual development i.e., before carrying out operations or making material changes. There is no ambiguity in the operative provision as regards the stage of consultation. The petitioners' argument that such consultation must be before releasing the tender for consultation services, therefore, has no basis in the governing law. The same intent would reflect from the Preamble of the DUAC Act which stipulates in no uncertain terms that the concern of the Commission is with the aesthetics of concerned region. Indubitably, the consideration whether or not a proposal is in sync with the existing aesthetics would not be possible until and unless the design and shape of the proposed project is ready being site specific. For, without a design before it, the Commission (DUAC) would be incapable of comprehending the compliance of a design with aesthetics of the region.

408. We recall and note that at the stage of tender for consultation services, the prospective bidders were called upon to submit their vision of the proposed project which goes on to show that no final design was in existence at that point of time. It was only after the consultant was selected that the design was finalised and the role of DUAC would not emerge before this crucial step.

ARBITRARINESS IN GRANT OF APPROVAL

409. We may now deal with the argument regarding arbitrariness of DUAC in granting approval. In order to understand whether the DUAC acted in fulfilment of its mandate, we deem it necessary to analyse the Minutes of the meetings of DUAC. Initially, when the proposal was placed before DUAC for its consideration, a detailed presentation was made before it by the consultant wherein various features of the

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project were delineated. The minutes dated 5.6.2020 note thus:

> "2. The proposal was scrutinised by the Commission. The architect also made a presentation of the project (via Video Conference), explained its unique features, client requirements and constraints and provided clarifications to the queries of the Members of the Commission. The Commission appreciated the overall design …"

410. Thereafter, the DUAC categorically noted that some inadequacies were found in the proposal and accordingly it was returned with certain observations. Point 3 of the Minutes reads thus:

> "3. It was observed that as per preliminary scrutiny done by the DUAC Secretariat in May 2020, some of the inadequacies found in the submission were communicated to the CPWD …."

411. The DUAC noted that the Vehicular Parking Plan and Landscape Plan was not commensurate with the requirements and observed in point 4 that:

> "4. The Commission reiterates that the above two viz. a) Vehicular Parking Plan and b) Landscape Plan need to be submitted as per requirement."

412. The DUAC elaborated on the observation regarding parking plan and observed thus:

> "5. In the Vehicular Parking Plan, parking for the vehicles needs to be shown as per statutory requirement. Further, the interface between vehicular movement and pedestrian/visitor movement needs to be indicated. The gate opening towards Rafi Marg Circle seems to require further resolution. This may be reviewed."

413. Even in the Landscape Plan, the DUAC emphasized upon rationalisation of open spaces around the proposed new building. In point 9, the DUAC asked the integration of new building with the old building. The Committee, in accordance with their mandate, specifically focussed on form and aesthetics of the proposed building in point 10 and noted thus:

> "10. The urban form and aesthetics of the main new Parliament building may be improved. The elevation design and treatment needs to be less overbearing and more representative of the diversity and democratic ideals of a modern India. The facade facing the present Parliament should be given appropriate treatment as it will be the link for movement between the two buildings, as well as define a symbolic connection. The form of the new building as visible from Vijay Chowk needs to be visually scaled to the present Parliament building."

414. Thereafter, the DUAC recorded certain observations relating to interiors and other features of the building like windows, desirability of natural light, better ventilation, availability of skylights and sustainability features in accordance with the provisions of green buildings in Delhi. It, then, recorded its decision as "Not Approved" and returned the proposal.

415. The project proponent, thereafter, submitted a revised proposal which was considered by the DUAC in its 1545th meeting on 1.7.2020, to which approval was granted after a detailed discussion and scrutiny, as recorded in the Minutes thus:

> "3. Now, the revised building plan proposal received (online) with incorporation of observations of the Commission was scrutinized, and after a detailed discussion with the architect/project proponent …"

416. The Minutes reveal that even in this round of consideration, the DUAC was not peripheral in its scrutiny and again recorded certain observations relating to parking requirements and environmental concerns. In point (a), it is noted that:

> "a. The parking requirements for the plot are proposed to be distributed in several plots scattered around the complex. To ensure smooth accessibility and to address environmental concerns, it was suggested that the local body shall explore the possibility of Multi-Level Car Parking (MLCP) after identifying a plot of

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appropriate size and location, in the vicinity, to relocate all the proposed parking in one consolidated plot wherein parking requirements for all users to the Parliament building including MP Chambers, supporting staff, media, visitors, school children buses, etc. can be accommodated."

417. Furthermore, touching upon various aspects of the quality and designs of fencing, size, scale and material of gates, the DUAC noted that they should be commensurate with the character and identity of the complex. The Commission also advised the project proponent to enhance natural lightening features and decide location of trees in the manner that pedestrian pathways are not disturbed and shade is enough. In point 3(e), it noted thus:

"e. The Landscape plan has to be more detailed with the appropriate treatment of Hardscape & Softscape. The location and selection of trees to be planted should be appropriate so that there is enough shade and does not interfere with the pedestrian pathways. Pedestrian circulation must be shaded and suitable for all ages. Covered entrances for pedestrians are advisable."

418. The above analysis leaves no manner of doubt that the DUAC was not only mindful of its advisory functions, but also discharged the same in accordance with its statutory mandate. The argument that the DUAC did not apply its mind to various aspects of the project is ill-informed, if not ill-advised. The DUAC was sitting in an advisory capacity so as to advise the Government on aesthetics of a development/re-development project. It is not meant to analyse any other aspect of the project. In that, it is expected to apply its mind to those aspects of the project which may have a bearing on aesthetics. The Minutes succinctly reveal that complete information relating to designs was placed before the DUAC and it applied itself on an array of factors including parking, plantation of trees, traffic, appearance of facade, ventilation, landscape, building equipment etc. so far as the same are relevant for its enquiry, to fulfil its advisory duties.

419. The law relating to arbitrariness and its application in a legal issue before the Court is well settled. To apply the principle of arbitrariness in an advisory function would entail a situation wherein the advice is rendered without any reasonable thought to the proposal. The law demands a demonstration of inadequacies, for instance, absence of any material to consider the proposal or failing to exercise the mandate or leaving out relevant considerations or mala fide consideration of the proposal. At the very least, the case must reveal a situation of non-application of mind based upon the circumstances of the case or the Minutes of the meeting. The present case does not involve any such situation. The Minutes reveal a thorough and reasonable consideration by DUAC of all relevant aspects and we are in no position to consider it a case of non-application of mind much less arbitrary. Suffice it to observe that the allegation of arbitrariness is easy to raise in a theoretical discourse, but hard to establish in a Court of law where unsubstantiated considerations have no place.

420. As per Conduct of Business Regulations, 1976, the Minutes of the meeting were ratified and confirmed in the next meeting of the Commission and no member has expressed any reservation regarding any aspect of the advice tendered by DUAC. The petitioners' challenge on this count, therefore, fails.

CHALLENGE TO CHANGE IN LAND USE IN REFERENCE TO HERITAGE CONSERVATION

421. The concern relating to disregard for heritage conservation laws has been expressed in multiple petitions in this case. From change in land use to grant of approval by various bodies, it is consistently alleged that heritage conservation laws have been kept out of consideration by the respondents. We note at the very outset that as regards the new Parliament building project, the concern of heritage conservation does not arise directly. For, plot No. 118 (New Parliament Building) is not

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an enlisted heritage property and does not fall within central vista precincts. However, the concern emerges due to it being an adjoining space with plot no. 116 (Existing Parliament Building) which houses a Grade-I structure. The impact of this positioning, if any, and role of HCC in examination thereof shall form part of the discussion to follow. From a thorough perusal of the submissions and documents, the following questions emerge for our consideration in this part:

(i) Whether the subject new Parliament building project has breached the scope of changes permissible under Unified Building Byelaws for Delhi, 2016[359] relating to heritage buildings/precincts?

(ii) Whether the approval of HCC is mandated at the development stage or prior thereto?

422. At the outset, we note that the argument relating to impermissibility of change in land use without reckoning the heritage related laws shall also be addressed in this part itself, along with the broader argument that the whole project is in contravention of heritage conservation laws. As regards heritage spaces, the general tone of the 2016 Byelaws is to preserve the heritage as they specify that "*conservation of heritage sites shall include buildings, artifacts, structures, areas and precincts of historic, aesthetic, architectural, cultural or environmentally significant (heritage buildings and heritage precincts)*…"

423. To begin this discussion, the pin-pointed enquiry is whether the broad statement that "once a heritage, always a heritage" or that heritage buildings/precincts have an inviolable character in law with an absolute embargo on any modification whatsoever, is the correct legal position. If not, then our examination would pertain to the *extent of changes* that can be made. The scheme of the 2016 Byelaws plainly enunciates that heritage buildings/precincts are not *ipso facto* unalterable. For, the Byelaws contemplate three kinds of changes that can be made in respect of heritage buildings/precincts:

(i) physical changes through development work on heritage sites (clause 1.3);

(ii) change of ownership of heritage sites (clause 1.12);

(iii) change of use of land on which heritage sites are situated (clause 1.12).

424. In the present challenge, we are concerned with points (i) and (iii) i.e., examination of permissibility of change in land use and physical changes during development as per 2016 Byelaws. We may proceed in that order.

425. But before that, be it noted that the principles of conservation or preservation of heritage buildings/precincts are restricted only to those buildings/precincts which have been listed as heritage buildings/precincts in the official notification. The same gets corroborated by the affidavit of Mrs. Ruby Kaushal, Member Secretary to the HCC where she states that the jurisdiction of the HCC is limited to the listed heritage buildings/precincts and that the entire Lutyen's Bungalow Zone (LBZ) is not a heritage zone. The submission is that only listed buildings/precincts are subject to heritage conservation norms. Clause 1.1 of the Byelaws categorically state that:

> "1.1. **Applicability** : This regulation shall apply to heritage sites which shall include those buildings, artifacts, structures, streets, areas and precincts of historic, architectural, aesthetic, cultural or environmental value (hereinafter referred to as Listed Heritage Buildings/Listed Heritage Precincts) …. **which shall be listed in notification(s) to be issued by Government/identified in MPD**."
>
> (emphasis supplied)

426. The Government in exercise of the powers conferred by Bye-laws 23.1 and 23.5 of the Delhi Building Bye-laws, 1983 read with sub-Section (17) of Section 2 of the New Delhi Municipal Council Act, 1994, has published a list of 141 Heritage Sites including Heritage Buildings, Heritage Precincts and Listed Natural Feature Areas for

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general information. The same reads thus:

"NOTIFICATION

Delhi, the 1st October, 2009

F. No. 4/2/2009/UD/l 6565.—Whereas a list of 147 Heritage Sites including Heritage Buildings, Heritage Precincts and Listed Natural Feature Areas prepared by the Chairperson, New Delhi Municipal Council, on the advice of the Heritage Conservation Committee, was published in the newspaper on June 8, 2005 as a public notice inviting objections and suggestions from all persons likely to be affected thereby within a period of thirty days from the date of publication of the notice.

And whereas copies of the said notice were made available to the public on 8th June, 2005.

And whereas all objections and suggestions received in respect to the above mentioned public notice have been duly considered by the Heritage Conservation Committee.

And whereas out of the original list of 147 heritage buildings and precincts referred to the NDMC by the HCC, two buildings/precincts have not been found suitable for listing by the NDMC (Annexure-B) and four buildings/precincts are being studied and reconsidered by the NDMC (Annexure-C).

Nov/, therefore, in exercise of the powers conferred by Bye-laws 23.1 and 23.5 of Delhi Building Bye-laws, 1983 read with sub-section (17) of Section 2 of the New Delhi Municipal Council Act 1994, the Government hereby publishes the following list of 141 Heritage Sites including Heritage Buildings, Heritage Precincts and Listed Natural Feature Areas for general information (Annexure-A)

By Order and in the Name of the Lt. Governor of the National Capital Territory of Delhi,

R.C. MEENA, Jt. Secy.

LIST OF 141 HERITAGE BUILDINGS IN NDMC AREA FOR NOTIFICATION

GRADE-I

Sr. No.	Name of Building/Precincts	Location
1	2	3
1.	Safdaijung's Tomb	West of Crossing of Aurobindo Marg and Lodhi Road
2.	Jantar-Mantar	Parliament Street
3.	India Gate	LBZ, Central Vista
4.	India Gate Canopy	LBZ, Central Vista
5.	Building within the President Estate	President Estate
6.	Jaipur Column	Infront of Rashtrapati Bhawan
7.	North Block and South Biock—	LBZ, Central Vista
8.	**Parliament House and Campus**	**LBZ, Central Vista**
9.	**Central Vista Precincts**	**LBZ, Central Vista at Rajpath**
10.	Hyderabad House and Campus	Near India Gate Circle
11.	Baroda House and Campus	Near India Gate Circle
12.	Dominion Columns	Near South Block
13.	**National Archives and Campus**	**Janpath**
14.	Cathedral Church of Redemption and Campus	Church Road

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15.	Shikargah	Teen Murti House
16.	Lai Bangla-1	Delhi Golf Club
17.	Mosque	Safdarjung's Tomb
18.	Tomb of Muhammad Shah Sayyid	Lodhi Gardens
19.	Bara Gumbad	Loclhi Gardens
20.	Mosque	Lodhi Gardens
21.	Arched Building	Lodhi Gardens
22.	Shish Gumbad	Lodhi Gardens
23.	Tomb of Sikander Lodi	Lodhi Gardens
24.	Athpula	Lodhi Gardens
25.	Agrasen ki Baoh	Haily Road
26.	Khairul Manzil Masjid	Subramanya Bnarti Marg, Mathura Road
27.	Lai Darwaza	Mathura Road, Opp. Zoo Entry
28.	Lal Bangla-U	Delhi Golf Club
29.	Tomb of Najaf Khan	W. of Lodi Colony
30.	Mosque	Haily Rd ad
31.	Tomb	National Stadium, Opp. High Court
32.	Barah Khamba	Delhi Golf Club
33.	Tomb of Sayvid Abid	Delhi Golf Course. Opp. Kaka Nagar
34.	Tomb (Early Mughal)	Delhi Golf Club
35.	Tomb (Late Mughal)	Delhi Golf Club
36.	Gandhi sadan smriti’	Tees January Marg
37.	Mir Taqi's Tomb	Delhi Golf Course, Opp. Kaka Nagar
38.	Vaulted Tomb	Delhi Golf Course, Opp. Kaka Nagar
39.	Teen Murti Statues	Opp. Jawahar Lal Memorial, Teen Murti Marg
40.	Mosque	South of Central Visita in the green area adjoining Rajpath
41.	Mosque	Kaka Nagar
42.	Teen Murti House—	Teen. Murti Marg
43.	Free Church and Campus	Parliament Street
44.	Sacred Heart Cathedral	Ashoka Place
45.	Darya Khan Lohanfs Tomb	East Kidwai Nagar
46.	Boh Bhatyari Ka Mahal	Link Road
47.	Bistadan Mahal	Southern Ridge, Sardar Patel Marg
48.	Well	Outside East Wall Safdarjung Tomb
49.	Temple	Jantar Mantar
50.	Dargah	West of Mathura Road. South of N.S.C.

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51.	Turret	Lodhi Gardens
52.	Shanti Patii Vista	Diplomatic Enclave at Chanakyapuri

GRADE-II

Sr.	Name of Building Precincts	Location
1.	Gol Dak Khana	Baba Kharak Singh Marg
2.	Central Telegraph Office (Eastern Court)	Janpath
3.	Jaipur House	Near India Gate Circle
4.	Bikaner House	Near India Gate Circle
5.	Western Court and Campus	Janpath
6.	All India Radio Building and Campus	Sans ad Marg
7.	Tomb	East of N. Stadium near Gate No. 5
8.	N.P. Boys S.S. School and Campus	Mandir Marg
9.	Embankment	Talkatora Garden
10.	Mosque	Lodhi Gardens
11.	Mosque and Campus	Adjacent to Eastern Entrances of Karbala Ground
12.	Bridge	Kamal Ataturk Ro ad near R.C. Club
13.	Pedestrian Bridge	Over Drain Kamal Ataturk Road
14.	Gale Way	Punchkuin Road
15.	Mosque	Dargali Camp. Punchkuin Road
16.	. Baghwali Masjicl and Campus	South end of Pandara Road
17.	Karbala and Campus	Jorbagh
18.	Grave Enclosure and Campus	Kaka Nagar Adjacent to NDMC Primary School
19.	Mosque and Campus	Delhi Golf Club
20.	Tomb and Campus	East of Hotel Oberoi
21.	Mosque and Campus	R.K Ashram Road
22.	Mosque and Campus	Race Course
23.	Gate Way and Campus	Dargali of Shahi Mardan, B.K Dutt Colony
24.	Travancore House and Campus	KG. Marg
25.	Kashmir House and Campus	Rajaji Marg
26.	Lady Hardinge Medical College and Campus	Shaheed Bhagat Singh Marg
27.	Kerala House and Campus	Jantar-Mantar Road
28.	Bahawaipur House and Campus	Sikandara Road
29.	Faridkot House and Campus	Copernicus Marg
30.	National Stadium and Campus	LBZ Central Vista
31.	Indira Gandhi Memorial	Safdaijung Road
32.	Darblianga House `and Campus	7, Man Singh Road

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33.	Kapurthala House and Campus	3, Man Singh Road
34.	J&K House and Campus	Prithvi Raj Road
35.	Gymkhana Club and Campus	Between RC Road & Safdaijung Road
36.	Laxmi Narain Temple (Birla Mandir) and Campus	Mandir Marg
37.	St. Columba's School and Campus	Ashoka Place
38.	Regal Rivoli Buildings	Outer Circle C.P.
39.	ECS House	CP
40.	Scindia House	Outer Circle C.P.
41.	Chota Jain Mandir	Jain Mandir Lane
42.	Qadam Sharif	Dargah Shahi Mardan, B.K. Dutt Colony
43.	Tomb of Arif Ali Shah	Dargali Shahi Mardan, B.K Dutt Colony
44.	Dargah of Hasan Rasul Numa	Punchkuin Road
45.	Memorial Canopy	LHMC
46.	Jain Happy School	Jain Mandir Road
47.	Gateway Lai Bangla	Delhi Golf Club
48.	Connaught Place/Connaught Circus including Middle Circle	CP.
49.	Gateway of Building	Rear side Imperial Hotel & Jantar Mantar Lane
50.	Gol Market	SBSMarg C.P.
51.	Convent of Jesus & Mary School and Campus	3angla Sahib Road
52.	Naval Officers' Mess and Campus	Shahjahan Road
53.	Jaisailmer House and Campus	Man Singh Road
54.	Patiala House and Campus	North-West India Gate
55.	Tehri-Garhwal House and Campus	5, Bhagwan Dass Road
56.	Embassy of Nepal and Campus	Barahkhamba Road
57.	Lady Irwin College and Campus	Sikandra Road
58.	Lady Irwin Sr. S. School and Campus	Canning Road
59.	Hungarian Cultural Centre and Campus	Janpath & Tees January Marg
60.	Sujan Singh Park and Campus	Subramanya Bharti Marg
61.	St. Thomas School	Mandir Marg
62.	Majlis Khana and Campus	B.K Dutt Colony
63.	Bibi Ka Rauza and Campus	B.K Dutt Colony
64.	Bara Jain. Mandir and Campus	Jain Mandir Road
65.	Lai Masjid	Dargah Shahi Mardan, B.K. Dutt Colony
66.	Gateway	Dargali Shahi Mardan. B.K.
67.	Tomb of Mali Khan am	Dutt Colony Karbala. Jor Bagli
68.	Sardar Vallabh Bhai Patel Smarak Trust Building	7, Jantar Mantar Road
69.	Free Mason's Hall and Campus	Janpath
70.	St. Thomas Church and Campus	Mandir Marg

GRADE-III

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Sr. No.	Name of Building/Precincts	Location
1.	Masjid Rakabganj	Cnurch Lane
2.	Masjid Maheedia	Aurangzeb Road
3.	**Grave Platform**	**North of Central Vista**
4.	Simehri Masjid and Roundabout	Sunehri Bagh Road
5.	Police Station and Campus	
6.	Police Station and Campus	Tuglaq Road Mandir Marg
7.	Dr. RML Hospital and Campus	Wellington Crescent
8.	Modern School and Campus	Barali Khamba Road
9.	New Delhi Cemetery and House	Prithviraj Road
10.	Hanuman Mandir and Campus	Baba Kharak Singh Marg
11.	Plinth	Delhi Golf Club Ashoka
12.	Bangla Shaib Gurudwara and Campus	Road
13.	Rakab-Ganj Gurudwara and Campus	Church Road
14.	Imperial Hotel mid Campus	Janpath
15.	Mosque	Blind School. Lodhi Road
16.	Gateway	Entrance School Lodhi Road
17.	Gateway	Dargali Shahi Mardan. B.K. Dutt Colony
18.	Residence Mosque	5, Sikandra Road
19.		Dargah Shahi Mardan. B.K. Dutt Colony

ANNEXURE-B

Sr. No.	Name of Building' Precincts	Location
1.	Mmto Bridge	Mmto Road (This structure falls under the physical jurisdictions of MCD and should be referred to them for further action.

GRADE-III

Sr. No.	Name of Building/Precincts	Location
2.	Patani House	5, Man Singh Road

ANNEXURE-C

LIST OF 4 HERITAGE BUILDINGS IN NDMC AREA BEING STUDIED/RECONSIDERED GRADE-I

Sr. No.	Name of Building Precincts	Location
1.	Archeological Survey of India Office building adjacent to National Museum at Janpath	Janpath & Maulana Azad Road Crossing

GRADE-II

Sr.	Name of Building' Precincts	Location

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No.		
2.	**Vice-President's House**	**Maulana Azad Road**
3.	Police Station and Campus	Parliament Street

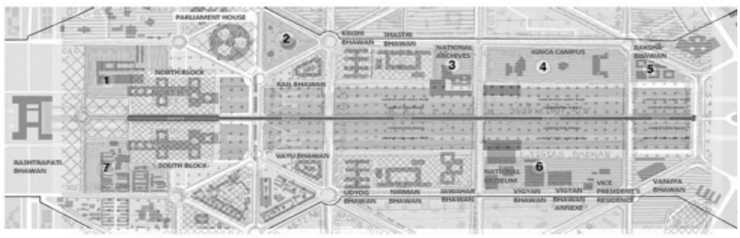
GRADE-I

Sr. No.	Name of Building/Precincts	Location
4.	Burman Residence	Jain Mandir Road

(emphasis supplied)

427. Therefore, our foremost concern is to determine whether any of the seven subject plots are situated on a listed heritage site. On careful examination, we note that out of seven subject plots, only two plots, i.e. plot no. 3 (National Archives listed as Grade-I) and plot no. 4 (which houses a structure titled "Grave Platform" listed as Grade-III), have been listed as heritage sites in the list. At serial no. 13 of Grade-I sites, "National Archives and Campus" located at Janpath is earmarked as a Grade-I heritage building/precinct. The other listed site is at serial no. 3 in Grade-III sites which is a part of plot no. 4.

428. The petitioners have submitted that the entire central vista area is a part of listed heritage sites. In response, learned Solicitor General has commended us with the official colour coded map of Central Vista Avenue signed by Senior Architect (R.D-II Unit) of Central Public Works Department (CPWD), New Delhi alongwith affidavit of Ms. Leenu Sahgal, Commissioner (Planning), Delhi Development Authority, dated 3.7.2020. There is no reason to doubt the correctness of this factual statement on affidavit. A list of listed heritage sites has also been furnished wherein 141 sites have been listed as heritage buildings, precincts and natural feature areas. We have carefully studied the plan specified in detail in the said map, reproduced hereunder:—



LEGEND

Central Vista Water Body | Pathway | Central Vista Lawns | Rajpath | Proposed Greens

Location	Currently being used as	Area (in acres)	Land use as per MPD 2021/ZDP 2001	Land use Changed to
Plot No. 2	Amenities and Parking	9.5	Recreational (District Park)	Government (Parliament House)
Plot No. 3	National Archives	7.7	Public and Semi Public Facilities	Govt Office (5.88 acres) & Recreational (District Park) (1.88 acres)
Plot No. 4	Indira Gandhi National Centre for the Arts	24.7	Public and Semi Public Facilities (SC)	Govt. Office (22.82 acres) & Recreational (District Park) (1.88 acres)
Plot No. 5	Raksha Bhawan (Government office)	4.5	Public and Semi Public Facilities (SC)	Govt. office
Plot No. 6	National Museum, Vigyan Bhawan, Vice President's House	24.7	Public and Semi Public Facilities (SC)	Govt. Office (22.82 acres) & Recreational (District Park) (1.88 acres)
Plot No. 7	A & B Blocks of Ministry of Defence (Government office)	15	MPD-2021- Government office ZDP Zone-D-2021- Recreational (Neighborhood Play Area)	Residential

Note:

1. **With regard to Plot No. 1 of area 15 acres mentioned in the public notice dated 21.12.2019, the current land use is Transportation (Bus Terminal)/Parking) (10.5 acres) and Recreational (Neighborhood Play Area) (4.5 acres). In terms of public notice dated 21.12.2019, it was proposed to change to 'Govt Office'. However, subsequently, it has been decided by the Government to use it as 'Residential' and accordingly DDA is taking further action to change the land use as per the provisions of Delhi Development Act, 1957.**
2. **Plot No. 8 of area 3.9 acres located in Zone C has been changed from Public Semi Public (Facilities) to Recreational (District Park).**

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429. The plan demarcates the Rajpath, central vista lawns and central vista water body running parallel to Rajpath as a collective space titled "Central Vista Precincts at Rajpath" which is a part of the listed heritage buildings/precincts at Serial No. 9 of Grade-I sites. Whereas, the existing Parliament Building on plot No. 116, has been separately notified as Grade-I at Serial No. 8 of the same list. The proposed Parliament Building, however, is on plot No. 118. Both these plots (Nos.116 and 118) may come within the central vista area, but are not part of central vista heritage precincts as such. Therefore, it follows that the entire central vista area has not been declared as a heritage precinct and only the central vista precinct ***at Rajpath*** is declared as such. Inasmuch as, all other heritage structures/precincts in the central vista area have been listed separately in the list of heritage buildings/precincts. In other words, if the entire central vista area was to be listed as heritage precinct, the requirement of listing its components separately would not have arisen. Further, it is a matter of record that the aforesaid precinct at Rajpath is not a part of the proposed comprehensive development project, as no changes thereto have been proposed as of now.

430. It is relevant to note that the appropriate authority while enlisting the heritage buildings/precincts/natural feature areas was conscious about the difference between building and precincts, as is evident from the published list. Our discussion on the expression "heritage buildings" also clarifies the position. The list separately includes multiple buildings/sites or precincts within the central vista area. For instance, other structures/buildings within central vista area i.e., India Gate, India Gate Canopy, North Block and South Block etc. If the petitioners' argument that the entire central vista area is a listed precinct would have reflected the correct position and there was absolutely no need for the competent authority to include different buildings/precincts situated in the same region separately. To reinforce this view, reference could be made to the INTACH Report which gives a physical description of "Central Vista, Rajpath" thus:

> "PHYSICAL DESCRIPTION : The vista was designed to link the Viceroy's House (now the President's House) to the northern gateway of the Purana Qila. At the eastern end was erected the War Memorial Arch (India Gate), around which were built the Princes' houses. On both sides on the main road, there are wide lawns. The architectural character of the Central Vista is enhanced by the landscaping, the street furniture, the water bodies, etc. and it is important that any new addition/intervention is sensitive to and respects the character of the area."

431. Notably, INTACH is not a statutory authority but only a registered society. Nevertheless, the description by it is also unambiguous and leaves no scope for further scrutiny. It is in complete sync with the stand taken by the respondents on affidavit and which has found favour with us that only the Central Vista Precincts at Rajpath, as described by the INTACH Report, qualify as a listed heritage precinct. As submitted by the respondents, a precinct may include some parts of the appurtenant land as well, however, it will not cover the entire central vista region. It will defeat the whole purpose of the exercise of listing, which is a statutory measure with intent to preserve and conserve only the listed heritage premises.

432. As regards the heritage status of other plots involved in the present *lis*, during the course of the hearing, the petitioners were called upon to show relevant official documents to depict that the subject plots have been listed as heritage buildings/precincts, as contended. No document to the contrary is forthcoming. Reference was, however, made to some documents downloaded from internet including official website of NDMC. Those documents cannot be the basis to disregard the official documents produced under the signatures of the authorised officer on affidavit including the statutory notification published by the Government for listing of

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141 heritage sites/buildings. We would, therefore, rely upon the official documents and the affidavit of the officials of the competent authority, as aforesaid.

433. As per the coded plan, the land use of plot Nos. 3 and 4 is being changed from Public and Semi-Public Facilities to Government Office and Recreational (District Park). Our enquiry is focussed on whether the said change is permissible in law.

434. On change in land use, clause 1.12 is the guiding provision for the present enquiry which categorically states that listing does not *ipso facto* prohibit change of ownership or usage. However, it adds a caveat by stating that the change in land use of such listed heritage buildings/precincts is not permissible without a "prior approval" of the HCC. It reads:

> "1.12. **Grading of the Listed Buildings/Listed Precincts:**
>
> …Listing does not prevent change of ownership or usage. However, **change of use of such Listed Heritage Building/Listed Precincts is not permitted without the prior approval of the Heritage Conservation Committee.** Use should be in harmony with the said listed heritage site. …"
>
> (emphasis supplied)

435. Therefore, it is urged that for the aforesaid two plots, the change in land use was contingent upon prior approval of HCC. In the first place this prior approval is required if the proposal for change in land use pertains to listed heritage building/listed precincts only. Not for other properties. In any case, the record reveals that this requirement has been substantially complied with by the respondents.

436. Indisputably, the HCC is constituted as a part of the nodal Ministry i.e., MoHUA and Special Secretary/Additional Secretary of the Ministry is designated as the Chairman of the committee. Other members of the HCC include Additional D.G. (Architecture), CPWD, Chief Planner, Town and Country Planning Organisation, Commissioner (Planning), DDA, Secretary, DUAC among others. In the present case, both the meetings of the Authority wherein the proposal of change in land use was considered comprised of representatives of all the agencies which were required to give their approval to the project. The minutes of the DDA meeting dated 10.2.2020 wherein the project proposal was approved for final notification reveal that Shri Kamran Rizvi, Additional Secretary, MoHUA, Government of India, who is also the designated Chairman of the HCC, was present in the meeting and had unreservedly joined in the approval of the HCC to the proposed change in land use. Additionally, we note that various other members of the HCC had also participated in the meeting of the Technical Committee in December, 2019. In the participation of high officials of HCC including its Chairman, it can be safely accepted that those officials of HCC were fully informed and conscious about their role in approving the proposal regarding change in land use. In other words, the HCC was throughout a part of the process, represented by its Chairman and other members. Their approval to the proposal under consideration has been duly recorded in the said meetings. It must, therefore, follow that the approval of the HCC as regards the change in land use was implicit and understood in the approvals granted in the said meetings. Resultantly, there is substantial compliance of "prior approval" under clause 1.12.

437. This approval under clause 1.12, however, does not dispense with the requirement of a formal written "prior permission" of HCC under clause 1.3. That would become essential before commencing the development work on listed heritage buildings/sites and that stage is yet to arrive, including in respect of construction on plot No. 118 likely to be affected by the expression "Heritage building"[360] to include such portion of land adjoining heritage building (existing Parliament building on plot No. 116) or part thereof as may be required for fencing or covering or in any manner preserving the historic and/or architectural and/or cultural value of such existing heritage building.

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SCOPE OF DEVELOPMENT ON HERITAGE SITES (PRIOR APPROVAL VIS-à-VIS PRIOR PERMISSION)

438. The scope of restrictions regarding the development/redevelopment of the heritage buildings/precincts is stated in clause 1.3 of the Byelaws which reads thus:

> "1.3 Restrictions on Development/Re-development/Repairs etc.
>
> (i) **No development or redevelopment** or engineering operation or additions/alterations, repairs, renovations including painting of the building, replacement of special features or plastering or demolition of any part thereof of the said listed buildings or listed precincts or listed natural feature areas shall be allowed **except with the prior permission of Commissioner, MCD, Vice Chairman DDA/Chairman NDMC. Before granting such permission, the agency concerned shall consult the Heritage Conservation Committee to be appointed by the Government and shall act in accordance with the advice of the Heritage Conservation Committee.**
>
> (ii) Provided that, before granting any permission for demolition or major alterations/additions to listed buildings (or buildings within listed streets or precincts, or construction at any listed natural features, or alternation of boundaries of any listed natural feature areas, objections and suggestions from the public shall be invited and shall be considered by the Heritage Conservation Committee.
>
> ….."

(emphasis supplied)

439. Clause 1.3 does not *per se* prohibit development/redevelopment/engineering operations/alterations/additions etc. of the heritage building/precincts. It stipulates that such development work can be undertaken on listed heritage buildings/precincts, only after prior permission of the specified authorities which would mandatorily consult and act in accordance with the advice tendered by the HCC. Clause 1.16 is in line with clause 1.3 and states that "*the regulations do not amount to any blanket prevention of demolition or of changes to Heritage Buildings*." The only requirement is to obtain prior permission/clearance from the relevant authorities from heritage point of view before the development work is actually commenced by the project proponent. Thus understood, heritage buildings/precincts are not *ipso facto* inviolable in law. The extent of permissible development on the listed heritage buildings/sites is within the domain of HCC.

440. As per clause 1.12, the listed buildings/precincts may be graded into three categories - Grade I, II and III, and based on such grading, the scope of development over such spaces is to be determined. The extent of physical development is determinable on the basis of grading of heritage buildings/precincts. For instance:

(i) No interventions be permitted either on exterior or interior of the heritage building or natural features unless it is necessary in the interest of strengthening and prolonging, the life of the buildings/or precincts or any part or features thereof. For this purpose, absolutely essential and minimum changes would be allowed and they must be in conformity with the original;

(ii) Internal changes and adaptive re-use may by and large be allowed but subject to strict scrutiny. Care would be taken to ensure the conservation of all special aspects for which it is included in Heritage Grade-II. In addition to the above, extension or additional building in the same plot or compound could in certain circumstances, be allowed provided that the extension/additional building is in harmony with (and does not detract from) the existing heritage building(s) or precincts especially in terms of height and façade;

(iii) Internal changes and adaptive re-use may by and large be allowed. Changes an include extensions and additional buildings in the same plot or compound.

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However, any changes should be such that they are in harmony with and should be such that they do not detract from the existing heritage building/precinct.

441. It is clear that restricted development to the extent of repairs and improvements is permissible even on Grade-I building. The respondents have categorically submitted that none of the listed heritage structures is being touched in violation of the aforesaid restrictions. Furthermore, it has been submitted that the proposed new building (Parliament building) falls outside the domain of HCC as it is situated on a separate plot (plot No. 118).

442. However, in light of the meaning of expression "heritage building", as provided in 2016 Byelaws, the respondents were asked as to whether plot no. 118 would come within the expression "land adjoining such building", thereby making it liable for the same level of scrutiny as a Grade-I structure. The respondents maintain that plot no. 118 would fall outside the purview of HCC. That issue needs to be examined by the HCC in the first place. We need not answer the same in these proceedings. If and when the project proponent seeks clarification/permission of HCC before commencing work on plot No. 118, the HCC is free to examine the same on its own merits by following procedure prescribed therefor.

443. Having stated the principles relating to the scope of permissible development, we make it clear that we are neither delving further into the question of development of new Parliament building, nor into the question of whether or not the interpretation of the expression "heritage building" would take within its sweep plot no. 118 as well (being situated on adjacent land). For, the 2016 Byelaws clearly state that the respondents are obliged to obtain "prior permission" of the Commissioner, MCD, Vice Chairman, DDA and Chairman, NDMC before development work commences and the same may be sought (if already not done) as and when the project proponent decides to commence development work upon plot No. 118 for the new Parliament building. The HCC is free to decide that proposal in accordance with law. We do not wish to dilate on this aspect any further and leave all questions in that regard open.

444. For the completion of record, we note that prior "approval" or "permission" of HCC, as the case may be, becomes essential at two different stages. As per clause 1.12 what is required is "prior approval" before processing the proposal for change of use of the listed heritage building/listed precincts. Not for other buildings/sites. Whereas, "prior permission" of the designated Authority is required to be obtained under clause 1.3 before the commencement of development/redevelopment etc. work by the project proponents of the listed heritage buildings/listed precincts including on lands adjoining thereto. The stages and purpose of each of these is distinct. The two do not overlap. In the present case, the former i.e., "prior approval" under clause 1.12 for change in land use of the concerned listed buildings/listed precincts has been granted by the HCC, as recorded in the form of minutes of the Authority concerned, referred to earlier. Thus, what is now needed is "prior permission" of the designated Authority under clause 1.3 before the development/redevelopment etc. work by the project proponent is commenced on the listed heritage buildings/precincts/natural feature areas including on plot No. 118 (for construction of new Parliament building) being a land adjoining to a Grade I listed heritage building, if already not obtained.

ENVIRONMENTAL CLEARANCE (EC)

445. We may now examine the validity of EC granted to the proposed Parliament project on plot no. 118 by MoEF. On a thorough perusal of the submissions and documents on record, the following questions emerge for our consideration in this part:

(i) Whether the respondents have acted in violation of 2006 Notification and O.M. dated 24.12.2010 by not submitting the entire Project i.e., Central Vista Project as conceived by the Government of India, for EC at the same time?

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(ii) Whether the applicant misdescribed/miscategorised the Parliament project as Category B2 (Building & Construction) project in item 8(a) as per the 2006 Notification so as to reduce the level of scrutiny?

(iii) Whether the grant of EC by MoEF and recommendation thereof by EAC stands vitiated on account of non-application of mind and failure to discharge their mandate as per law?

446. We may begin this discussion by briefly examining the law relating to the requirement of EC under 2006 Notification. For the purpose of clearance, clause 4 of the Notification requires categorisation of the project/activity either as category A or category B depending upon the spatial extent and potential impacts on human health, natural and manmade resources. It states thus:

"4. Categorization of projects and activities:—

(i) All projects and activities are broadly categorized in to two categories - Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man made resources.

..."

447. Clause 6 provides for the application of prior EC to be made by the project proponent. Notably, this clause makes it clear that such application must be made after identification of the prospective site for the project and before actual commencement of the construction activity or preparation of land. It states thus:

"6. Application for Prior Environmental Clearance (EC):—

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report."

448. Along with the application in Form I and Form IA, a pre-feasibility report is to be prepared and attached by the project proponent. However, in cases falling under item 8 of the schedule, instead of a pre-feasibility report, a conceptual plan is to be supplied along with Form I and Form IA. The petitioners had advanced an argument that the respondents failed to submit a pre-feasibility report while making the application for clearance for construction of new Parliament building. The same is turned down in light of the position of law as aforesaid.

449. While making application on 12.2.2020, the project proponent had submitted three documents to the EAC, including the conceptual plan and no infirmity is found on this count. The application letter states thus:

"... We are enclosing the following documents for your kind perusal.

1. Form 1 as per EIA Notification 2006.
2. Form 1 A as per EIA Notification 2006 duly filled with all requisite Annexure Drawings/Plans.
3. Conceptual Plan."

450. After the submission of application, the scrutiny process goes through four broad stages as per clause 7. Notably, the clause makes it clear that all four stages may not be warranted in all projects and the same would depend upon a host of other factors as we shall see. The four stages are sequenced thus:

"I. Stage (1) - **Screening**:

In case of Category 'B' projects or activities, this stage will entail the scrutiny of

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an application seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) for determining **whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project**. The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report. For categorization of projects into B1 or B2 except item 8(b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time."

(emphasis supplied)

451. The underlying idea of this stage is to analyse the level of scrutiny that a particular project ought to go through and whether further stages would be attracted or not. At the stage of screening, the EAC decides whether an impact assessment report is required for further appraisal or such appraisal would be permissible without an impact assessment report. It further makes it clear that once a project is categorized as B2 project after screening stage, no Environment Impact Assessment Report[361] shall be required.

452. Thereafter, the second stage of "Scoping" comes in, which is defined as:

"**II. Stage (2) - Scoping:**

(i) "Scoping" : refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought …"

453. This definition then makes it clear that no scoping is mandated for projects categorized as category B2 in item 8 of the Schedule and appraisal of such projects shall take place on the basis of Form I and Form IA. It is noted that:

"…All projects and activities listed as Category 'B' in Item 8 of the Schedule (Construction/Township/Commercial Complexes/Housing) shall not require Scoping and will be appraised on the basis of Form 1/Form 1A and the conceptual plan."

454. S.O. 996(E) dated 10.4.2015 published in the Gazette of India also makes it clear that projects falling under category B against item 8(a) do not require scoping. The relevant extract thereof notes thus:

"Provided also that the following shall not require Scoping—

(i) all projects and activities listed under Category 'B', against Item 8(a) of the Schedule;

…

…"

455. It further notes that the projects/activities referred in the aforesaid clause shall be appraised on the basis of Form I, Form IA and the conceptual plan thus:

"Provided also that—

(A) the project and activities referred to in clause (I) shall be appraised on the basis of Form I or Form IA and the conceptual plan;

…"

456. The third stage is of public consultation which is defined as:

"III. Stage (3) - Public Consultation:

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(i) "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. All Category 'A' and Category B1 projects or activities shall undertake Public Consultation, **except the following**:—

... ...

(d) all Building/Construction projects/Area Development projects and Townships (item 8).

(e) all Category 'B2' projects and activities.

..."

(emphasis supplied)

457. Without a doubt, there is no requirement of public consultation in category B2 projects and building or construction projects in item 8(a). It is also made clear that such consultation, wherever required, is to cater to the concerns of locally affected persons and others who have a plausible stake in the environmental impacts of the project or activity.

458. The fourth and most prominent stage is of appraisal. This is the stage of actual scrutiny of the proposal by the expert committee. The definition itself makes it clear that there is no uniform and unalterable standard of scrutiny for all projects, irrespective of their expanse and nature. Appraisal is defined as:

"**IV. Stage (4) - Appraisal:**

(i) Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same."

459. At the cost of repetition, albeit with the benefit of clarity on the legal position, we note that clause (ii) reiterates the same legal position as regards the material on the basis of which appraisal of category B item 8(a) projects (projects not requiring public consultation) is to be done. It is stated that:

"(ii) The appraisal of all projects or activities which are not required to undergo public consultation, or submit an Environment Impact Assessment report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable, any other relevant validated information available and the site visit wherever the same is considered as necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned."

460. The aforesaid legal position makes it clear that both basis as well as level of scrutiny of a proposal strictly depends upon the categorization of project. The 2006 Notification draws a clear balance and does not prescribe equal level of scrutiny for all projects.

461. We may now examine the basis of categorization of projects/activities. The Schedule attached with the Notification incorporates a "List of Projects or Activities

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Requiring Prior Environmental Clearance". Item 8 in category B is divided into two sub-categories - item 8(a) titled "Building and Construction projects" and item 8(b) titled "townships and Area Development projects". The distinction lies in the expanse of built-up area of the proposed project. The Schedule specifies that a project with built-up area falling between 20,000 sq.m. and 1,50,000 sq.m. would be categorized as building and construction project in item 8(a). Notably, the term "built-up area" is defined as:

> "… the built up or covered area on all the floors put together, including its basement and other service areas, which are proposed in the building or construction projects."

462. As per the Form I and Form IA submitted by the project proponent and final EC, it is a matter of record that plot no. 116 (which houses the existing Parliament building) has a built-up area of 44,940 sq.m. and proposed built-up area on plot no. 118 is 65,000 sq.m. Therefore, total built-up area covered in the proposed project is 1,04,740 sq.m. and as per the specification provided in 2006 Notification, the project is to be categorized as category B project in item 8(a). In light of the legal position enunciated above, the appraisal of this project is mandated on the basis of Form I and Form IA. Contrary to the petitioner's argument, the requirements of scoping and public consultation are not warranted for the subject project.

463. The petitioners have advanced an argument that the respondents resorted to foul play in misdescribing/miscategorising the project by carving out the Parliament project from the Central Vista Project. However, on a closer and comprehensive examination, we are of the view that the argument lacks merit. The argument draws support from the fact that in tender for consultancy services and public notice dated 21.12.2019 inviting objections to change in land use, the respondents had referred to the project as a uniform whole.

464. Principally speaking, in a matter of planning and development activity, the Government has the sole prerogative to decide the nature, expanse and timeline of development work. The Government may choose to begin the development of an entire region at once or do it in a phased manner. We hasten to add that this prerogative of the Government is subject to due observance of rules, regulations and other procedures. The scrutiny of the Court is to ensure that the Government does not transgress its boundaries in the task of governance. For the purpose of inviting a consultant and changing use of land involved in the project, it is understandable, rather desirable, that the entire project is treated as one. It would be absurd to invite different consultants for different components of a project, the very idea behind which is to ensure uniformity of design and efficiency. It would be a never-ending spiral. The job of consultant herein was to present a vision document for the whole project at once so that the Government is in a position to plan further course of action as per the approved design. It could not have been expected to seek such consultancy services in a piecemeal manner. Therefore, merely because the project was presented as a cumulative one for the aforesaid purposes, it cannot be inferred that the Government intended or is legally obliged to treat it as such from the stage of conception to the stage of execution.

465. Be that as it may, once the Government has ensured that the proposed usage of land is in sync with the desired purposes as also the existing usage and has finalized a uniform vision of development, it would be well within its domain of policy to timeline the project in a phased manner for the purpose of actual execution. Such phasing may take place on the basis of various factors, including but not limited to, the source of financing for different components, purpose of different components, operational requirements, imminence of need including owner or authorized user of land. Thus, a relevant factor to be kept in mind is the factum of land ownership or

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control. In this case, the land involved in the Parliament project is under the control of Lok Sabha Secretariat and other plots involved in the common central secretariat project are owned by L&DO, MoHUA. Furthermore, it is pertinent to note that the Parliament project is being financed by the Lok Sabha Secretariat, whereas the remaining projects shall be financed by different Ministries. Thus, the ownership of the structures would be in different entities, albeit being part of Government of India. Notably, the Parliament project is meant to serve a different organ of the State i.e., Legislature, whereas the remaining projects are intended to cater to the needs of Executive in general and different departments of the Government of India in particular. It is also a matter of record that the timeline proposed for the Parliament project culminates in 2022, whereas the remaining projects shall go on till 2026.

466. Apart from the aforesaid differences, we must note that there is no similarity of design between the proposed Parliament complex and central secretariat. From an operational point of view as well, the two projects have separate operational concerns and are not dependent upon each other for any purpose. The functioning of the Parliament is not in any way dependent upon the availability of new central secretariat. The Parliament functions at limited intervals during the year, whereas the offices of central ministries continue their functioning throughout the year and therefore, the footprint and utility of both these projects are distinct.

467. It would not be out of place to note that even change of policy is well recognized as a function integral to governance. In *Col. A.S. Sangwan* v. *Union of India*[362], the Court rightly noted the possibility of changes in policy matters and noted thus:

> "**4**. … **A policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and imperatives of national considerations**. We cannot, as Court, give directives as to how the Defence Ministry should function except to state that the obligation not to act arbitrarily and to treat employees equally is binding on the Union of India because it functions *under* the Constitution and not *over* it. In this view, we agree with the submission of the Union of India that there is no bar to its changing the policy formulated in 1964 if there are good and weighty reasons for doing so. We are far from suggesting that a new policy should be made merely because of the lapse of time, nor are we inclined to suggest the manner in which such a policy should be shaped. It is entirely within the reasonable discretion of the Union of India. It may stick to the earlier policy or give it up. But one imperative of the Constitution implicit in Art. 14 is that if it does change its policy, it must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrarily. …"
>
> (emphasis supplied)

468. In *Secretary, Ministry of Chemicals and Fertilizers, Government of India* v. *Cipla Ltd.*[363], the Court expounded the correct approach to deal with policy documents in a judicial review and noted thus:

> "**4.1. It is axiomatic that the contents of a policy document cannot be read and interpreted as statutory provisions. Too much of legalism cannot be imported in understanding the scope and meaning of the clauses contained in policy formulations**. At the same time, the Central Government which combines the dual role of policy-maker and the delegate of legislative power, cannot at its sweet will and pleasure give a go-by to the policy guidelines evolved by itself in the matter of selection of drugs for price control. The Government itself stressed on the need to evolve and adopt transparent criteria to be applied across the board so as to minimize the scope for subjective approach and therefore came forward with specific criteria. It is nobody's case that for any good reasons, the

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policy or norms have been changed or have become impracticable of compliance. That being the case, the Government exercising its delegated legislative power should make a real and earnest attempt to apply the criteria laid down by itself. The delegated legislation that follows the policy formulation should be broadly and substantially in conformity with that policy, otherwise it would be vulnerable to attack on the ground of arbitrariness resulting in violation of Article 14."

(emphasis supplied)

469. In *Sooraram Pratap Reddy* v. *District Collector, Ranga Reddy Distt.*[364], the Court has categorically noted that the determination of what is mandated for public purpose is a domain of the government and until and unless such decision is found to be *ultra vires* a statute or irrational or unreasonable or vitiated by fraud, there is no occasion for the courts to interfere. In *Sooraram Pratap Reddy*[365], the Court noted the dynamic nature of public purpose thus:

"**108**. … It was also observed : (*Motibhai case* AIR, 1961 Guj 93 AIR p. 104, para 43)

"43. Public purpose is not a constant. The scope of an expression which conjugates general interest of the public must necessarily depend inter alia on social and economic needs and broad interpretation of the democratic ideal. It must alter as social and economic conditions alter. The social and economic theorist may contend for an extremely wide application of this concept of public purpose and overemphasise the element of the general interest of the public. The reactionary on the other hand may strive for stringent restraints on its shifting boundaries and oppose any shift in emphasis. The true rule of the matter would seem to lie midway. The Court will not attach too much weight to the apparent character of the activity or agency but would prefer to lean in favour of an application of the rule which has regard to the substance of the matter and embraces activities, engagements and operations which would serve the common good as being affected with public interest. *The application of the rule must rest on the modern economic system of a welfare State having its own requirements and problems. The application of the rule would not be governed by right distinctions nor would the economic principle be allowed to be blurred by the blending of forms and interests*." ….."

(emphasis supplied)

470. It is true that the 2006 Notification prescribes for a cumulative impact assessment. We are in agreement with the proposition that the basic purpose of an environmental impact assessment is to determine and mitigate the cumulative impact of a project - if the project proponent intends to commence development together or within reasonable time space. However, the meaning of the expression "cumulative impact/effect' is not to be understood as an expression of art. It does not shun segregating an independent project. In an examination of this nature, the foremost requirement is to identify the precise expanse of a project. For this purpose, the first source is the information supplied by the project proponent in Form I as it expressly requires information on any interlinked projects. Upon the receipt of that information, it falls upon the EAC to check and scrutinize whether there is more to the project which has been left out of its scrutiny. This latter scrutiny is dependent upon the nature of the project as it would involve collective consideration of all operational aspects of a project. It does not mean connecting independent projects upon a subjective notion that it is necessary to do so for a collective appraisal merely because such projects fall in the same region. The word 'cumulative' is to be read in conjunction with the word 'project' and idea behind examination of cumulative impact is to assess the impact of the project including all its functional components, and not of all development activities going on in a region.

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471. In the light of 2006 Notification read with Office Memorandum dated 7.10.2014 issued by MoEF, it is settled that environmental clearance is always site specific and is required to be obtained only before the actual commencement of work on the project and not before that. Thus, there is no sound basis for the argument that the Central Secretariat project must be assessed with the Parliament project. For, the stage of commencement of work in respect of the former Project has not reached yet and indisputably the same will be on a different site altogether.

472. Once the project proponent frames a conscious timeline of completion of various projects which broadly fall under the umbrella of a common vision for the region, the same cannot be disturbed on the notion that the whole vision should go through the regulatory compliances at once. That would defeat the whole purpose of advance planning of a development activity. Planning involves in-depth consideration of a wide range of concerns including regulatory requirements. The decision to attribute different timelines and purposes to different projects is a domain of planning and the Court cannot readily attribute the label of *mala fides* to such informed decision until and unless there is a clear attempt to evade the requirements of law. Noticeably, the Parliament project involves two components - renovation of existing building and construction of new building on adjacent plot - and both these components have been submitted for collective assessment by the project proponent. If these components would have been separated and submitted for clearance in a piece-meal manner, it would have been a case of "cake-slicing" the project. For, these two components are functionally and intrinsically connected and must be considered cumulatively.

473. The petitioners' reliance upon O.M. dated 24.12.2010 titled "Consideration *of Integrated and Inter-linked projects - Procedure Regarding*" is misplaced. The real purport of this O.M. is to ensure that projects which entail multi-sectoral components are not dissected by the project proponent in a sectoral manner, thereby rendering the EAC incapable of assessing the multidimensional aspects of a project. The first and foremost requirement for the applicability of this O.M. is that the subject project should involve multi-sectoral components. The case on hand does not involve multi-sectoral components to it as it is a simpliciter construction project. If a project does not involve multi-sectoral components, there is no occasion for the EAC to examine this aspect. The words "integrated" and "inter-linked" offer guidance on this count. Any two activities/projects could be said to be integrated or inter-linked when they are functionally connected in the manner that operability of one is intrinsically dependent on the operability of another. It is a scientific and functional connection, not a hypothetical or theoretical connection. The above discussion on cumulative impact supplements this position. In *Dictionary of Environment & Ecology*[366], the approach of integrated pollution control is defined as one which takes into account all inputs and outputs from "a process". It signifies that the strategy ought to be to regulate and monitor the effects of the process in question and the process which is "actually going on". For, the real concern must be to regulate an ongoing process by mitigating its effects, if any, and not to anticipate effects of those processes which are not ongoing at the moment but are merely future processes. Such cannot be the import of cumulative assessment. It reads thus:

> "**Integrated pollution control, integrated pollution prevention and control.**
>
> an approach **which looks at all inputs and outputs from a process** that is likely to cause pollution and regulates other factors as well as emissions."
>
> (emphasis supplied)

474. In *Dictionary of Architecture and Construction*[367], the expression "building system" is defined thus:

> "**Building system.**

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1. .....

2. An assembly of integrated building subsystems satisfying the functional requirements of a building."

(emphasis supplied)

475. The aforesaid definition provides that functionality is the core element in deciding what comprises of a building system. Thus, different components which are not only separated by area but also do not depend upon each other for functional needs cannot be treated as a part of one building system. This is corroborative of the legal position exposited above in the discussion.

476. Irrefutably, any exposition on what could amount to an integrated project, thereby calling for a cumulative assessment, has to be done with circumspection. For, the 2006 Notification would apply equally to other public projects including private projects without variation in the legal standard. The question here is whether a common builder/developer undertaking construction work on ten different plots totalling upto thousand acres scattered in different areas of a region/state/country and not adjoining or contiguous could be subjected to the rigours of cumulative assessment equivalent to an integrated project merely because the total area across which the projects are spread, when added up, turns out to be beyond permissible limits warranting such assessment. That is not the dispensation prescribed by law as of now. In our considered opinion, this interpretation would be counter-productive to the very idea of sustainable development. To be considered as integrated, the plots must involve multi-sectoral components in close proximity if not contiguous and fulfil other specifications under the notification.

477. The tenor of the 2006 Notification shows that the grant of environmental clearance is project as well as owner/builder specific. Appendix I attached with the notification contains the format of Form I. The terminology used in the format includes expressions such as "Name of the Project/s", "Name of the applicant", "Designation (Owner/Partner/CEO), "Address", "Location, Plot/Survey/Khasra No." etc. which reveal that the application for grant of clearance initiates from the owner of the subject land and is a site-specific exercise. Merely because the proponent (Central Public Works Department - CPWD) undertakes multiple independent projects/activities of similar type, that by itself cannot be the basis to assess the category applicable for the purpose of the notification under consideration. Furthermore, item 8 in the Schedule attached with the 2006 Notification providing for "List of Projects or Activities Requiring Prior Environmental Clearance" provides that environmental clearance is warranted only when the built-up area (project-specific) is equal to or exceeds 20,000 sq.m. Thus, if the built-up area of a particular owner does not exceed the aforesaid minimum threshold, there would be no occasion for such owner to apply for any clearance. This ought to be even if the common builder engaged by such owner is working on other projects in the same region. That would not *ipso facto* subject the owner to the 2006 Notification.

478. As discussed above, the factum of land ownership is equally pertinent in such enquiry. If ownership or control over the land to be developed vests in different entities, then merely because the common builder (CPWD) is developing different projects, cannot be assessed as a uniform or as an integrated/interlocked project. It would be anomalous to press different owners for a collective environmental appraisal (of higher standard) merely due to location of their sites in close proximity despite the fact that development thereof is yet to commence and do not involve multi-sectoral components.

479. Furthermore, it is relevant to note that the 2006 Notification is not toothless in the face of misinformation in Form I. Clause 8 of the 2006 Notification, in clause (vi), provides for appropriate recourse in case any information in Form I is found to be false

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and misleading (including information relating to interlinked projects). It states thus:

> "**8. Grant or Rejection of Prior Environment Clearance (EC):**
>
> ...
>
> (vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

480. We find merits in the plea taken by the respondents that the Parliament project cannot be regarded as inter-linked or interdependent with the central secretariat project. The differences relating to functionality, budgeting, timelines and purpose are glaring and substantial.

481. Notably, the argument of the petitioners alleging fraud in segregation of the project is also devoid of merit. For, it completely blurs the line between a conscious policy decision to separate the development project need-based and concealment, misrepresentation or fraud. Fraud stands on the foundation of a fraudulent mental intent and culling out that specific intent is a pre-requisite for establishing the ground of fraud in a court of law. The petitioners' argument of fraud lacks a judicial sustainable basis.

482. The information supplied by the proponent in Form I is the pivot around which our examination revolves. The form has supplied information on various aspects, as required. We may now advert to certain specific aspects for the purpose of this examination:

(i) **Change in land use, land cover and topography -** It is informed that land use is being changed from recreational use to Government use/Parliament.

(ii) **Clearance of existing land, vegetation and buildings -** It is informed that there are 250 trees on plot no. 116 and 326 trees on plot no. 118. The trees on plot no. 116 are not being touched in the process, however, 194 trees out of 250 trees on plot no. 118 are proposed to be translocated for clearing the space for the new structure. It is further informed that 250 new trees are proposed to be planted in plot no. 118.

(iii) **Pre-construction investigations -** it is informed that pre-construction investigations have been done.

(iv) **Temporary sites to be used during construction and housing of workers -** it is informed that around 3200 workers are to be engaged for the construction activity and they will be housed in earmarked camps.

(v) **Earthworks -** It is informed that the project involves earthworks for which cut and fill shall be done, and additional earthwork shall be utilized for Government construction projects in NCT and nearby areas.

(vi) **Facilities for storage of goods or materials -** It is informed that provisions have been made for separate warehouses and storage spaces.

(vii) **Treatment/disposal of solid waste or liquid effluents -** It is submitted that the project will generate solid waste both during construction as well as operational phase. A comprehensive plan has been prepared for the disposal of said waste. During the construction phase, a "Construction and Demolition (C&D) Waste" management plan has been made which primarily covers:

(a) Proper collection to avoid spillage, nuisance, traffic congestion, choking of drains and covering of storage spaces.

(b) Segregation of generated waste into concrete, soil, steel, wood, plastic,

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bricks and mortar.

(c) Re-use and recycling at C&D waste management facility.

It is further informed that for the management of municipal solid waste, a different approach has been devised which includes:

(a) Segregation of municipal solid waste into bio-degradable, non-bio-degradable, hazardous waste and garden waste, and supplying this waste to authorized personnel as per NDMC norms.

(b) Organic wastes to be composted through an in-house mechanism.

During the operational phase, it is informed that waste would be generated in the same manner as in the construction phase and estimates state that maximum solid waste generation could be 4826.35 kg per day including the waste generation during Parliament session.

(viii) **Wastewater generation -** It is informed that wastewater generation shall take place both during construction phase and operational phase. The management approach regarding both these phases is provided thus:

"**Construction Phase**

During construction phase, liquid effluents will be collected, stored, treated in a wastewater/sewage treatment plant and reused for either gardening, construction related needs such as curing or flushing or sprinkling as per the guidance of the Delhi Pollution Control Committee after securing necessary Consents.

Operation Phase

It is estimated that-438 KLD of wastewater will be generated from the project (including the existing and proposed parliament buildings) during operation phase, which will be treated in wastewater/sewage treatment plant to comply with the requirements of the Consent to Operate issued by the Delhi Pollution Control Committee (DPCC). Thereafter, the water will be re-used for flushing (a dual plumbing system will be installed in the new building) or in the Heating, Ventilation and Air-conditioning (HVAC) systems."

(ix) **Increase in traffic -** It is informed that road traffic will increase during the construction phase and of visitors during the operational phase.

(x) **Dismantling of existing structures -** It is informed that existing structures on plot no. 118 (proposed land for new Parliament House) will be dismantled.

(xi) **Influx of population (temporarily or permanently) -** It is informed that 3200 workers would be engaged during the construction phase and during the operational phase, approximately 9500 people (inclusive of 4500 permanent employees and 5000 temporary staff/visitors) would be present at the site.

(xii) **Water management and source of water -** It is informed that a water management plan has been devised for construction phase and operational phase. During the construction phase, 180 KLD water will be required which will be generated through recycling of available sewage waste water and other sources. Additionally, 45 KLD of water will be outsourced from NDMC supply for domestic usage. For the operational phase, water management is prepared for both existing and proposed project.

(xiii) **Involvement of hazardous substances -** It is informed that there shall be no storage of hazardous substances except diesel for operational needs.

(xiv) **Hazardous wastes -** It is informed that hazardous wastes generated during the project shall be dealt in accordance with Hazardous and Other wastes (Management and Transboundary Movement) Rules, 2016 and handling, storing, recycling, transporting, disposal shall be in accordance with the orders/approvals from DPCC.

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(xv) **Emissions -** It is expected that fugitive emissions from handling, loading, unloading shall be released during the construction phase. To minimize such emissions, the following steps are proposed:

(a) loading/unloading to be done under covered area;

(b) proper barricading to reduce offsite dust generation;

(c) transportation of material to be done under covered means of transport;

(xvi) **Dust/odours -** To prevent emergence of dust and foul odour, it is proposed that a comprehensive plan shall be made to be operative in construction phase and operational phase. During the construction phase, the following steps are proposed:

(a) water sprinkling for dust suppression;

(b) mobile/temporary toilets;

(c) temporary solid waste storage on the site; For the operational phase, it is informed that owing to landscaped nature of the site, there will be minimum dust generation including that from vehicular emissions.

(xvii) **Deposition of pollutants -** It is informed that there will be some dry deposition due to air emissions near the proposed site and special care will be taken during the construction phase to prevent the same.

483. In Form I-A, the project proponent has submitted a detailed checklist of environmental impacts on land environment, water supply, waste handling, water environment, fauna, air environment, socio-economic impacts, energy conservation. Furthermore, an elaborate Environment Management Plan[368] has also been submitted. The EMP is prepared in a phased manner to take care of a myriad set of concerns anticipated during the construction phase and operational phase. The purpose of EMP is noted in the following terms:

"**Purpose of EMP**

The environment management plan is prepared with a view to facilitate effective environmental management of the project, in general and implementation of the mitigation measures in particular. The EMP provides a delivery mechanism to address potential adverse impacts and to introduce standards of good practice to be adopted for all project works. For each stage of the programme, the EMP lists all the requirements to ensure effective mitigation of every potential biophysical and socio-economic impact. For each impact or operation, which could otherwise give rise to impact the following information is presented:

- A comprehensive listing of the mitigation measures (actions) that the project proponent will implement;
- The parameters that will be monitored to ensure effective implementation of the action;
- The timing for implementation of the action to ensure that the objectives of mitigation are fully met."

484. The EMP is produced hereinbefore for better appraisal:—

Table 1 : Environmental Management Plan

S. No.	Potential Impact	Action	Parameters for Monitoring	Timing
I. Construction Phase				
1.	Air Emissions	All equipment are operated within specified design parameters	Random checks of equipment logs/manuals	Construction activities
		Vehicle trips to be	Vehicle logs	During site

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		minimized to the extent possible		clearing and construction activities
		Any dry, dusty materials stored in sealed containers or prevented from blowing.	Absence of stockpiles or open containers of dusty material	Construction activities
		Compaction of soil during various construction activities	Construction logs	Construction activities
		Ambient air quality within the premises of the proposed unit to be monitored	The ambient air quality will conform to the standard for $PM_{2.5}$, PM_{10}, SO_2 and NO_x.	As per requirement of Central Pollution Control Board
2.	Noise	List of all noise generating machinery onsite along with age to be prepared.	Equipment logs, noise reading	During construction phase
		Equipment to be maintained in good working orders.	Equipment logs, noise reading	During construction phase
		Night working to be minimized	Working hour records	Construction activities
		Generation of vehicular noise	Maintenance records of vehicles	During construction phase
		Implement good working practices (equipment selection and siting) to minimize noise and also reduce its impacts on human health (ear muffs, safe distances, and	Site working practices records, noise reading	During construction phase
		Acoustic mufflers/enclosures to be provided in large engines	Mufflers/enclosures in place	Prior to use of equipment.
		Noise to be monitored in ambient air within the plant premises	Noise reading	As per requirement of Central Pollution Control Board or quarterly whichever is lesser.
		The Noise level will not exceed the permissible limit both during day and night times.		
		All equipment operated within	Random checks of equipment	During construction

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		specified design parameters.	logs/manuals	phase
		Vehicle trips to be minimized to the extent possible.	Vehicle logs	During construction phase
3.	Wastewater Discharge	No untreated discharge to be made to surface water, groundwater or soil.	No discharge hoses in vicinity of watercourses.	During construction phase
		The discharge point should be selected properly and sampling and analysis should be undertaken prior to discharge	Discharge norms for effluents as given in consent to operate by Central Pollution Control Board.	During construction phase
		Take care in disposal of wastewater generated such that soil and groundwater resources are protected.	Discharge norms for effluents as given in consent to be operate by Central Pollution Control Board.	During construction phase
4.	Soil Erosion	Minimize area extent of site clearance, by staying within the defined boundaries	Site boundaries not extended/breached as per plan document.	During construction phase
		Protect topsoil stockpile where possible at edge of site.	Effective cover in place.	During construction phase
5.	Drainage and effluent management	Ensure drainage system and specific design measures are working effectively.	Visual inspection of drainage and records thereof	During construction phase
		The design to incorporate existing drainage pattern and avoid disturbing the same.		
6.	Waste management	Implement waste management plan that identifies and characterizes every waste arising associated with proposed activities and which identifies the procedures for collection, handling and disposal of each waste arising.	Comprehensive Waste Management Plan in place and available for inspection on-site. Compliance with MSW Rules, 1998 and Hazardous Wastes (Management and Handling Rules), 2003	Prior to site clearance

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7.	Non-routine events and accidental releases	Plan to be drawn up, considering likely emergencies and steps required to prevent/limit consequences.	Mock drills and records of the same	During construction phase
8.	Environmental Management Cell/Unit	The Environmental Management Cell/Unit is to be set up to ensure implementation and monitoring of environmental safeguards.	A formal letter from the management indicating formation of Environment Management Cell	During construction phase
II. Operation Phase				
9.	Air emissions	Stack emissions from DG set to be optimized monitored	The ambient air quality will conform to the standards for PM 10, PM2.5, SO_2 and NO_x as given by Central Pollution Control Board.	During operation phase
		Ambient air quality within the premises of the proposed unit to be monitored.	The ambient air quality will conform to the standards for PM 10, PM2.5, SO_2 and NO_x as given by as per requirement of Central Pollution Control Board.	During operation phase
		Exhaust from vehicles to be minimized by use of fuel-efficient vehicles and well maintained vehicles having PUC certificate.	Vehicle logs to be maintained	During operation phase
		Vehicle trips to be minimized to the extent possible	Vehicle logs	During operation phase
10.	Noise	Noise generated from operation of DG set to be optimized and monitored	Maintenance record of operations	During operation phase
		DG sets to generate less than 75 db(A) Leq at 0.5 m from the sources	Maintenance record of operations	During operation phase
		DG sets are to be	Maintenance	During operation

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		provided at basement with acoustic enclosures with height of chimney as specified by SPCB	record of operations	phase
		Generation of vehicular noise	Maintenance record of vehicles	During operation phase
11.	Wastewater discharge	No untreated discharge to be made to surface water, groundwater or soil.	No discharge hoses in vicinity of watercourses	During operation phase
		Take care in disposal of wastewater generated such that soil and groundwater resources are protected	Discharge norms for effluents	During operation phase
12.	Drainage and effluent management	Ensure drainage system and specific design measures are working effectively.	Visual inspection of drainage and records thereof	During operation phase
		Design to incorporate existing drainage pattern and avoid disturbing the same.	Visual inspection of drainage and records thereof	During operation phase
13.	Indoor air contamination	Contaminants such as CO, $CO_{2,}$ and VOCs to be reduced by providing adequate ventilation.	Monitoring of indoor air contaminants such as CO, $CO_{2,}$ and VOCs.	During operation phase
14.	Energy Usage	Energy usage for air-conditioning and other activities to be minimized	Findings of energy audit report	During operation phase
		Conduct annual energy audit for the buildings		
15.	Emergency preparedness, such as fire fighting	Fire protection and safety measures to take care of fire and explosion hazards, to be assessed and steps taken for their prevention.	Mock drill records, on site emergency plan, evacuation plan	During operation phase
16.	Environmental Management Cell/Unit	The Environment Management Cell/Unit to be set up to ensure implementation and monitoring of environmental safeguards.	A formal letter from the management indicating formation of Environment Management Cell	During operation phase

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485. The EAC (Infra-2), in its 49th Meeting on 25-26.2.2020, considered the application for grant of EC. The minutes of the meeting reflect that the committee took note of various aspects of the project including need of the project, present use, preservation and expansion of green spaces and measures to reduce environmental impact during construction phase. The committee also noted that a large number of representations have been received whereby various objections have been raised on the project. Upon deliberation, EAC found the application to have inadequate information and returned the same noting thus:

> "… The EAC deliberated upon the proposal and noted that the project will provide a larger parliament building for the nation for better functioning of the legislature. Additionally, the project will also provide short term and long term employment opportunities. The proposed project will also make a positive contribution to social infrastructure and overall development of the region. There may be some environmental impacts (e.g. on soil, ambient noise levels, traffic, etc.) which can be mitigated by taking preventive measures during operation. The EAC also took note of the issues raised in the representation(s) and response given by the project proponent in its submission and conceptual plan and Environment Management Plan submitted. The Committee after detailed deliberation asked the project proponent to submit the following for further deliberation:
>
> (i) Revised Form-1/1-A along with details of total built-up area proposed for expansion.
>
> (ii) Scope of renovation of existing Parliament Building.
>
> (iii) Status of Court Case(s) pending in Courts/Tribunals related to the project.
>
> (iv) Traffic Management Plan.
>
> (v) Point wise reply to the representations received.
>
> (vi) Updated Master Plan of Delhi showing land-use of plot no. 118.

486. The proposal thus stood deferred.

487. The requisite documents were supplied by the project proponent to EAC along with modified Form I/I-A. A detailed conceptual plan titled "Conceptual Plan for Environmental Clearance of Expansion and Renovation of Existing Parliament Building" was also prepared and submitted by the proponent for appraisal by EAC. The conceptual plan consists of details on various environmental aspects which can be summarized thus:

(i) Environmental sensitivity;

(ii) Connectivity with national highways, railway stations, airports and state boundaries;

(iii) Project cost;

(iv) Project details covering information relating to plot area, built-up area, permissible ground coverage, proposed ground coverage, proposed construction area, area to be demolished, power requirements, fresh water requirements, waste water generation, number of trees to be translocated and number of trees to be planted.;

(v) Population density;

(vi) Complete layout of sewage treatment plant;

(vii) Storm water drainage system;

(viii) Flow charts for solid waste management and composting systems;

(ix) Power backup, firefighting system and landscaping.

488. To assuage the concerns relating to traffic management, a comprehensive "Traffic Circulation & Management Plan for New Parliament Building" has been released. The preamble of the plan reads thus:

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"**1.1 PREAMBLE**

...

Traffic circulation and management plan is the outcome of proposed redevelopment of Parliament in Central Vista addressing road blockage issue during movement of President of India, PM & VIPs. With the new proposed Parliament building, internal circulation of vehicular traffic for self-driven cars, pickup and drop -off locations for VIPs needs to be addressed in regards with efficient vehicular access & circulation with associated security measures. Construction activity for proposed redevelopment of Central Vista includes large number of movements of construction machinery & equipment. With consideration of construction phasing, hindrance to traffic and road restriction on movement of heavy vehicles during day time, provision of temporary road construction and work zone planning shall be decided.

..."

489. Furthermore, a copy of representations received by the project proponent along with point-wise replies was placed before the EAC. Mr. Ashwani Mittal, Executive Engineer, CPWD submitted a comprehensive chart on "Key Issues Pertaining to Project, Pollution Sources, Assessment Methods and Mitigation/Management Suggested". The chart lays down possible concerns and planned mitigation/management measures on ten functional areas of the project, namely—

a. Air Pollution;
b. Noise Pollution;
c. Water;
d. Solid Waste (mainly municipal);
e. Risk Assessment;
f. Ecology and biodiversity;
g. Land use;
h. Socio-economic impacts;
i. Hydrogeology and Geology;
j. Soil Conservation.

490. The same are reproduced for better appraisal:—

KEY ISSUES PERTAINING TO PROJECT, POLLUTION SOURCES, ASSESSMENT METHODS AND MITIGATION/MANAGEMENT SUGGESTED

S. No.	Functional Area	Project Impact Activities	Mitigation/Management	Remarks
1.	Air Pollution	Sources of air emissions: Vehicular movement - There will be marginal increase, at most, since number of trips will only marginally increase. DG sets - These are proposed to be kept in standby mode, and will be used only during	Vehicular movement will be further streamlined based on the Transport Plan. The DG sets will be provided with adequate stack height.	No increase in air pollution beyond existing levels. Potential decrease as state of the art and low or no emission vehicles get introduced over time.

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		rare power outage scenario as the power supply to Parliament is stable.		
2.	Noise pollution	Sources of noise generation: Vehicular movement DG sets	Vehicular noise will remain as before DG sets being in standby mode during normal operations will not emit noise During times of power failure, with state of art technology being used, in terms of acoustic enclosures, noise levels will be within limits.	No increase in noise levels beyond existing levels.
3.	Water	Domestic sewage	STP of 500 KLD is proposed. Further the current treated sewage being disposed is proposed to be reused which will result in decrease in consumption of fresh water. Further, rooftop water will be collected in RWH tank.	Reduced water consumption due to reuse of treated waste water.
4	Solid Waste (mainly municipal)	Municipal Solid Waste (MSW)	Organic Waste Converter will be provided which will convert the municipal waste, mainly from kitchen waste to organic manure, which will be used in gardening.	MSW management will meet norms as per MSW Rules.
5	Risk Management	Non-routine events and accidental releases	Storage of HSD for DG set will be as per norms and with fire prevention design in place, diesel usage will be low-risk.	Risk and hazard issues are within acceptable norms.
6	Ecology & Biodiversity	Tree counts	Currently, there are 250 & 333 trees on plot 116 and 118 respectively. -233 trees will be transplanted from Plot 118 and after planting additional 290 trees (including some which will be replanted) total 390 trees will be present at Plot 118. Thus, total 57 trees will be increased at site even after expansion.	The total number of trees will increase temporary loss of bio-diversity at site will be compensated by enhanced bio-diversity in project surroundings and net addition of tree

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				cover over time.
7	Land use	Change in Landuse from Recreational (District Park) to Government (Parliament House)	The change in land use has been accorded approval from the competent authority and duly notified by MoHUA, GOI. Landuse change will be subject to the outcome of case pending in Hon'ble Supreme Court of India.	Land use change has been down following due legal process.
8.	Socio-economic impacts	The project will lead to temporary and permanent employment and will benefit the local economy.	As per rules extant, suitable expenditure as per Corporate Environmental Responsibility (CER). Currently the CER budget has been considered at INR 7.11 crores which will be spent as per MoEF&CC norms.	There will be clear benefits to the local populace due to the project.
9	Hydrogeology & Geology	Groundwater is not being used for the project and the requisition of additional fresh water has been kept to a minimal level	Reduce, reuse, recycle has been built into the project, no ground water resources to be used.	No impact on groundwater resources
10	Soil Conservation	Soil will be excavated for the project, especially for the basement housing utilities	Top soil will be conserved and re-used for gardening. Additional soil from excavation will be utilized by CPWD in its ongoing projects.	

491. The revised application along with the aforesaid details and documents was reconsidered by the EAC in its 50th Meeting on 22-24.4.2020. The committee considered the relevant information on record and considered the application in light of the representations/objections received. The committee noted that more representations have been received ahead of the 50th meeting and considered the same during appraisal. The committee then took into account the information on record and mitigation measures, wherever applicable, and recommended the project for grant of EC, with fifteen specific conditions. We may now analyse the conditions:—

I. For operationalizing the project, the committee recommended that Consent to Operate be obtained thus:

> "(ii) Consent to Establish/Operate for the project shall be obtained from the Delhi Pollution Control Committee as required under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974."

II. To ensure adequate fire safety measures, the committee recommended to install proper measures and equipment in accordance with National Building Code and

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noted thus:

> "(iii) The project proponent shall provide for adequate fire safety measures and equipment as per National Building Code/required by Fire Service Act of the State and instructions issued by the local Authority/Directorate of fire, from time to time. Further, the project proponent shall take necessary permission/NOC regarding fire safety from Competent Authority as required."

III. The committee put a cap on the fresh water requirement and stated that the Consent to Operate shall not be granted before requisite permissions relating to water requirements have been obtained. It recommended thus:

> "(v) As proposed, fresh water requirement from NDMC shall not exceed 210 KLD. Consent to Operate (CTO)/Occupancy Certificate shall be issued only after getting necessary permission for required water supply from NDMC/concerned authority."

IV. As regards sewage treatment, the committee recommended the use of Membrane Bioreactor (MBR) technology for sewage treatment. It further recommended that treated effluent be re-used for flushing and HVAC Cooling thus:

> "(vi) Sewage shall be treated in the STP based on MBR Technology with tertiary treatment i.e. Ultra-Filtration. The treated effluent from STP shall be recycled/re-used for flushing and HVAC cooling. As proposed, no treated water shall be discharge to Municipal drain."

V. The committee further recommended a monitoring plan for continuous monitoring of the proper use of treated waste water. It recommended thus:

> "(vii) The project proponents would devise a monitoring plan to the satisfaction of the State Pollution Control Board so as to continuously monitor the treated waste water being used for flushing in terms of faecal coliforms and other pathogenic bacteria."

VI. The committee recommended that for proper implementation of conditions relating to quality and quantity of recycled waste water, a third-party study may be commissioned and stated thus:

> "(viii) The project proponents would commission a third party study on the implementation of conditions related to quality and quantity of recycle and reuse of treated water, efficiency of treatment systems, quality of treated water being supplied for flushing (specially the bacterial counts), comparative bacteriological studies from toilet seats using recycled treated waters and fresh waters for flushing, and quality of water being supplied through spray faucets attached to toilet seats."

VII. The committee suggested compliance with rainwater harvesting laws and recommended thus:

> "(ix) The local bye-law provisions on rain water harvesting should be followed. If local byelaw provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Byelaws, 2016. As proposed, one rain water harvesting tank shall be provided for rain water harvesting after filtration as per CGWB guidelines."

VIII. The committee recommended separate treatment for wet and dry waste and earmarking of adequate area for solid waste management within the premises. The recommendation reads thus:

> "(x) Separate bins for dry and wet waste must be provided in each unit and at appropriate places for facilitating segregation of waste. Solid waste shall be segregated and managed as per the rules notified under the E.P. Act, 1986.

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Wet garbage shall be composted in Organic Waste Converter. Adequate area shall be provided for solid waste management within the premises which will include area for segregation, composting. The inert waste from project will be sent to dumping site."

IX. The committee then recommended proper storage and disposal of demolition debris in accordance with Construction and Demolition Waste Management Rules 2016. The committee then gave pin-pointed recommendations regarding solid waste disposal and we reproduce the same for their sheer importance:

"a) The project proponent shall prima-facie be responsible for collection, segregation of concrete, soil and others and storage of construction and demolition waste generated, as directed or notified by the concerned local authority in consonance with these rules.

b) The project proponent shall ensure that other waste (such as solid waste) does not get mixed with this waste and is stored and disposed separately.

c) The project proponent if generate more than 20 tons or more in one day or 300 tons in a month shall segregate the waste into four streams such as concrete, soil, steel, wood and plastics, bricks and mortar and shall submit waste management plan and get appropriate approvals from the local authority before starting construction or demolition or re-modelling work and keep the concerned authorities informed regarding the relevant activities from the planning stage to the implementation stage and this should be on project to project basis.

d) The project proponent shall keep the construction and demolition waste within the premise or get the waste deposited at collection centre so made by the local body or handover it to the authorized processing facilities of construction and demolition waste; and ensure that there is no littering or deposition of construction and demolition waste so as to prevent obstruction to the traffic or the public or drains.

e) The project proponent shall pay relevant charges for collection, transportation, processing and disposal as notified by the concerned authorities. The project proponent if generate more than 20 tons or more in one day or 300 tons in a month shall have to pay for the processing and disposal of construction and demolition waste generated, apart from the payment for storage, collection and transportation as per the rate fixed by the concerned local authority or any other authority designated by the State Government."

X. The committee then recommended that along with the current traffic management plan, a detailed traffic decongestion plan be prepared on the basis of cumulative impact of all development and increased habitation consequent thereto. It noted that:

"(xii) Traffic Management Plan as submitted shall be implemented in letter and spirit. Further, a detailed traffic management and traffic decongestion plan shall be drawn up to ensure that the current level of service of the roads within 5 kms radius of the project is maintained and improved upon after the implementation of the project. This plan should be based on cumulative impact of all development and increased habitation being carried out or proposed to be carried out by the project or other agencies in this 5 Kms radius of the site in different scenarios of space and time. Traffic management plan shall be duly validated and certified by the State Urban Development department or competent authority for road augmentation and shall also have their consent to the implementation of components of the plan which involve the participation of these departments."

XI. The committee then considered the aspect of cutting of trees and noted that

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such action may be taken only where it is absolutely necessary, that too after prior permission from the Tree Authority constituted as per the Delhi Preservation of trees Act, 1994. it noted that:

> "(xiii) **As committed by the proponent, there shall be no cutting of trees. Where absolutely necessary, tree transplantation shall be carried out with prior permission from the Tree Authority constituted as per the Delhi Preservation of Trees Act, 1994 (Delhi Act No. 11 of 1994). Old trees should be retained based on girth and age regulations and as prescribed by the Delhi Forest Department. In case of non-survival of any transplanted tree, compensatory plantation in the ratio of 1 : 10 (i.e. planting of 10 trees for every one tree) shall be done and maintained**."

(emphasis supplied)

XII. The committee then recommended that landscape planning should involve plantation of native species and water intensive species may not be used for landscaping. It noted thus:

> "(xiv) **A minimum of 1 tree for every 80 sqm of land should be planted and maintained. The existing trees will be counted for this purpose. The landscape planning should include plantation of native species. The species with heavy foliage, broad leaves and wide canopy cover are desirable. Water intensive and/or invasive species should not be used for landscaping. As proposed, 4,500 sqm area shall be provided under landscaping in proposed parliament building in addition to existing green area of 16,136 sqm in existing building**."

(emphasis supplied)

492. Upon a close scrutiny of the information supplied in Form I and I-A, documents supplied by the project proponent and appraisal made by the EAC, we are of the view that the grant of EC is in conformity with the mandate of the competent authority and is just and proper. The project proponent has undertaken various expert studies to prepare a comprehensive traffic management plan, solid waste management plan, water management plan and waste disposal plan. There is ample information on record to show that the project proponent has adequately addressed various facets of the project including source of water, disposal of water, generation of concrete, disposal of concrete, power availability, concerns relating to landscape etc. and the petitioners have outrightly failed to substantiate their apprehensions by placing material on record to the contrary.

493. As regards the transplantation of trees, wherever imminent, the committee has rightly noted that any such action must be taken after prior permission from the statutory authority under the 1994 Act. Understandably, the exercise of transplantation is to be carried out strictly in circumstances when the project cannot be carried forward in its actual form unless the trees are relocated. In environmental jurisprudence, the uppermost consideration is to secure the vision of sustainable development. The existence of an expert statutory authority to regulate this phenomenon is a legal safeguard to ensure that harmony is maintained between need for beneficial development in public interest and protection of trees - the guardians of our lungs. No decision of the competent authority under the 1994 Act is put in issue before us. We, therefore, need not dilate on this aspect any further.

494. The minutes of the two meetings of EAC are self-explanatory and reveal due application of mind, in light of the principles relating to application of mind enunciated above. We do not wish to repeat the same to avoid prolixity. EAC is an expert body and it is amply clear that it has been made aware of all relevant information relating to the project and it has applied its mind to the proposal. Even on settled principles of judicial review, it is clear that relevant material has been considered by the committee

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and no reliance has been pointed out on any irrelevant material. The specific recommendations given by the committee do indicate that the committee was aware of the need for precautionary measures in environmental matters and accordingly, it suggested requirement of further permissions on certain counts.

495. Once an expert committee has duly applied its mind to an application for EC, any challenge to its decision has to be based on concrete material which reveals total absence of mind. Absent that material, due deference must be shown to the decisions of experts. The facts of the case do not reveal any deliberate concealment of fact/information from the EAC or supply of any misinformation. The petitioners' extensive reliance upon *Hanuman Laxman Aroskar*[369] is misdirected and will not be of any avail in advancing their cause. We are in complete agreement with the dictum that full and correct disclosure and highest level of transparency are warranted in any application for EC. However, the present case is fundamentally different. The landscape of this project does not involve a greenfield component surrounded by forests and significant wildlife. It does not involve complete non-application of mind regarding a crucial aspect of the project, such as Ecologically Sensitive Zones. The entire basis of scrutiny and appraisal in *Hanuman Laxman Aroskar*[370] was different. For, it involved a project which mandated compliance with all four stages of EC i.e., screening, scoping, public consultation and appraisal. Whereas, the present project, as already discussed above, is not subject to scoping procedure. In *Hanuman Laxman Aroskar*[371], various details in Form I/I-A were left blank, information regarding trees was actively concealed and absence of reasons coupled with cursory analysis of the application raised substantial concerns of non-application of mind. The fact situation in that case was enough for shaking the judicial conscience and invocation of powers of review.

496. The petitioners have urged that the respondents have deliberately kept the Parliament annexe building and library out of the total built-up area so as to reduce the scrutiny level. Upon examination, we note that this argument is also devoid of substance. We note at the very outset the respondents' submission that the aforesaid structures are not a part of the proposal. In Written Submissions - Part I, it is stated in clear terms that no work is proposed with respect to the said buildings (Parliament annexe and Library). The submission in para 9 reads thus:

> "9. The aforesaid 44940 sq.m. + 5200 sq.m. do not contain or include "Annexe building", which is not being touched. A copy of the map showing the existing parliament building and the proposed parliament complex [Plot No. 118] is enclosed for ready reference."

497. The petitioners' argument, therefore, overlooks the factual position stated by the respondents and stands rejected. As noted above, the requirement of obtaining prior environmental clearance is a site-specific exercise. The objective is to prevent any adverse impact by the proposed activity. Thus, it is necessary to understand the scope of the work before considering the impact thereof. The essential question is whether the scope of work involves physical activity on a structure which has been kept out of impact assessment. The project, as noted above, involves two dimensions - construction of new Parliament Building and renovation of existing Parliament Building. Furthermore, the MoEF, while granting clearance on 17.6.2020, noted the scope of renovation of existing Parliament Building thus:

> "2. (vi) … Scope of renovation of existing Parliament Building will be (a) Condition Survey to assess the structure of the existing Parliament Building; (b) Structural Strengthening; and (c) Renovation of interiors and utilities."

498. Thus, the scope of work is limited to improving the functionality and life of the existing building, and not to carry out changes in all the structures annexed with the building. We may gainfully refer to S.O. 695(E) dated 4.4.2011 which defined "built-

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up area" for the purpose of environmental clearance under the 2006 Notification as:

> "The built up area for the purpose of this Notification is defined as "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects"."

499. The above definition further clarifies that the built-up area is to be deduced in the context of the proposed construction project. Once a particular building is involved in the project, the covered area of all the floors, basement and services areas thereof must be included in the total built-up area. As a corollary, until and unless a building or site is involved in the project and is the subject of any development, there would be no occasion for the EAC to include its area in the total area of the project. For, there can be no question of any environmental impact from such building.

MERITS REVIEW BY NGT

500. Before we delve into the analysis further, we would address the call for a merits review in this challenge to EC. The expression "merits review" needs to be put into its correct perspective. For that we must immediately advert to Section 16 of the National Green Tribunal Act, 2010[372]. It provides for the appellate jurisdiction of NGT thus:

> "**16. Tribunal to have appellate jurisdiction. —**Any person aggrieved by,—
>
> ...
>
> ...
>
> (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);
>
> ...
>
> ...
>
> may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:"

501. The provision empowers "any aggrieved person" to file an appeal against the grant of EC for the scrutiny of NGT. The scheme of 2010 Act, as found in Sections 17-19, provides for a host of remedies to the aggrieved persons, including compensation and other reliefs depending on the injury. Section 20 lays down the basic principle on which the tribunal is expected to exercise its jurisdiction. It states thus:

> "**20. Tribunal to apply certain principles.** —The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."

502. The expression "merits review" signifies that the tribunal must scrutinize the merits of the decision and must not restrict itself to a cursory examination of the process of decision making. Section 20 makes it amply clear that the principles of sustainable development, precautionary principle and polluter pays principle must inform its examination. The requirement of merits review is to be understood in the light of the statutory jurisdiction of NGT under the 2010 Act and not beyond it. Statutorily, NGT is vested with a limited mandate to hear an appeal before it in light of the aforesaid principles and grant limited reliefs as provided in the 2010 Act. Section 16 specifies that the jurisdiction of NGT may be invoked when any person either feels that the project should not be carried forward or should be subjected to certain safeguards under the Environment Protection Act, 1986. The NGT, therefore, is a body meant for the assessment of a limited facet of the project i.e., environmental facet and is not meant to be a panacea for all ills. The requirement of merits review, as

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exposited in *Hanuman Laxman Aroskar*[373], is to be understood as a review within the statutory jurisdiction of NGT.

503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute.

504. We deliberated upon whether the question of EC needs to be sent for consideration of NGT. However, none of the issues raised before us demonstrate a requirement of in-depth technical analysis in this case. Mere suspicion cannot become a ground for parting away with a subject matter which is pending for this Court's consideration and deserves complete justice in the cause.

505. No doubt, by way of the exclusive jurisdiction clause in Section 29, the jurisdiction of civil Courts is barred on these subject matters, but there is no impact whatsoever on the jurisdiction of this Court, being a Court of record and bestowed with original and appellate jurisdiction including superior powers to do complete justice under Article 142 in special circumstances. In other words, the jurisdiction of this Court is not controlled or guided by the form of jurisdiction vested in NGT in terms of the 2010 Act. The considerations before this Court can be diverse and expansive and the moment a *lis* comes before this Court, the subject matter comes out of the ambit of limited statutory consideration and falls in the realm of plenary constitutional consideration - wherein the duty of the Court is to do complete justice between the parties before it and in public interest jurisdiction to a class of persons.

506. Indubitably, environment and development are not sworn enemies of each other. It would be an anomalous approach to consider environment as a hurdle in development and vice-versa. The entities like EAC and NGT are created to strike a just balance between two competing interests and a time-tested principle of striking this balance is timely invocation of mitigating environmental measures amidst a development activity. True that mere application of certain mitigating measures may not alleviate environmental concerns in all matters and in some circumstances, the project is simply incomprehensible with the environment. But as long as a legitimate development activity can be carried on in harmony with the idea of environmental protection and preservation including sustainable development, the Courts as well as expert bodies should make their best endeavour to ensure that harmony is upheld and hurdles are minimized by resorting to active mitigating measures.

507. The principle of sustainable development and precautionary principle need to be understood in a proper context. The expression "sustainable development" incorporates a wide meaning within its fold. It contemplates that development ought to be sustainable with the idea of preservation of natural environment for present and future generations. It would not be without significance to note that sustainable development is indeed a principle of development - it posits controlled development. The primary requirement underlying this principle is to ensure that every development work is *sustainable*; and this requirement of sustainability demands that the first attempt of every agency enforcing environmental rule of law in the country ought to be to alleviate environmental concerns by proper mitigating measures. The future generations have an equal stake in the environment and development. They are as much entitled to a developed society as they are to an environmentally secure society. By Declaration on the Right to Development, 1986, the United Nations has given express recognition to a right to development. Article 1 of the Declaration defines this right as:

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"1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

508. The right to development, thus, is intrinsically connected to the preservance of a dignified life. It is not limited to the idea of infrastructural development, rather, it entails human development as the basis of all development. The jurisprudence in environmental matters must acknowledge that there is immense inter-dependence between right to development and right to natural environment. In International Law and Sustainable Development, Arjun Sengupta in the chapter "***Implementing the Right to Development***[374]" notes thus:

"… Two rights are interdependent if the level of enjoyment of one is dependent on the level of enjoyment of the other…"

509. The concern of the regulatory agencies is to weed out the unsustainable from the development plan and to parallelly ensure that right to development is not trumping upon any other right. Sengupta further notes:

"… There is an improvement in the right to development only if at least one of the constituent rights improves and no other right deteriorates or is violated, which means the right to development conforms to the principle of the indivisibility of human rights…[375]."

510. The precautionary principle duly mandates that all agencies of the State, including Courts, must make their best endeavour to ensure that precaution is instilled in the process of development. The very requirement of prior EC is born out of this need for precaution. It is a manifestation of the precautionary principle in India and if development work is carried out in furtherance of prior EC and such EC is not vitiated by illegality, it would be a case of proper adherence with the precautionary principle.

511. In matters of balancing between competing environmental and development concerns, the Court has to be project-specific. In environmental matters, even one fact here or there may have the effect of attributing a totally distinct character to the project and accordingly, the scope of judicial review may vary. This sentiment is best reflected in the following words of *Professor Schotland*[376] who proposed ranking of standards of judicial review according to strictness:

"3. ….. I have always thought of scope of review as a spectrum, with de novo at one end, with unconstitutionality at the other end, and in between a number of what I will call "mood-points" or degrees of judicial aggressiveness or restraint, such as preponderance of the evidence, clearly erroneous, substantial evidence on the whole record, scintilla of evidence, abuse of discretion and last, right next to or even into unconstitutionality, arbitrary and capricious. And since these are only "mood-points", there is considerable room within each for difference."

512. The proper balance of judicial review in environmental matters in a constantly developing society is a matter of great debate across all jurisdictions. In *Ethyl Corporation* v. *EPA*[377], the observations of Judge Wright present a just balance. He observed thus:

"There is no inconsistency between the deferential standard of review and the requirement that the reviewing court involve itself in even the most complex evidentiary matters; rather, the two indicia of arbitrary and capricious review stand in careful balance. The close scrutiny of the evidence is intended to educate the court. It must understand enough about the problem confronting the agency to comprehend the meaning of the evidence relied upon and the evidence discarded; the questions addressed by the agency and those bypassed; the choices open to the agency and those made. The more technical the case, the more intensive the court's effort to understand the evidence, for without an appropriate understanding

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of the case before it the court cannot properly perform its appellate function. …"

513. He then notes the need for realising the limits of judicial function thus:

> "**But the function must be performed with conscientious awareness of its limited nature. The enforced education into the intricacies of the problem before the agency is not designed to enable the court to become a superagency that can supplant the agency's expert decision-maker.** To the contrary, the court must give due deference to the agency's ability to rely on its own developed expertise. The immersion in the evidence is designed solely to enable the court to determine whether the agency decision was rational and based on consideration of the relevant factors. It is settled that we must affirm decisions with which we disagree so long as this test is met…"
>
> (emphasis supplied)

514. They must always look for a careful balance when two equally relevant interests compete with each other. The task may not be easy, but is the only reasonable recourse. For the proper application of these principles, the first and foremost thing to be kept in mind is the nature of the project. In the present case, the subject project is an independent building and construction project wherein one-time construction activity is to be carried out. It is not a perpetual or continuous activity like a running industry. It is absolutely incomprehensible to accept that a project of this nature would be unsustainable with the needs and aspirations of future generations. Furthermore, the increase in footprint is not shown to be substantial and the inclusion of new members of Parliament after the delimitation exercise is anyway going to lead to an inevitable increase in footprint (floating though) that cannot be countenanced as a concern here.

515. We, therefore, upon a thorough examination, decline to interfere in the grant of EC. The expertise developed by the EAC cannot be undermined in a light manner and as noted above, due deference must be accorded to expert agencies when their decisions do not attract the taint of legal unjustness[378]. We, however, feel the need to record that the mitigating measures must be observed by the project proponent in letter and spirit during the construction and operational phase. Waste management methods, inclusive of hazardous wastes, must be subject to regular monitoring. The construction debris must be subjected to immediate removal as per the Construction & Development Plan. The project proponent may also install permanent high-capacity smog tower as part of the Project and use adequate number of smog guns to minimise pollution levels during the construction activity is in progress on the site.

516. We deem it fit to call upon the respondent MoHUA to consider issuing appropriate general directions so as to ensure that adequate use of smog guns during the construction of development projects and setting up smog towers is made a mandatory requirement, particularly involving government buildings, townships or other major private projects. Time has come to advance the intent behind improving air quality a mandatory feature for modern buildings and more particularly during the phase of construction of such major projects in the cities most affected by air pollution. In other words, directions be issued for the areas with deteriorating air quality index. We call upon the respondents (MoEF) to finalise the nuances in this regard and issue appropriate directions.

CONSULTATION SERVICES NIT

SELECTION PROCESS

517. The petitioners have challenged the selection/appointment of consultant on various counts including due to following usual best price method instead of best design competition of international standards for such an eminent project of national importance. At the outset, we must deal with the challenge to the method preferred by the Government for selection/appointment of Consultant for the stated project. In

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light of our analysis whilst dealing with other larger issues (other than based on statutory violations) for the same reasons or principle underlying thereto, even the challenge under consideration must be negatived being devoid of merits. For, in absence of any statutory mandate to adopt a particular method for selection/appointment of Consultant for projects of national importance, it would result in deciding the challenge on the principle of second guess by the Court in exercise of powers of judicial review. That is certainly uncalled for and beyond the scope of permissible enquiry. What method is good or must be adopted for appointment of Consultant is the exclusive prerogative of the executive and in the nature of a policy matter - where the Courts should not venture upon when even angels would fear to tread. The mandate of Consultant is only to present a vision document. The nitty-gritty of the design and floor plans is the mandate of the project proponent and the Government (concerned departments being the stakeholders). Further, just because the Government has followed a particular method of selection/appointment of the Consultant for the stated project and another one would have been a better option cannot be the basis to quash the appointment already made after following a fair procedure consequent to inviting tenders from eligible persons similarly placed.

518. Having said thus, what remains for consideration is essentially an assail against a contractual relationship between two entities by a third party to the contract, that too by way of a public interest litigation. Nevertheless, we may proceed to dissect this assail as well.

519. On 2.9.2019, a notice was issued by CPWD inviting bids for the appointment of consultant from national/international design and planning firms. The invitation document specified initial eligibility criteria and minimum eligibility criteria for prospective bidders. The criteria specified elaborate requirements relating to prior experience, historical area redevelopment projects, minimum annual turnover, earnest money and minimum experience. Thereafter, a technical evaluation criterion was specified to evaluate financial strength, project capabilities, core project team and approach and methodology. The scope of consultancy work was specified as:

> "**4. Scope of Consultancy Work:**
>
> **The Firms/Consultants shall provide comprehensive consultancy services in Project Conceptualization** covering Topographical and Contour Survey by using Total Stations, prepare survey site plan showing existing structures, trees, electric poles etc. with geo-coordinates, Geotechnical investigations along with reports, survey space utilization, functional relations, preparation of master plan including obtaining its statutory and local bodies approval, preliminary project report preliminary estimate, detailed architectural drawings, detailed structural design and detailing including designing and detailing of all services, their drawings & approval, external development works, landscaping, BIM Modeling, detailed project report and preparation of all Bid/Tender documents etc. **Consultant should adhere to the Central Vista Committee Guidelines and Lutyens Bungalow Zone Guidelines while carrying out the consultancy work for the Redevelopment of Central Vista."**
>
> (emphasis supplied)

520. The scope of consultancy work clearly specifies that the consultant is required for the purpose of "project conceptualization" by assisting the project proponent in various activities. It further specifies that the consultant is bound to adhere to CVC guidelines and Lutyens Bungalow Zone guidelines, which goes on to show that the consultant is not entrusted with any independent function of making a new master plan and is only bound to work within the four corners of legal framework governing the region.

521. The Terms of Reference (TOR) further specify the scope of work and state

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thus:

"**1.1 Scope of Work**

i) The scope of work shall be as follows:

a) Inception Report and Master Plan

b) Comprehensive detailed Design & Periodic Supervision of Workmanship."

522. The petitioners have used the above specification to contend that the project proponent has been delegated the function of preparation of Master Plan to the private consultant. The argument deserves to be rejected at the very outset. Clause 1.2 of TORs is instructive on this count as it notes the "Detailed Scope of Work". The expression "master plan" as used in the TORs is absolutely different from the statutory meaning of this expression. In this document, master plan is broadly used to denote the vision document for the final design of the project. Point (a) in clause 1.2 (Detailed Scope of Work) notes:

"**i) Inception Report and Master Plan**

a) Preparation and finalisation of design brief in consultation with the Client."

523. Point (h) provides more clarity as it notes:

"h) Preparation of Conceptual Master Plan including affected area/buildings, circulation, land use, proposed building blocks, type of works, phasing etc."

524. The selection of consultant was based upon a pre-decided Quality and Cost Based Selection[379] process wherein 80% weightage was given to technical evaluation and 20% weightage was given to financial evaluation. Out of the four components of technical evaluation, as noted above, the last component of Approach and Methodology carried maximum weightage and was to be evaluated by a Jury of Experts. After the submission of bids, a pre-bid meeting was organized for removal of doubts of prospective bidders. A total of 18 firms participated in the pre-bid meeting and six firms finally submitted their technical and financial bids for evaluation. These firms gave a presentation on their approach and methodology before a designated Jury of Experts on 11.10.2019. The jury comprised of one Chairman, five Members and one Member Secretary. The composition of the jury is relevant and we reproduce the same for better understanding:

(i) Prof. PSN Rao, Director, School of Planning and Architecture, New Delhi - Chairman

(ii) Prof. Dr. Rama Subramanian, Principal of Dayanand Sagar College of Architecture, KS Layout, Bengaluru - Member

(iii) Shri Ashok Malik, Retd. Chief Architect, NDMC - Member

(iv) Shri Navneet Kumar, ADG (Works), CPWD - Member

(iv) Shri Vikas Bhosekar, Land Scape Architect, Plot No. 13, No. 136, New CDSS, Pune - Member

(vi) Shri Ramesh Dangle, Urban Designer, Chief Architect Planner, CIDCO, Navi Mumbai - Member

(vii) Shri Vijay Prakash Rao, Senior Architect, Region Delhi, CPWD - Member Secretary

525. A tender is essentially a contract between two parties and merely because one party to the contract is the State, the basic character of the transaction does not change. In India, we follow the principle of privity of contract and the law relating to contracts and specific relief provides ample remedy to an aggrieved party to the contractual transaction. The principle of privity of contract has sound basis in law. It is owing to the basic character of a commercial relation wherein two parties of sound mind choose to enter into a legal relationship with each other and decide mutual rights and liabilities in accordance with the needs of the transaction with their free consent. There is an element of *consensus ad idem*. In a free commercial transaction, it is the

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foremost desire of the parties to keep third person interference away.

526. As a general rule, there is no locus for a third person to question a free contractual relationship. In special circumstances, no doubt, the Specific Relief Act, 1963[380] provides for circumstances when "any person" could initiate action for recission of contracts or cancellation of instruments. However, this action is available only if the initiator is able to show that the contract/instrument is detrimental to its interests. Moreover, that is a remedy to be pursued in civil Court or the Court of first instance. There is no basis in law to permit an absolutely unaffected person to shake a settled transaction between two parties.

527. No doubt, it is settled that an award of tender by the Government, though a contract, stands on a slightly different footing. It is so because when a Government chooses to engage with a citizen, it is expected to extend a fair treatment to all those persons who choose to engage with the Government. This requirement of fairness brings in the element of equality of treatment and absence of favouritism and thus, the requirements of Article 14 cannot be ousted. The question here is about the scope of interference by a writ Court in a challenge against an award of tender at the instance of a third party to the transaction. Undisputedly, none of the petitioners before us had participated in the tender process and they cannot be termed as aggrieved as they do not satisfy the requirement of privity of contract in conventional terms. We have before us a bunch of public-spirited individuals who wish to question the award of tender, not because of the ineligibility of the duly selected/appointed Consultant or unfair advantage given to him but on other grounds by invoking high constitutional principles, which we have already negatived hitherto.

528. In that view of matter, the primary concern of the Court is to see whether the selection has been made by using a formalised system of selection or by an arbitrary pick and choose mechanism. In this case, the process of tender was used to select the consultant wherein uniform conditions were prescribed for all the participants who were eligible and free to participate in the process. Upon submission of bids, their applications were analysed on pre-determined set of objective parameters which were duly notified to all the participants beforehand. An opportunity was given to all the participants to clarify any doubts and the final technical evaluation was done by a Jury of Experts. The petitioners have not raised any allegation against the neutrality of jury members. Moreover, it is also not the case of the petitioners that the jury members failed to apply their mind during evaluation. The petitioners primarily assail the conditions of tender. As aforesaid, it is not for the Court to determine the suitability of conditions under which the Government wants to enter into commercial relationships with private persons or the manner in which it intends to execute the Project absent any statutory regime in that regard. The Government with the aid of its various agencies, is free to determine its rules of engagement with other entities.

529. In such matters, illegality in decision-making is the primary concern of this Court. The petitioners have not shown that the conditions of tender were deliberately crafted in a manner to make them suitable for a particular participant. Nor, have they shown that the conditions were violative of any mandatory requirement. Even as regards the process of selection, it is not enough to allege *mala fide* conduct by pitching the argument of favouritism until and unless that allegation is directed against specified persons who ought to be made parties to the proceedings. There cannot be an allegation of institutional *mala fide* in fact. Furthermore, it is settled that an allegation of favouritism is essentially a question of fact which is to be mandatorily supported by hard evidence. The Court is not expected to buy an argument of this nature on face value and enter upon a wandering investigation or roving enquiry merely because the petitioners allege favouritism. Apart from pure suspicion, the petitioners have not been able to assist the Court in proceeding in any logical direction which would demonstrate favouritism in the selection of consultant. Suspicion cannot

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be a guide for the Court in a judicial enquiry. The argument that the participants were less in number would be of no significance unless it is shown that the conditions of tender or other circumstances attributable to the respondents had prevented others from participating. It is not even the case of the petitioners, at least those who claim to be in the same profession, that they had a desire to participate and were prevented from doing so. The law regarding interference by the Court in award of tender is well settled. In *Michigan Rubber (India) Limited* v. *State of Karnataka*[381], the Court observed thus:

> "**35**. … As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide."

530. The Court, in *Michigan Rubber*[382], summed up certain parameters to be kept in mind while considering a challenge of this nature and observed thus:

> "**23.** From the above decisions, the following principles emerge:
>
> …..
>
> (b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. **If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited**;
>
> (c) **In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted**;
>
> (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and
>
> (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government."
>
> (emphasis supplied)

531. The above proposition may be read with our discussion on judicial interference in policy matters in the initial part of this judgment. We are not reiterating the settled position to avoid prolixity. The above proposition has been expounded in a case wherein the challenge was raised by a participant in the same tender process and not a third party.

532. It is relevant to note that the question of *locus* in considering an argument of this nature cannot be side lined. For, such arguments call upon the Court to expand the contours of its jurisdiction to venture into strictly private commercial matters. A

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litigant, not being a party to the transaction, cannot be heard in ordinary circumstances. What needs to be established is substantial and demonstrable public interest on the basis of a concrete factual position. The jurisprudence evolved by this Court in such matters looks for substantial public interest, to be shown on the basis of violation of Part III or arbitrariness in Government action. In the absence thereof, it becomes the duty of the Court to preserve free commercial relations. Law has a substantial interest in preserving the freedom of contract. In *Villianur Iyarkkai*[383], this Court discussed this position of law in the following terms:

> "**113.** As far as second preliminary objection regarding locus standi of the appellant to challenge the award of the contract for the development of the Pondicherry Port to Respondent 11 is concerned, **this Court finds that the contract assailed in the writ petitions is purely commercial in nature. Neither the parties, which had participated in the process of selection of the consultant/developer nor one of those, which had expressed desire to develop the Pondicherry Port but was not selected, has come forward to challenge the selection procedure adopted by the Government of Pondicherry or the selection of Respondent 11 as developer of the Pondicherry Port**.
>
> **114.** The question of locus standi in the matter of awarding the contract has been considered by this Court in *BALCO Employees' Union (Regd.)* v. *Union of India*[384]. This Court, after review of law on the point, has made following observations in para 88 of the judgment:
>
> > "*88*. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to court due to some disadvantage. In those cases also it is the legal rights which are secured by the courts. We may, however, add that public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but, a public interest litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the court."
>
> **From the passage quoted above it is clear that the only ground on which a person can maintain a PIL is where there has been an element of violation of Article 21 or human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to the court due to some disadvantage**."
>
> (emphasis supplied)

533. As long as there is fair play in Government action, it is no one's concern to assail a commercial transaction by levelling vague and unsubstantiated allegations. The genesis of a public interest litigation lies in public interest; and public interest lies in vindicating the rights of those who lack the wherewithal to reach the Court to remedy injustice against them. The tool of public interest litigation or "social interest litigation", as it is more appropriately called, was devised to open the doors of the constitutional Courts for remedying glaring injustices against humans, that is, for securing constitutional rights. It was never meant to transform the constitutional Court as a superlative authority over day-to-day governance. Judicial time is not meant for undertaking a roving enquiry or to adjudicate upon unsubstantiated flaws or

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shortcoming in policy matters of Government of the day and politicise the same to appease the dissenting group of citizens - be it in the guise of civil society or a political outfit.

534. The foregoing comments are not because the Courts feel burdened by untenable and frivolous claims but to highlight that Court time saved would be time-earned to be best spent on more deserving claims of have-nots due to long incarceration, affecting liberty, denial of pension and salary, motor accident claims, land acquisition compensation, including genuine corporate resurrection and revival to benefit large number of workmen and investors etc. The list of such deserving litigation is unending. We need to say so because we had to spend considerable time and energy on this matter (lest the petitioners entertain a feeling of having been denied a fair opportunity), despite the pandemic situation, which at the end, we find to be devoid of substance.

535. We may usefully advert to the exposition in *Narmada Bachao Andolan* v. *Union of India*[385]. In paragraph Nos. 230 to 235 of the reported decision, the Court noted thus:

> "**230.** Public interest litigation (PIL) was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves. With the passage of time PIL jurisdiction has been ballooning so as to encompass within its ambit subjects such as probity in public life, granting of largesse in the form of licences, protecting environment and the like. **But the balloon should not be inflated so much that it bursts. Public interest litigation should not be allowed to degenerate to becoming publicity interest litigation or private inquisitiveness litigation**.
>
> **231. While exercising jurisdiction in PIL cases the court has not forsaken its duty and role as a court of law dispensing justice in accordance with law. It is only where there has been a failure on the part of any authority in acting according to law or in non-action or acting in violation of the law that the court has stepped in. No directions are issued which are in conflict with any legal provisions. Directions have, in appropriate cases, been given where the law is silent and inaction would result in violation of the fundamental rights or other legal provisions**.
>
> **232.** While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction.
>
> **233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions**. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. **The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere.** When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the court itself is not above the law.
>
> **234. In respect of public projects and policies which are initiated by the**

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Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision.

235. What the petitioner wants the Court to do in this case is precisely that. The facts enumerated hereinabove clearly indicate that the Central Government had taken a decision to construct the dam as that was the only solution available to it for providing water to the water-scarce areas. It was known at that time that people will be displaced and will have to be rehabilitated. There is no material to enable this Court to come to the conclusion that the decision was mala fide. A hard decision need not necessarily be a bad decision."

(emphasis supplied)

536. The apprehension of the petitioners regarding percentage contracts is also unfounded, for the same is taken care of by Manual for Procurement of Consultancy & Other Services, 2017[386] released by Department of Expenditure, Ministry of Finance. Chapter-3 of the Manual provides for "Risks and Mitigations" relating to percentage contracts. The risk is stated thus:

"Bias against Economic solutions : Since the percentage payment is linked to the total cost of the project, in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged."

537. The corresponding mitigation measure is stated thus:

"Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services."

538. Thus, there is no absolute prohibition on percentage contracts. The only requirement is mitigation which can be done by a fixed target cost. In the present case, by releasing a subsequent corrigendum, the consultancy fee was capped by the project proponent irrespective of the final cost of the project and thus, no apprehension of lack of economic design survives.

DESIGN/CONCEPT COMPETITION

539. The contention regarding conduct of a design competition before finalizing the design of the proposed structure can, at best, be understood as a suggestion. For, there is no legally binding duty upon the project proponent to conduct a design competition for a project of this nature.

540. Chapter 7 of the Manual, in point 7.9, provides for guidelines on "Public competition for Design of symbols/logos", which reads thus:

"7.9.1 Certain Ministries/Departments are required to conduct competitions **for the design of logos/symbols for their use**, which should be conducted in a transparent, fair and objective manner. Following guidelines shall be followed by all Ministries/Departments as well as their attached/subordinate offices and the

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autonomous bodies/organizations controlled by them, while conducting public competitions for design of symbols/logos for their use."

(emphasis supplied)

541. The aforesaid requirement, which is undoubtedly desirable, is envisioned for the designs of logos and symbols for the use of the Government and not for buildings. The distinction is crucial, for, building projects have their own functional and operational needs and a mandatory requirement of conducting a design competition may run contrary to public interest vested in operational efficiency. The exclusion is a conscious one. It is possible to say that by conducting a design competition, it would have opened up the process and increased participation. However, for the purpose of a legal review, it can only be termed as a desirability. It cannot be elevated to the standard of an imperative legal obligation of the State. And in the absence of which, the entire process cannot be regarded as illegal. The respondents have categorically submitted that considering the fact that the proposed project is a functional building, a concept competition was conducted instead of a design competition. For, the latter is suitable for logos and art works, and a concept competition was more suited to meet the needs of a functional building. A concept competition, like a design competition, is another way of planning for developing a functional building (such as Parliament House).

542. It is for the government to decide their method of planning from the legally available alternatives in accordance with the nature of project - emphasis on design or emphasis on functionality. In any case, it is not for the Courts to decide which competition will be more appropriate, being a policy matter.

543. To rebut the argument that CPWD may not be well equipped to take care of concerns of design and executing a project of such immense national importance, learned Solicitor General submitted from the record that CPWD has been successfully executing projects at international scale. The recently completed state of the art National Assembly of Afghanistan or the Parliament of Afghanistan, he added, was constructed by CPWD and there is no occasion to doubt the competence of a whole agency.

PUBLIC TRUST

544. Evidently, vehement reliance was placed by the petitioners on the doctrine of public trust in furthering their cause. The doctrine of public trust has traversed a long journey in legal jurisprudence. The doctrine enjoins the State to exercise its control over common public resources in a manner which furthers preservation and protection in public interest. It requires the management and distribution of public resources in a manner that public is not deprived of them. The doctrine of public trust involves basic element of due diligence in State's management of public resources.

545. The public trust doctrine was primarily evolved for regulating the State's handling of water resources. In ***Landscape Architecture Magazine***, **Frederick Steiner** and **John Roberts** noted thus:

"The public trust doctrine has evolved from Roman law, "by the law of nature these things are common to mankind-the air, running water, the sea and consequently the shores of the sea", and through English common law, which held that the sovereign owns, "all of its navigable waterways and the lands laying beneath them 'as trustee of a public trust for the benefit of the people'" (189 California Reporter 355, 1983)...[387]"

546. Thereafter, with the growth of judicial review and limitations upon State action, the doctrine received evolution to other areas, for instance, lands and education. Eventually, it became a controlling factor in most of the natural public resources which give rise to an expectation of fair handling. Whereas the precise import of the public trust doctrine in a given proceeding depends upon the nature of

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resource under question, the underlying theme remains consistent, that is, usage of public resources for beneficial public use.

547. The Constitution posits this doctrine at various places, particularly in Part-IV. Illustratively, Article 39(b) mandates justness in "ownership and control of material resources" so as to "subserve common good". Article 48A enjoins the State to protect and improve the environment thus:

> "48A. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

548. Furthermore, Article 49 enjoins the State to protect monuments of historic and artistic interest thus:

> "49. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, **declared by or under law made by Parliament to be of national importance**, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be."
>
> (emphasis supplied)

549. Article 49 reveals a crucial dimension of public trust. It categorically specifies that the obligation of State to protect monuments pertains to those monuments which are declared to be of national importance by a law made by Parliament. Though, it *ipso facto* does not mean that public trust does not enliven State action with respect to handling of other public resources, nonetheless it is instructive of the constitutional intent that the doctrine of public trust does not operate in vacuum. It depends on several factors including, but not limited to, the resource under question, usage of the resource in the past, proposed usage of the resource, management of the resource and nature (public or private) of the entity which is entrusted with its management.

550. The application of this doctrine in a specific factual scenario essentially involves a balancing act. It is not a doctrine of grammar and of textual application. The ground of public trust is invoked when argument of increased protection is pitched against enhanced use of resources. It is relevant to note that in United States, the State of Hawaii is considered to have the most robust public trust jurisprudence as the Hawaiian Constitution has an express provision for it. Section-1 of Article XI thereof reads thus:

> "**Section 1.** For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.
>
> All public natural resources are held in trust by the State for the benefit of the people."

551. The express provision is a result of the immense environmental volatility and fast-paced reduction of limited natural resources in Hawaii. The crucial takeaway from the aforesaid reference to Hawaiian Constitution is found in the manner in which it is understood in judicial application. Despite there being an express provision, the practical understanding of public trust doctrine in Hawaii also entails a balance between protection and maximum beneficial use of resources. Ana Ching in "***Charting the Boundaries of Hawaii's Extensive Public Trust Doctrine Post-Waiahole Ditch***[388]" traces the applicability of the doctrine and notes thus:

> "… However, extending the public trust doctrine does not necessarily lead to greater protections for all resources, **as courts have ruled that the public trust doctrine requires a balancing between protection on the one hand, and maximum beneficial use on the other. Thus, the trust's objective is not to maximize protection, but instead is to achieve the most equitable and beneficial allocation of resources. As the case law demonstrates, this**

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approach has left space for commercial uses of public resources."

(emphasis supplied)

552. What emerges from the above discussion is that for proving a violation of public trust, it falls upon the petitioners to establish that public resources are being squandered and used or planned to be used in a manner which cannot be termed as beneficial public use. The Court would look for an actual deprivation of public's right over common resources. As for the respondents, it falls upon them to establish that the proposed use of public resources is aligned in the direction of beneficial use and in public interest. In the present case, the respondents have elaborately demonstrated the imminent need for the project. Furthermore, as discussed above, the change in land use does not result into any deprivation of recreational spaces. On the contrary, the changes would result into optimisation and greater access to open spaces including entail in assets creation. We have also noted that the present project of expansion and renovation of Parliament does not entail any destruction or diminution of heritage sites or urban aesthetics as such. The respondents have repeatedly assured the Court of adhering to all norms and conditions necessary for preservation of environment and heritage including urban aesthetics.

553. As regards the natural environment, we have thoroughly appraised the EC and forms submitted to obtain the same, and found no circumstance which could lead us to believe that the tenets of environmental protection are compromised in the process. The mitigating measures have been scrutinized and are found to be carefully drawn up so as to ensure permissible beneficial use. The public trust doctrine does not prohibit beneficial use of public resources. The scale would not tilt towards *status quo* and retention of the existing condition of public property when the proposed use is for legitimate development and creation of assets and in public interest. Until and unless the proposed use is such that no entity holding resources in a fiduciary capacity would propose, there is no occasion for the Court to disturb a just use of resources for the fulfilment of a public purpose.

554. Another important facet of public trust doctrine is that it limits the State from excessive entrustment of natural public resources to commercial entities. It requires an abdication of responsibility. The landmark decision of U.S. Supreme Court in *Illinois Central Railroad*[389], relied upon by the petitioners, also involved a grant of resources to private entities. Frederick Steiner and John Roberts, in ***Prospect : Public Trust Doctrine***, crisply noted thus:

> "The U.S. Supreme Court's decision in *Illinois Central Railroad* v. *Illinois* (146 US 387 (1892)) has been described as the "lodestar" of American public trust law. This case involved the State of Illinois granting to the Illinois Central Railroad Company "virtually the entire harbor of the City of Chicago" and then repealing the grant. **The U.S. Supreme Court held that this repeal was legitimate, "because the state could not abandon its trust ... in the first place." Further, because Illinois had a duty to "hold and manage" the disputed Chicago harbor lands, "the original grant was comparable to surrendering the police power in the 'administration of government and preservation of the peace' to a private party**."[390]

(emphasis supplied)

555. Furthermore, in *Kamal Nath*[391], this Court noted two aspects relating to public trust doctrine - *first*, resolution of conflict between those who want to preserve and those who want to meet societal exigencies in accordance with changing needs is for the legislature and not Courts and *second*, the executive cannot convert public resources into private ownership.

> "**35.** We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our

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rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. **But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use.** The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

(emphasis supplied)

556. The aforesaid exposition from *Kamal Nath*[392] further denotes that most of the cases in which this doctrine is invoked involved conversion of public ownership into private ownership; or commercial use of resources; or abdication of responsibility; or unjust denial to common public. None of these circumstances exist in the present case. The project does not involve any conversion into private ownership and has no element whatsoever of permitting commercial use of vital public resources. The proposed project is in line with the standards of public trust and the petitioners have failed to point out any circumstance which would suggest otherwise.

AVAILABILITY OF INFORMATION IN PUBLIC DOMAIN

557. In our discussion above, we have highlighted the importance of availability of information in public domain. The discussion emanated from the petitioners' argument that the project is being carried forward clandestinely. There is no dispute as regards the legal position on public access to information. The enquiry here is a factual one. To counter the submission of the petitioners, the respondents have placed a detailed compilation of documents. The compilation reveals that the respondents had duly uploaded relevant documents pertaining to various stages of the process on respective websites. In fact, the petitioners have extensively built their case on the documents purportedly available in public domain. The petitioners, in W.P. (C) 853/2020, have called for production of documents before 2.9.2019. However, the formal process of inviting tenders for consultation services was initiated on 2.9.2019. All the documents after this date are in public domain. That is not in dispute. Other relevant documents relating to processes before the aforesaid date have been supplied by way of the compilation and thus, the prayer does not survive for further consideration. We consider it useful to briefly lay out the documents placed in public domain by the respondents:

(i) Relevant Environment Impact Assessment notifications from 2006-2020.

(ii) Letter dated 9.12.2015 written by Smt. Sumitra Mahajan, Speaker of Lok Sabha expressing need for enhanced space.

(iii) Letter dated 2.8.2019 written by Sh. Om Birla, Speaker of Lok Sabha reiterating the need for space and other technological requirements.

(iv) Office Memorandum dated 30.8.2019 issued by MoHUA expressing the need for development/redevelopment of Parliament Building, Common Central Secretariat and Central Vista, and requesting CPWD to float a Request for Proposal (RFP) for selection of consultant.

(v) Notice inviting bids dated 2.9.2019.

(vi) Responses to queries received in pre-bid meeting dated 14.9.2019.

(vii) Copy of notice inviting bids dated 23.9.2019.

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558. Evidently, all relevant documents from the stage of expression of need for the project by Speaker of Lok Sabha to appointment of consultant, issuance of public notice, conduct of public hearing, final notification for change in land use and minutes of meetings of CVC, DUAC and EAC were placed in public domain. The petitioners have not pointed out a single document which formed a part of the process and was not placed in public domain.

559. Be that as it may, it is also relevant to note that mere absence of information does not vitiate an administrative process, that too in toto. This is not the standard envisaged for judicial review. For, after the enactment of the 2005 Act, there are statutory means for obtaining information from the Government. If the authority fails to provide relevant information, the same could be assailed before appellate bodies. There is a duly streamlined procedure for the same. The real effect of absence of information in public domain has to be tested on the anvil of actual prejudice on public's ability to participate in the decision-making process, wherever provided for. It must result into a denial of legally enforceable right. In the present case, none of the persons who participated in raising objections to change in land use or those who sent representations to DUAC and EAC have come forward to contend that they could not access information, thereby rendering them incapable of participating in the process or in raising informed objections. Nothing survives for further consideration on this count.

560. Reverting to the argument of the petitioners that technical information and documents (such as redevelopment plan and layouts) were not kept in public domain, which prevented the objectors to make effective representation. This objection was taken before the BoEH. It has been so recorded in the recommendations of BoEH. It had noted that majority of the objectors who are planners and architects entertain a feeling that authentic technical information of this iconic project of Central Vista is not available in public domain. Further, it is suggested that impact assessment study on traffic, environment and heritage may be commissioned at the earliest. The third major objection noticed by the BoEH was that the project proponent had not forwarded the proposal to CVC. As regards the last two points, the same has nothing to do with the grievance regarding lack of information in public domain. Coming to the first objection regarding lack of technical information regarding the iconic project in public domain, we fail to understand as to how that would be a case of statutory non-compliance of the procedure for consideration or for that matter, the culmination of final decision of the Authority and of the Central Government in exercise of powers under Section 11A of the Act. In the context of modification of Master Plan or Zonal Plan, the procedure prescribed in the Rules is limited to disclosure of intention as per the form prescribed for issuing public notice and the manner of enquiry to be conducted by the BoEH. The public notice is not required to be accompanied by technical information of the proposed project to be constructed on the notified plots. In fact, the concluding paragraph of public notice dated 21.12.2019 makes it amply clear that the text/plan indicating the proposed modifications is available on DDA's official website i.e. www.dda.org.in. Further, there is no statutory requirement to display development plan concerning the proposed project, in the town planning legislation under consideration. Be it noted that the case on hand is not relating to the preparation of draft Master Plan or Zonal Plan governed by Part III of the Act, but only regarding modification in exercise of powers under Section 11A of the Act. In any case, it was open to the interested party to approach the concerned authority under the 2005 Act for obtaining (further) requisite information from the concerned authority. It is not the case of the petitioners that such application was made and was not entertained within reasonable time or was rejected. Had such application been made, the Authority would have responded to appropriately. It needs no emphasis that if any person who intended to take objection by relying on technical information had thirty clear days' time to obtain such information and submit his objection. Merely

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taking such objection for the sake of record does not take the matter any further nor need be entertained, in law, so as to label the final decision of the competent authority as illegal. Furthermore, as noticed earlier in the present case, none of the petitioners had raised any point other than 13 points taken before the BoEH during the hearing. Suffice it to observe that the argument of non-availability of stated technical information in public domain as pursued by the petitioners, will be of no consequence and certainly not germane to declare the final decision of the Central Government manifested vide notification dated 20.3.2020 as illegal.

PRELIMINARY OBJECTION IN I.A.

561. We now turn to the preliminary objection raised in I.A. No. 59230 of 2020 as regards the propriety of the Court's order to collectively entertain the wide range of issues connected with the present subject matter, including those relating to EC in light of our order dated 6.3.2020. It has been submitted that the order resulted into a denial of statutory right to approach other forums and could not have been passed.

562. At the outset, we note that the said order did not operate as a bar against any person from approaching the Court for any relief whatsoever. The present *lis* reached this Court by way of a substantive special leave petition and later, writ petitions filed in the High Court of Delhi came to be transferred to this Court. Thereafter, seven other writ petitions have been filed directly before this Court under Article 32 of the Constitution. In any case, once a cause reaches this Court and of this nature, the fundamental concern of the Court is and must be not only of doing substantial and complete justice, but also expeditious resolution of all aspects in larger public interest. This we must do within the constitutional bounds. Judicial activism to this limited extent is certainly permissible, in national interest. In doing so, the Court would not merely exercise its power under Article 139A while transferring the case before itself, rather, the underlying principle at play is the duty of this Court to do complete justice as envisaged under Article 142 and to obviate possibility of project of national importance being stuck, embroiled and delayed due to engagement of the project proponent before multiple legal forums/proceedings. We have had plethora of cases in the post-PIL period wherein prolonged litigation against infrastructural projects resulted in inordinate delays to the extent that the projects got buried forever or became unviable owing to excessive burden on the public exchequer (honest taxpayers' money). That is where this Court's power to do not only complete but substantial justice gets triggered.

563. Deviating from constitutional obligation of the Court, we may also note that the 2018 amendment to the Specific Relief Act, 1963 aligned the view of the legislature in this direction with the insertion of Section-20A and clause (ha) to Section-41 which prohibited the grant of injunction against infrastructural projects. The underlying legislative intent of the legislature is to protect such projects from inappropriate use of Court processes. Therefore, there is no doubt that the broad approach of a constitutional Court in dealing with a public interest matter has to be a vigilant one to further larger public interest. The laws delay due to tardy flow of Court processes (for variety of reasons attributable to different stakeholders or duty holders or so to say systematic one) must not let itself become an impediment in the fulfilment of development goals of our hallowed nation and consequently to the future generation. Depending on the subject matter, the constitutional Courts must address the legal challenges at the earliest opportunity without being bogged down by technicalities, in national interest.

564. There is ample support to the proposition that when larger national interest is involved and concerns of public exchequer are directly involved in the *lis*, the Court must act at the earliest opportunity. For, each day's delay has a direct impact on the exchequer. In *Narmada Bachao Andolan* v. *Union of India*[393], the Court resonated this

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position and observed thus:

> "**227.** There are three stages with regard to the undertaking of an infrastructural project. One is conception or planning, second is decision to undertake the project and the third is the execution of the project. The conception and the decision to undertake a project is to be regarded as a policy decision. While there is always a need for such projects not being unduly delayed, it is at the same time expected that a thorough possible study will be undertaken before a decision is taken to start a project. Once such a considered decision is taken, the proper execution of the same should be undertaken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of a project and such a system cannot be said to be arbitrary, then the only role which a court may have to play is to see that the system works in the manner it was envisaged."

565. In *Tata Cellular*[394], the Court referred to the following para authored by Clive Lewis from Judicial Remedies in Public Law, 1992 edition:

> "**86.** An innovative approach is made by Clive Lewis as to why the courts should be slow in quashing administrative decisions (in his *Judicial Remedies in Public Law* 1992 Edn. at pp. 294-95). The illuminating passage reads as under:
>
> "The courts now recognise that the impact on the administration is relevant in the exercise of their remedial jurisdiction. Quashing decisions may impose heavy administrative burdens on the administration, divert resources towards reopening decisions, and lead to increased and unbudgeted expenditure. Earlier cases took the robust line that the law had to be observed, and the decision invalidated whatever the administrative inconvenience caused. The courts nowadays recognise that such an approach is not always appropriate and may not be in the wider public interest. The effect on the administrative process is relevant to the courts' remedial discretion and may prove decisive. This is particularly the case when the challenge is procedural rather than substantive, or if the courts can be certain that the administrator would not reach a different decision even if the original decisions were quashed. Judges may differ in the importance they attach to the disruption that quashing a decision will cause. They may also be influenced by the extent to which the illegality arises from the conduct of the administrative body itself, and their view of that conduct.""

566. The character of a public interest proceeding is necessarily non-adversarial in nature and it is not a matter of two individuals fighting against each other at all possible forums. In *Kalpana Mehta* v. *Union of India*[395], this Court, in para 206, had observed that "*When courts enter upon issues of public interest and adjudicate upon them, they do not discharge a function which is adversarial*." Such a proceeding is essentially in the nature of a collective enquiry to determine whether the State is acting in accordance with settled principles of law and such collective enquiry is always targeted towards larger public interest. What purpose will a public interest proceeding serve if the fulfilment of one notion of public interest leads to a clear subjugation of another legitimate action of the State taken in public interest and as the petitioners themselves put it, concerning project of national importance touching upon democratic polity. That is where the role of this Court comes in, which ought to be active and not passive in such proceedings.

567. We may usefully refer to our prior discussion on the statutory jurisdiction of NGT vis-a-vis the constitutional powers of this Court. We are not reiterating the same here to avoid repetition. The expression "complete justice" does not contemplate a narrow view of doing justice to the petitioners or the respondents. Rather, the principle entails looking at the parties, their respective positions and the subject matter/cause before it as a whole. The Court needs to be even more vigilant and proactive in its pursuit of complete justice when the subject matter involves an

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exercise of power in *rem* and considerations of public interest traverse beyond the immediate expectations of the parties before the Court. It is not a case where parties have approached the Court for the vindication of personal rights, as already noted above, and the nature of subject matter is entirely different.

568. When competing public interests are brought before a constitutional Court, it becomes the duty of the Court to harmonize and balance such interests, even if it requires the invocation of an extraordinary power. The performance of this function by the Court becomes even more indispensable when the grievance of the petitioners is that national interest is at stake. It is precisely for such occasions that this Court is bestowed with such a plenary power.

569. We also briefly note that this Court has time and again restated that the jurisdiction of this Court under Article 32 of the Constitution is plenary and merely because a statutory remedy of appeal is provided for in a statute, it cannot be the sole basis to take away the jurisdiction of this Court in a cause pending before it, which is likely to pose legal questions of larger public and national interest including to facilitate the State to fulfil its constitutional obligations. Moreso because, substantive writ petition(s) is filed and is being heard analogously by this Court as public interest litigation to question the impact of the impugned decision(s) being violative of environmental laws. In any case, this objection has become academic because at the end of the oral arguments, the learned counsel appearing for the applicants, who had taken this plea, suggested to dispose of the application as infructuous.

POSTLUDE

570. Before we part, we feel constrained to note that in the present case, the petitioners enthusiastically called upon us to venture into territories that are way beyond the contemplated powers of a constitutional court. We are compelled to wonder if we, in the absence of a legal mandate, can dictate the government to desist from spending money on one project and instead use it for something else, or if we can ask the government to run their offices only from areas decided by this Court, or if we can question the wisdom of the government in focusing on a particular direction of development. We are equally compelled to wonder if we can jump to put a full stop on execution of policy matters in the first instance without a demonstration of irreparable loss or urgent necessity, or if we can guide the government on moral or ethical matters without any legal basis. In light of the settled law, we should be loath to venture into these areas. We need to say this because in recent past, the route of public/social interest litigation is being increasingly invoked to call upon the Court to examine pure concerns of policy and sorts of generalised grievances against the system. No doubt, the Courts are repositories of immense public trust and the fact that some public interest actions have generated commendable results is noteworthy, but it is equally important to realise that Courts operate within the boundaries defined by the Constitution. We cannot be called upon to govern. For, we have no wherewithal or prowess and expertise in that regard.

571. The constitutionally envisaged system of "checks and balances" has been completely misconstrued and misapplied in this case. The principle of "checks and balances" posits two concepts - "check" and "balance". Whereas the former finds a manifestation in the concept of judicial review, the latter is derived from the well enshrined principle of separation of powers[396]. The political issues including regarding development policies of the Government of the day must be debated in the Parliament, to which it is accountable. The role of Court is limited to examining the constitutionality including legality of the policy and Government actions. The right to development, as discussed above, is a basic human right and no organ of the State is expected to become an impediment in the process of development as long as the government proceeds in accordance with law.

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572. The parties had relied upon several reported decisions/authorities in support of their arguments. However, we have considered the same to the extent necessary; and referred to those which are found to be relevant for deciding the issues under consideration, in our judgment at appropriate place(s). We do not deem it necessary to dilate on other relied upon decisions being repetitive or not directly on the points answered by us, to obviate prolixity. Also, because the principle expounded therein is restated by us in this judgment and is no way different.

CONCLUSION AND ORDER

573. In conclusion, we declare and direct as follows:

(i) We hold that there is no infirmity in the grant of:

(a) "No Objection" by the Central Vista Committee (CVC);

(b) "Approval" by the Delhi Urban Art Commission (DUAC) as per the DUAC Act, 1973; and

(c) "Prior approval" by the Heritage Conservation Committee (HCC) under clause 1.12 of the Building Byelaws for Delhi, 2016.

(ii) We further hold that the exercise of power by the Central Government under Section 11A(2) of the DDA Act, 1957 is just and proper and thus the modifications regarding change in land use of plot Nos. 2 to 8 in the Master Plan of Delhi, 2021/Zonal Development Plan for Zone-D and Zone-C vide impugned notification dated 20.3.2020 stands confirmed.

(iii) The recommendation of Environmental Clearance (EC) by Expert Appraisal Committee (EAC) and grant thereof by MoEF is just, proper and in accordance with law including the 2006 Notification. We uphold the same along with appropriate directions therein to ensure that the highlighted mitigating measures are followed by the project proponent in their letter and spirit.

(iv) The project proponent may set up smog tower(s) of adequate capacity, as being integral part of the new Parliament building project; and additionally, use smog guns at the construction site throughout the construction phase is in progress on the site.

(v) We also call upon the respondent MoEF to consider issuing similar general directions regarding installation of adequate capacity of smog tower(s) as integral part in all future major development projects whilst granting development permissions, particularly in cities with bad track record of air quality - be it relating to Government buildings, townships or other private projects of similar scale and magnitude, including to use smog guns during the construction activity of the Project is in progress.

(vi) The stage of prior permission under clause 1.3 of the Building Bye Laws of the Heritage Conservation Committee (HCC), is the stage of actual development/redevelopment etc. work is to commence and not the incipient stage of planning and formalisation of the Project. Accordingly, the respondents shall obtain aforementioned prior permission of the designated Authority before actually starting any development/redevelopment work on the stated plots/structures/precincts governed by the heritage laws including on plot No. 118, if already not obtained.

(vii) The selection/appointment of Consultant, in light of the limited examination warranted in this case, is held to be just and proper.

574. We must reserve a moment to appreciate the contribution made by learned counsel representing various parties. Despite voluminous documents involved in the case and given the fact that the hearing was conducted via video conferencing, the assistance given by learned counsel was invaluable. That helped us immensely in deciding the complex nature of factual and legal aspects involved in the case.

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575. Having answered the questions posed for our consideration, the subject petitions/appeal(s)/cases stand disposed of in their entirety in the above terms. Pending applications, if any, shall also stand disposed of with no order as regards costs.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
TRANSFERRED CASE (CIVIL) NO. 229 OF 2020

Rajeev Suri … Petitioner(s)

Versus

Delhi Development Authority and Others … Respondent(s)

WITH

TRANSFERRED CASE (CIVIL) NO. 230 OF 2020
CIVIL APPEAL NO. OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO…….. OF 2020)
(ARISING OUT OF DIARY NO. 8430 OF 2020)
WRIT PETITION (CIVIL) NO. 510 OF 2020
WRIT PETITION (CIVIL) NO. 638 OF 2020
WRIT PETITION (CIVIL) NO. 681 OF 2020
WRIT PETITION (CIVIL) NO. 845 OF 2020
WRIT PETITION (CIVIL) NO. 853 OF 2020
WRIT PETITION (CIVIL) NO. 922 OF 2020

AND

WRIT PETITION (CIVIL) NO. 1041 OF 2020

JUDGMENT

SANJIV KHANNA, J.:— In the heart of the national capital, and within the "Lutyens' Bungalow Zone" (LBZ), lies the Central Vista - the centrepiece and living heritage of Delhi. The Indian National Trust for Art and Cultural Heritage (INTACH) describes Central Vista as the "ensemble with main axis Rajpath…the Rashtrapati Bhawan at Raisina Hills, flanked by the Secretariat (North and South Blocks)…the Parliament House…the hexagonal round-about that has the India Gate and the Canopy…" The Rashtrapati Bhawan, spread over about 330 acres, is the abode of the head of the Indian Republic. The Parliament House is the birth-place of our Constitution and the *sanctum sanctorum* where the elected representatives of people discuss, deliberate and enact laws. The North and the South Blocks house offices where the higher echelons of government and civil service take policy decisions and govern the largest democracy in the world. The promenade has other iconic buildings like India Gate with Amar Jawan Jyoti, the National Archives, the National Museum, the National Stadium, the National War Memorial and the adolescents' favourite 'the Children's Park'. The area embellished with green lawns, water channels and fountains attracts residents and visitors for its distinctiveness, historical relevance and as a locale for relaxation, recreation, walks and picnics. Initially constructed possibly as a statement of imperial grandeur and power, the Central Vista, in post-independent India, inspires and connects common people to the citadels of our democracy.

577. The present dispute relating to the modification and redevelopment of the Central Vista has different facets. First, is the legal challenge to change in the land use of six plots in the Central Vista under the Delhi Development Act, 1957, and the permissions/approvals granted by the Central Vista Committee, the Delhi Urban Arts Commission under the Delhi Urban Arts Commission Act, 1973 and the clearance/no-objection for construction of a new Parliament House under the Environment Protection Act, 1986. Failure to take prior permission/approval of the Heritage Conservation

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Committee as per Annexure II of the Unified Building Bye-Laws is alleged. In Writ Petition (Civil) No. 853/2020, the Notice inviting Bid and award of consultancy to the nineth respondent therein has been challenged. At a deeper and conceptual level the question relates to the government's duty to consult and the scope and ambit of the citizen's right to participate in the quasi legislative exercise. Connected with the two issues is the third question of scope and amplitude of the power of judicial review.

578. Since I have reservations with the opinion expressed by my esteemed brother A.M. Khanwilkar, J. on the aspects of public participation on interpretation of the statutory provisions, failure to take prior approval of the Heritage Conservation Committee and the order passed by the Expert Appraisal Committee, I have penned down a separate dissenting judgment. However on the aspects of Notice inviting Bid, award of consultancy and the order of the Urban Arts Commission, as a standalone and independent order, I respectfully agree with the final conclusions in the judgment authored by respected brother A.M. Khanwilkar J.

579. At the outset, an overview of the legislative and regulatory framework of the Delhi Development Act, 1957 ('Development Act') and the applicable rules would be beneficial in understanding the facts and issues that need consideration and decision.

580. The Development Act is enacted by the Parliament with the objective to develop Delhi in a planned manner, as without proper planning the growth of the national capital would be unorganised, inequitable, unaesthetic and hazardous. The Development Act postulates constitution of the Delhi Development Authority (the 'Authority'), which shall work to promote and secure the development of Delhi according to plan. Chapter III, titled 'Master Plan and Zonal Development Plan,' consists of Sections 7 to 11. Section 7 requires the Authority to carry out a civic survey and prepare a Master Plan for Delhi, defining various zones into which Delhi may be divided for the purposes of development, and indicate the manner in which the land in each zone is proposed to be used. Section 8 of the Development Act states that simultaneously with the preparation of Master Plan, or soon thereafter, the Authority shall prepare zonal development plans for each of the zones. The Master Plan is to serve as a basic pattern of framework within which these zonal development plans may be prepared. These zonal development plans may contain a site-plan and use-plan for the development of the zone and show the approximate locations and extents of land-uses proposed including such things as public buildings and other public works and utilities, housing, recreation, public and private open spaces, other categories of public and private uses etc. It is also to specify the standards of population density and building density, and show every area in the zone which may, in the opinion of the Authority, be required or declared for development or redevelopment. Section 9 states that after its preparation, the Authority shall submit the plan to the Central Government for approval as soon as possible. The Central Government may either approve the plan with or without such modifications as it may consider necessary or reject the plan with directions to the Authority to prepare a fresh plan.

581. Section 10 of the Development Act is of importance and reads as under:

> "**10. Procedure to be followed in the preparation and approval of plans.—** (1) Before preparing any plan finally and submitting it to the Central Government for approval, the Authority shall prepare a plan in draft and publish it by making a copy thereof available for inspection and publishing a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the draft plan before such date as may be specified in the notice.
>
> (2) The Authority shall also give reasonable opportunities to every local authority within whose local limits any land touched by the plan is situated, to make any

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representation with respect to the plan.

(3) After considering all objections, suggestions and representations that may have been received by the Authority, the Authority shall finally prepare the plan and submit it to the Central Government for its approval.

(4) Provisions may be made by rules made in this behalf with respect to the form and content of a plan and with respect to the procedure to be followed and any other matter, in connection with the preparation, submission and approval of such plan.

(5) Subject to the foregoing provisions of this section the Central Government may direct the Authority to furnish such information as that Government may require for the purpose of approving any plan submitted to it under this section."

582. Section 10 mandates the Authority to first prepare a draft plan in accordance with the rules and publish it, inviting objections and suggestions from any person. Every local authority within whose local limits any land touched by the plan is situated is also to be given a reasonable opportunity to make representation. Upon consideration of the objections, suggestions and representations, the Authority shall finally prepare the plan and submit it to the Central Government for approval. We shall subsequently refer to the rules enacted, which read together with the Development Act envisage a scheme of robust and effective public participation in the entire process.

583. Section 11 states that after the plan has been approved by the Central Government, the Authority shall publish the plan in a manner prescribed by the regulations, and by way of a notice, inform that the plan has been approved, the place where a copy of the plan may be inspected at all reasonable hours, and the date on which it shall come into operation.

584. Section 11A which was inserted by Act 56 of 1963 with effect from 30th December, 1963 and reads:

"**11A. Modifications to plan**.— (1) The Authority may make any modifications to the master plan or the zonal development plan as it thinks fit, being modifications which, in its opinion, do not effect important alterations in the character of the plan and which do not relate to the extent of land-uses or the standards of population density.

(2) The Central Government may make any modifications to the master plan or the zonal development plan whether such modifications are of the nature specified in sub-section (1) or otherwise.

(3) Before making any modifications to the plan, the Authority or, as the case may be, the Central Government shall publish a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the proposed modifications before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the Central Government.

(4) Every modification made under the provisions of this section shall be published in such manner as the Authority or the Central Government, as the case may be, may specify and the modifications shall come into operation either on the date of the publication or on such other date as the Authority or the Central Government may fix.

(5) When the Authority makes any modifications to the plan under sub-section (1), it shall report to the Central Government the full particulars of such modifications within thirty days of the date on which such modifications come into operation.

(6) If any question arises whether the modifications proposed to be made by the

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Authority are modifications which effect important alterations in the character of the plan or whether they relate to the extent of land-uses or the standards of population density, it shall be referred to the Central Government whose decision thereon shall be final.

(7) Any reference in any other Chapter, except Chapter III, to the master plan or the zonal development plan shall be construed as a reference to the master plan or the zonal development plan as modified under the provisions of this section."

585. Sub-section (1) to Section 11A permits the Authority to make modifications to the Master Plan or Zonal Development Plan which in its opinion, does not affect any important alterations in the character of the plan and which does not relate to the extent of land-uses or the standards of population density. Sub-section (2) to Section 11A similarly empowers the Central Government to make modifications to the Master Plan or the Zonal Development Plan, but with a wider power to even affect modifications which go beyond the exclusions under sub-section (1). The power of modification is to be exercised when necessary in public interest. Sub-section (3) to Section 11A imposes and casts a duty on the Authority or Central Government, as the case may be, to consult general public by publication of a notice in the prescribed form and manner, invite objections and suggestions in respect of the proposed modification. The Authority or the Central Government, as the case may be, are duty bound to consider the objections and suggestions. When upon consideration, the Authority makes modifications under sub-section (1), it is required to report the full particulars to the Central Government, within 30 days of the date from which such modification come into force. Similarly, the Central Government may after consideration of the objections/suggestions notify the modification(s) in terms of sub-sections (2) to (4) to Section 11A of the Development Act. Sub-section (6) states that where a question arises whether the modifications proposed by the Authority have the effect of making changes that are covered by the exclusions in subsection (1), the Authority shall refer the matter to the Central Government, whose decision would be final.

586. Act 56 of 1963 also amended clause (g) to sub-section (2) of Section 56 of the Development Act which relates to the power of the Central Government to make Rules after consultation with the Authority and which have to be notified in the Official Gazette. Clause (g) to subsection (2) of Section 56 of the Development Act, before insertion of Section 11A, stipulated thus:

"(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

xx xx xx

(g) the periodical amendment of the master plan and a zonal development plan, the period at the expiration of which such amendment may be taken up, the procedure to be followed in making such amendment and the date of operation of such amendment;"

587. Post the amendment, clause (g) of Section 56(2) of the Development Act reads as under:

"(g) the form and manner in which notice under subsection (3) of section 11A shall be published;"

588. The Central Government in exercise of power under sub-section (1) of Section 56, read with clauses (e), (g) and (r) of sub-section (2) to Section 56, has enacted the Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959, (the 'Development Rules') which came into force on 1st January, 1960.Development Rules, in terms of Rule 3, require the Authority to carry out a civic survey and analysis of the physical, economic and sociological features of Delhi with reference to the natural resources, distribution of population, industry, communication, housing requirements, and other matters relating to the development of Delhi. Thereafter, a draft Master Plan

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- consisting of maps, diagrams, charts, reports, and other written matter of explanatory or descriptive nature, as they pertain to development of the whole or any part of Delhi-has to be prepared and made available for public examination. Clause (b) of sub-rule (3) to Rule 4 states that the draft Master Plan may include the land use plan based upon such survey of the present use of land as may be necessary as well as analysis of estimated future needs and consisting of comprehensive proposal for most desirable utilisation of land including government land. It may include a financial plan and an administrative plan. Rule 5 relates to public notice regarding preparation of Master Plan, and reads:

> "**5. Public Notice regarding preparation of Master Plan**.— (1) As soon as may be after the draft master plan has been prepared, the Authority shall publish a public notice stating that—
>
> (a) the draft Master Plan has been prepared and may be inspected by any person at such time and place may be specified in those notice;
>
> (b) suggestions and objections in writing, if any, in respect of the draft master plan may be filed by any person with the secretary of the Authority within 90 days from the date of first publication of the notice.
>
> [Provided that where the Central Government considers it expedient so to do for the purpose of maintenance of public order or in case of any exigency likely to affect the interest of the public it may require such suggestions and objection to be filed within in period of three days from the date of the notice]
>
> (2) This notice may be in Form A appended to these rules without modification with. Such modification as may be necessary."

589. Rule 5 states that public notice will be published stating that the draft master plan has been prepared and may be inspected at such time and place as specified and secondly, suggestions and objections in writing, if any, in respect of the Master Plan may be filed with the Secretary of the Authority within ninety (90) days of the first publication of the notice. Under the proviso the Central Government may in case of exigency provide for a shorter notice.

590. Rule 6 states that the notice will be published in the manner prescribed in Section 44 of the Development Act and shall also be published in the official gazette.

591. Rules 8, 9, 10 and 11 which deal with consideration of objections and suggestions and preparation of the final draft Master Plan; read:

> **"8. Appointment of Board for enquiry and hearing**.— (1) The Authority shall, for hearing and considering any representation, objection and suggestion to the draft master plan, appoint a Board consisting of not less than 3 and not more than 5 members of the Authority.
>
> Provided that such Board shall have powers to co-opt not more than 2 members from amongst the members of the Advisory Council.
>
> [(2) No business of the Board shall be transacted at any meeting unless at least three members are present from the beginning to the end of the hearing.]
>
> **9. Enquiry and hearing**.— The secretary shall, after the expiry of the period allowed under these rules for making objections, representations and suggestions fix a date or dates for hearing by the Board of any person, or local authority in connection with any objection, representation or suggestion made by such person or local authority in respect of the draft master plan and shall serve on the local authority or any person who may be allowed a personal hearing in connection with such representation, objection or suggestion to the draft master plan, a notice intimating the time, date and place of the hearing.
>
> Provided that the Board may disallow personal hearing to any person, if it is of the opinion that the objection or suggestion made by such person in

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inconsequential, trivial or irrelevant.

10. Report of Enquiry.— The Board shall after the conclusion of its enquiry, submit to the Authority a report of its recommendations.

11. Preparation of final draft Master Plan and its submission to Central Government.— The Authority shall, after considering the report of the Board and any other matter it thinks fit, finally prepare the master plan and submit it to the Central Government for its approval."

592. As per Rule 8, the Authority is required to appoint a Board of Enquiry and Hearing (BoEH) for hearing and considering the representations, objections and suggestions to the draft Master Plan. BoEH shall comprise of not less than three members of the Authority, which has the power to co-opt not more than two members from amongst the members of the Advisory Council of the Authority. Sub-rule (2) to Rule 8 prescribes the minimum quorum for the BoEH and states that no business of the BoEH shall be transacted unless at least three members of the BoEH are present from the beginning till the end of the hearing. Rule 9 states that the Secretary of the Authority, after the procedure prescribed under the Rules for making objections/representations and suggestions has been followed, shall serve notice on the local authority or the person who may be allowed personal hearing in connection with the representation, objection or suggestion to the draft Master Plan, intimating the time, date and place of hearing. Rule 10 states that the BoEH after conclusion of the inquiry shall submit to the Authority a report of its recommendations. Clearly, the sub-rules demonstrate the importance given to public participation including public hearing.

593. As per Rule 11 the Authority after considering the report of the BoEH and any other matter it thinks fit, shall finally prepare the Master Plan and submit it to the Central Government for its approval. Rules 5 to 11 apply *mutatis mutandis* to Zonal Development Plans.

594. The Development Rules were amended by the Delhi Development (Master and Zonal Development Plan) Amendment Rules, 1966 by Gazette Notification GSR 930 dated 13th of May, 1966. Consequent to this amendment, Rules 12 and 13, which dealt with amendment of the Master Plan, were omitted. This was *ex facie* necessary and followed enactment of Section 11A of the Development Act. After Rule 15, Chapter V titled "Modification to the Master Plan and the Zonal Development Plan" was inserted, wherein Rule 16 states that the notice referred to in subsection (3) of Section 11A shall be in Form B, and published in accordance with Rule 6. Form B is reproduced below:

"FORM B

Public Notice

The following modification/s which the Delhi Development Authority/Central Government proposes to make to the Master Plan for Delhi/Zonal Development Plan/s, for zone/s _____ is/are hereby published for public information. Any person having any objection or suggestion with respect to the proposed modification/s may send the objection or suggestion in writing to the Secretary, Delhi Development Authority, Delhi Vikas Bhawan, Indraprastha Estate, New Delhi, within a period of thirty days from the date of this notice. The person making the objection or suggestion should also give his name and address.

Modification/s.

.....

.....

.....

2. The plan/s indicating the proposed modification/s will be available for

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inspection at the office of the Authority, Delhi Vikas Bhawan, Indraprastha Estate, New Delhi, on all working days except Saturday, within the period referred to above.

Secretary
Delhi Development Authority

Delhi Vikas Bhawan,
Indraprastha Estate,
New Delhi
Dated, the _____ 196."

[No. 19015(3)/66-UD.]
R.R. Sharma, Under Secy."

595. By virtue of powers under the Development Act and the Development Rules, a Master Plan for Delhi was promulgated in 1962, setting out a broad vision for the development of Delhi. Subsequently, for some reasons which we cannot fathom, albeit which need not be examined for the present litigation, the Authority by taking recourse and invoking Section 11A of the Development Act has enacted the Master Plan of Delhi 2001, followed by the Master Plan of Delhi 2021, which is currently being implemented. While the second and the third Master Plans were regarded as modifications under Section 11-A of the Development Act, the procedure under Section 11 and the Development Rules was followed in preparation and publication of the draft master plan and the positive requirement of public consultation and hearing were followed on both occasions. Significance of this exercise and its' legal implications would be noticed later.

596. With this statutory framework in mind, we shall proceed to consider the facts; -

(a) On 2nd September 2019, Central Public Works Department (also referred to as 'CPWD') issued notice inviting bids for the "Development/Redevelopment of Parliament Building, Common Central Secretariat and Central Vista at New Delhi." The tender document stated:"A new Master Plan is to be drawn up for the entire Central Vista area that represents the values and aspirations of a New India - good governance, efficiency, transparency, accountability and equity and is rooted in the Indian Culture and social milieu."

(b) On 4th December 2019, the Land and Development Office (L&DO), in the Ministry of Housing and Urban Affairs (MoHUA), forwarded a proposal for change in land use of 7 plots located in the Central Vista area and 1 plot located in the Timarpur area, to the Authority. On the very next day i.e., 5th December 2019 the Technical Committee of the Authority held its meeting. The examination was on the proposal for change of land use for the following plots:

"A. Plot No. 1 is located on Church road near DTC Central Secretariat Bus Terminal, New Delhi. As per MPD - 2021 the Land Use of the Site is under Transportation (Bus Terminal/Parking). (Location marked on attached Annexure A). The proposed land use of the site is Government Office.

B. Plot No. 2 is located opposite to the Parliament House, New Delhi. As per MPD - 2021 the land use of the site is under Recreational (District Park). (Location marked on attached Annexure A). The proposed land use of the site is Government Office.

C. Plot No. 3 is located on Dr. Rajendra Prasad Road and houses National Archives. As per MPD - 2021 the land use of the site is under Public and Semi Public facilities. (Location marked on attached Annexure A). The proposed land use of the site is Government Office and Recreational (District Park).

D. Plot No. 4 is located on Dr. Rajendra Prasad Road and is occupied by Indira

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Gandhi National Centre for Art and Culture. As per MPD - 2021 the land use of the site is under Public and Semi Public facilities (SC). (Location marked on attached Annexure A). The proposed land use of the site is under Government Office and Recreational (District Park).

E. Plot No. 5 is located between Man Singh Road, Ashoka Road and India Gate Hexagon in a triangular formation. As MPD - 2021 the land use of the site is under Public and Semi Public facilities. (Location marked on attached Annexure A). The proposed land use of the site is Government Office.

F. Plot No. 6 is located on Maulana Azad Road and consists of VP house, Vigyan Bhavan and National Museum. As per MPD -2021 the land use of the site is under Public and Semi Public facilities (SC). (Location marked on attached Annexure A). The proposed land use of the site is under Government Office.

G. Plot No. 7 is located on Dara Shikoh Marg. As per MPD - 2021 the land use of the site is under Government office. (Location marked on attached Annexure A). The proposed land use of the site is Residential.

H. Plot No. 8 is located on Lucknow Road near Timarpur and part of Planning Zone C. As per MPD-2021 the land use of the site is under Public and Semi Public Facilities. (Location marked on attached Annexure B). The proposed land use of the site is Recreational (District Park).”

(c) On the same day, i.e. 5th December 2019, the Technical Committee of the Authority approved the proposal for further processing under Section 11A of the Development Act. Relevant portion of the decision is as under:

<table>
<tr><td rowspan="5">43/2019</td><td rowspan="5">Proposed change of land use of various plots (8 nos.) as mentioned in the Technical Committee Agenda</td><td colspan="2">The proposal was presented by Land & Development officer, GoI.
Officers from Planning, Zone-D, DDA informed that Land use was mentioned transportation for Plot No. 1 as in agenda Item located on church road near DTC Central Secretariat Bus Terminal, New Delhi, but as per Master Plan and Zonal Plan of Zone D - 2001 it is as under:</td></tr>
<tr><td>Land use as per MPD-2021/ZDP 2001</td><td>Land use changed to</td></tr>
<tr><td>MPD-2021 - Transportation (Bus Terminal/Parking</td><td rowspan="2">Govt. Office</td></tr>
<tr><td>ZDP-Zone-D - 2001 - Part - Recreational (Neighbourhood Play Area) Part - Transportation (Bus Terminal/Parking</td></tr>
<tr><td colspan="2">After detailed deliberation, the proposal as contained in Para 4.0 of the agenda with the above modification in land use for Plot No. 1 was recommended by the Technical Committee for further processing under Section 11A of DD Act, 1957. With the following conditions:
(i) The clearance from the PMO, Heritage Conservation Committee and Central Vista Committee shall be taken by L&DO.
(ii) The heritage buildings shall be dealt as per the relevant heritage provisions.</td></tr>
</table>

(d) Thereafter, on 21st December 2019, a public notice was issued inviting objections and suggestions from the public in terms of sub-section 3 to Section 11-A of the Development Act and Rule 16 under the Development Rules, the

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relevant portion of which reads as under:

"**DELHI DEVELOPMENT AUTHORITY**

(Master Plan Section)

PUBLIC NOTICE

New Delhi, the 21st December, 2019

S.O. 4587(E).--The following modification which the Delhi Development Authority/Central Government proposes to make to the Master Plan-2021/Zonal Development Plan of Zone 'D' (for Plot No. 1 to 7) and Zone 'C' (for Plot No. 8) under Section 11-A of DD Act, 1957, is hereby published for public information. Any person haying any objection/suggestion with respect to the proposed modification may send the objection/suggestion in writing to the Commissioner-cum-Secretary, Delhi Development Authority, 'B' Block, Vikas Sadan, New Delhi-110023 within a period of thirty (30) days from the date of this Public Notice. The person making the objection or suggestion should also give his/her name and address in addition to telephone No./contact number and e-mail ID which should be legible.

Proposed Modification:

S. No.	Location	Area (in acres)	Land use as per MPD 2021/ZDP 2001	Land use Changed to	Boundaries
1.	Plot No. 1 Located on Church Road near DTC Central Secretariat Bus Terminal, New Delhi	15	MPD-2021 - Transportation (Bus Terminal/Parking) ZDP Zone-D, 2001 Part-Recreational (Neighbourhood Play Area) Part-Transportation (Bus Terminal/Parking)	Govt. Office	North : Church Road South : Rashtrapati Bhavan and North Block East : Part of North Block West : Rashtrapati Bhavan
2.	Plot No. 2 Opposite to Parliament house	9.5	Recreational (District Park)	Parliament House	North : Red Cross Road South : Raisina Road West : Parliament of India
3.	Plot No. 3 Located on south of Dr. Rajendra Prasad Road and houses National Archives	7.7	Public and Semi Public Facilities	Govt. Office (5.8 acres) and Recreational (District Park) (1.88 acres)	North : Dr. Rajendra Prasad Road South : Green area and Rajpath East : Janpath West : Shastri Bhavan
4.	Plot No. 4 Located on South of Dr. Rajendra Prasad Road and East of Janpath	24.7	Public and Semi Public Facilities (SC)	Govt. Office (22.82 acres) and Recreational (District Park) (1.88 acres)	North : Dr. Rajendra Prasad Road South : Green area and Rajpath East : Man Singh Road West : Janpath

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5.	Plot No. 5 Located on east of Man Singh Road and South of Ashoka Road	4.5	Public and Semi Public Facilities (SC)	Govt. Office	North : Ashoka Road South : Green area and Rajpath East : C-Hexagon West : Man Singh Road
6.	Plot No. 6 Located on North of Maulana Azad Road and East of Janpath	24.7	Public and Semi Public Facilities (SC)	Govt. Office (22.82 acres) and Recreational (District Park) (1.88 acres)	North : Green Area and Rajpath South : Maulana Azad Road East : Man Singh Road West : Janpath
7.	Plot No. 7 Located on North of Dalhausi Road near South Block	15	MPD-2021 - Government office ZDP Zone-D-2001 Recreational (Neighbourhood Play Area)	Residential	North : South Block South : Dara Shikoh Road East : Part of South Block West : Rashtrapati Bhavan
8.	Plot No. 8 Located on Lucknow Road near Timarpur (Falls in Zone -C)	3.9	Land Use as per ZDP of Zone-C-2021 Public and Semi Public Facilities	Recreational (District Park)	North : CGHS Dispensary South : Government Land East : Lucknow Road West : Government Land

The text/Plan indicating the proposed modifications shall be available for inspection at the office of Deputy Director (MP), Delhi Development Authority, 6th Floor, Vikas Minar, I.P. Estate, New Delhi on all working days during the period referred above. The text/plan indicating the proposed modifications is also available on DDA's website i.e. www.dda.org.in.

[F. No. F. 20(12) 2019/MP]
D. SARKAR, Dy. Secy."

(e) Meanwhile, on 31st January 202 a revised proposal for change of land use in respect of Plot No. 1 was sent by the L&DO to the Authority.

(f) As per the respondents, pursuant to the public notice, as many as 1292 objections to the proposed amendments/modifications to the plan were received from people living across the country. Some were on behalf of multiple persons. (For example, objection/suggestion No. 1292 was on behalf of Rajiv Kataria and 16 others.)

(g) The public notice had stipulated:—

"as per procedure all the objections/suggestions received within the stipulated time period of 30 days i.e. up to 19.01.2020, will be placed before the Board of Enquiry and Hearing (BoEH)".

597. There is an error in computation of the 30-day period in the public notice, as Section 9 of the General Clauses Act, 1897 requires exclusion of the date of publication. Accordingly, the period of 30 days having commenced on 22nd December 2019 would have ended on 20th January, 2021. The respondents in their counter affidavit have not specifically dealt with and answered this contention. However, at the time of hearing it was stated that objections received as late as on 21stJanuary 2020

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were taken into consideration. Reliance placed on the compilation giving a gist of objections/suggestions which refers to the diary number and the date, does not indicate the date on which the objections/suggestions were received in the inbox. Consequently, we would accept the statement made in the public notice that the objections received till 19th January 2020 only were taken on record, though as per law the citizenry had the right to file objections/suggestions till 20th January 2020.

(h) On 3/4th February 2020 emails and SMS were issued to those who had filed objections/suggestions fixing meeting of the BoEH for oral hearing on 6th and 7th Februray, 2020 from 10 : 30 a.m. to 5 : 30 p.m. at Vikas Sadan, INA, New Delhi. Public notice informing the persons, who had submitted objections and suggestions, about the meeting of the BoEH, was published in five newspapers on 5th February 2020, reads:—

"**DELHI DEVELOPMENT AUTHORITY**
PUBLIC NOTICE

Delhi Development Authority issued public notice vide Gazette notification S.O. 4587 (E) dated 21.12.2019 and also published in the newspapers for inviting objections/suggestions from the public regarding proposed change of land use of Plot No. 1 to 7 (Zone-D) and Plot No. 8 (Zone-C).

As per procedure all the objections/suggestions received within the stipulated time period of 30 days i.e. up to 19.01.2020, will be placed before the Board of Enquiry and Hearing (BoEH). The Board Hearing will be held on 06.02.2020 (Thursday) & 07.02.2020 (Friday) from 10 : 30 A.M. onwards at DDA Office, Conference Hall, 8-Block, Ground Floor, Vikas Sadan, INA.

Any person who has filed objection/suggestion and wants to present his/her oral evidence in person before the Board, may come to the abovementioned venue on 06.02.2020 & 07.02.2020 to present his/her views, as per the proposed schedule, which shall be available on the DDA website i.e. www.dda.org.in (under head 'HOTLINKS'/'PUBLIC NOTICES') on 05.02.2020 (12 pm). Concerned persons shall also be informed through E-mail/SMS as per details provided in their representations.

In case any person who has filed objection/suggestion but does not find his/her name in the schedule or has not received any e-mail/SMS, may present his/her oral submission before the Board on the said date i.e. 07.02.2020 (Friday) from 1 : 00 P.M. to 1 : 30 P.M. All persons are requested to carry a valid Identity Proof."

598. The public hearings were held on 6th and 7th February 2020.

(i) A summary of the objections and suggestions was prepared and made available to the BoEH. The most common, if not almost universal, grievance raised was scanty and insufficient information and lack of details/explanation regarding the proposed changes and the redevelopment envisaged so as to enable the public to make suggestions/objections. Consequently, there was disquiet and perturbation. For the sake of convenience and for clarity, we would like to reproduce portions of some of the objections/suggestions:

"Sriram Ganapathi

Objections:

On account of the Central Vista area being the 'nation-space' of India the ever-increasing association in the minds of the general pubic of this being the space that signifies the unity and spirit of India and the manifestation of the same in the ever-increasing number of Indians who visit this area the proposed reduction of as much as 80 acres of area available both directly and indirectly to the general public transport and parking etc. in this area may be an inappropriate planning decision for obvious reasons.

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xx xx xx

Suggestions:

On account of general inability to understand the merit for such conversion without attendant details illustrating the need for the proposed modifications. It is suggested that relevant material may be put into the public domain and a thorough public consultative process completed prior to finalisation of any decision regarding the same.

Madhav Raman

Objections:

xx xx xx

…Land use is a violation of extant heritage regulation protecting Central Vista a notified Grade 1 Heritage Area and a Special Heritage Area of LBZ as notified in MPD 2021. This proposed change interferes with the original urban design of this precinct and changes the relationship between built and unbuilt of the Central Vista.

Suggestions:

On account of general inability to understand the merit for such conversion without attendant details illustrating the need for the proposed modifications. It is suggested that relevant material may be put into the public domain and a thorough public consultative process completed prior to finalisation of any decision regarding the same.

Pulkit Khanna Malik

Suggestions:

The merits of the proposed conversion are unclear whereas the demerits are glaringly obvious. It is suggested that relevant material be put into the public domain and a thorough public consultative process completed before any decisions are finalised.

Shamit Manchanda, Architect

We would also like to draw your attention to the Master Plan of Delhi 2021 Sections 8.0 item 8.1 which is not sought to be changed and thereby the proposed changes seem to be in violation of the Master Plan of Delhi 2021.

Suggestions:

In view of the points mentioned above it is requested that the details sought are made public before proceeding with the proposed land use changes that seem to be conflicting with the Master Plan of Delhi 2021. Please also share if any study has been undertaken to assess the impact of additional pedestrian and vehicular traffic this change of land use will cause.

Punit Sethi

Additional Suggestions:

(b) It is requested that the details sought are made public before proceeding with the proposed land use changes as they seem to be conflicting with the Master Plan of Delhi-2021.

(c) If any study has been undertaken prior to proposing the said land use changes to assess the impact additional pedestrian and vehicular traffic, this change of land use will cause or impact on the environment et.al. should be first said with public at large so that a participatory public process can be followed in decision making."

599. Objections were also made in relation to exercise of powers of the Authority to make modifications under clause (1) of Section 11A of the Development Act. Some had highlighted that the project would reduce public space/area and the requisite

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approvals were not in place. We would for clarity quote some responses received by the Authority to illustrate the concerns raised:

"Anil Sood

xx xx xx

The master Plan can be modified subject to the satisfaction of restrictions imposed under section 11A.

Thus sub-section (1) of section 11A permits modifications of the Master Plan under the following circumstances:

not affect important alterations in the character of the plan; and

which do not relate to the extent of land-users or the standards of population density.

That it is a matter of record that DDA has not conducted the Civic Survey as mandated under section 7 but has also violated the mandate of subsection 1 of section 11A that prohibits change of land use in case of change of population density and altar the basic character of the plan.

Meena Gupta

The proposed redevelopment reduces drastically the space available to the public for recreational public and semi-public use. This is a loss not just to the people of Delhi but to the people of India. The Central Vista is a historic as well as iconic place. The buildings are just about a hundred years old and attempts should be made to preserve rather than demolish them. Several thousand old and very old trees will have to be cut down to make way for the buildings. Replacing these many trees is impossible. Virtually no consultation has been held with the public at large or bodies like the Urban Arts Commission has been carried out.

We request you therefore to immediately stop action on this proposal and only take it up after proper discussion with the public and expert bodies."

(j) The BoEH, apart from noting the submissions/objections/suggestions by those who appeared at the hearing, did not deliberate or record specific reasons dealing with the suggestions and objections. Having interacted with the public, BoEH did find merit in the objection regarding absence and lack of information in public domain and took specific note of the public anxiety and 'misgivings'. Minutes of the BoEH are an incontrovertible acknowledgement that, but for indicating the present and proposed land use, no plans, layouts, drawings etc., or written matter explanatory or of descriptive nature to illustrate or explain the proposed changes and project were put in public domain. BoEH had therefore thoughtfully recommended the need to address lack of transparency concern by all departments. The recommendations made by the BoEH are as under:

"(i) Regarding proposal of change of land use of Plot No. 1, it is recommended that the revised proposal for change of land use must be taken afresh under Section 11-A pf DD Act, 1957.

(ii) Among the respondents, majority of whom are Planners/Architects, there appears to be a feeling that authentic technical information on this iconic project of Centra Vista is not available in public domain, which is leading to avoidable misgivings. Board recommends that all concerned departments need to address this concern.

(iii) Keeping in view the strong reservation of the respondents, it is suggested that impact assessment studies on traffic, environment and heritage may be commissioned at the earliest.

(iv) From the responses received during public hearing, it appears that the present project has not been referred to the Central Vista Committee, although in the past any such project has always been referred to the Central

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Vista Committee. Authority may like to take a view on this issue and make suitable recommendations to Government of India."

(k) On 10th February 2020, the proposal for modification of the Central Vista Plan was placed before the Authority and approved in respect of Plot Nos. 2 to 8 vide agenda item no. 18/2020. The relevant portion of minutes reads as under:

"Item No. 18/2020

Regarding proposed change of land use of Plot Nos. 1, 2, 3, 4, 5, 6, 7 and 8.F.20 (12) 2019/MP

a) The proposal was presented by Joint Secretary (L&E), MoHUA, In-charge of Central Vista Development/Redevelopment Project, who was present as Special Invitee. She apprised the details of the Project to the members of the Authority.

b) JS, MoHUA informed that during the planning of Capital City-New Delhi, the architects and urban designers - Edward Lutyens and Herbert Baker had prepared an urban design plan for entire New Delhi in such a way that all the important Government offices would come along the Central Vista (Rajpath). However, by the year 1931, when Delhi officially became capital of India, only five (05) buildings were constructed namely, Rashtrapati Bhawan, Sansad Bhawan, North and South Blocks and first building of the National Archives. She assured that the heritage buildings in the Central Vista shall be conserved.

c) She further informed that for this Project, the following measures are being taken up:

i. No trees shall be cut during the implementation of the project. However, some trees may be transplanted for which techniques are available.

ii. Total tree cover shall increase with new plantation.

iii. 100% C&D waste shall be re-cycled and utilized within the project.

iv. All the green building features will be followed by making most efficient use of resources and adopting modern day construction technologies.

v. Rain Water Harvesting (RWH) structures and water conservation measures will be undertaken.

vi. Proposed development has been integrated with two metro stations in the Vista namely, Udyog Bhawan and Central Secretariat for commuting public/government employees through an underground shuttle.

vii. In the proposed scheme, the Central Government Ministries/Offices will be moved to the Central Vista thereby cutting down large scale travel across 47 Central Government Ministries/Offices' Buildings spread in different parts of Delhi. The proposal, once implemented shall result in easing traffic flow in Lutyens' Bunglow Zone (LBZ) and in the city. This will result in reduction of vehicular trips thereby reducing carbon footprint, congestion, pollution and accidents.

d) The recommendations of Board of Enquiry & Hearing (BoE&H) and the issues raised by the public in the meeting held on 06.02.2020 and 07.02.2020, were deliberated in the Authority meeting. Member Engineering, DDA-cum-Chairman or BoE&H explained that as has been clarified by JS, MoHUA, the proposed project addresses all issues raised by the public in a comprehensive manner. He informed that all objections and suggestions given by the public were duly considered by the BoE&H. Various objections and suggestions which were pertaining to L&DO and Planning Department of DDA were replied to by the representatives of these respective agencies and the details are available on the record. Based on the detailed deliberations, BoE&H has recommended

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for issuing public notice for plot no. 1 and consideration of allowing change of land use with respect to plot no. 2to 8.

e) The following facts were further elaborated by JS, MoHUA:

i. Under the proposed Development/Redevelopment, total public space in the Central Vista is increasing by almost 100 acres. This constitutes the following:

A National Bio-diversity Arboretum in 48.6 acres land on the western end of the President's Estates is proposed to house 1,236 endangered species in 11 different phytological zones. This facility will be open to the researchers as well as to the public.

North and South Blocks which cover nearly 27 acres is proposed to be converted into National Museums showcasing India prior to and after 1857.

Nearly 25 acres of land on the Western Bank of River Yamuna is proposed to be developed as New India Garden with an iconic structure to commemorate 75 years of India's Independence.

ii. The project also proposes to develop/re-develop the Central Vista with proper public utilities, green spaces, water bodies, landscaping etc. whose total area will be more than the existing area as 5.6 acres from the existing buildings will be added to the greenspace. Further, plot no. 8 located at Timarpur in Planning Zone-Chaving an area of 3.9 acres is also being added to green spaces of Delhi.

iii. The area of over 90 acres currently under Hutments will be properly planned and developed into organised urban spaces.

iv. All necessary approvals for buildings and the facilities will be taken from the competent authorities as and when required.

f) Vice Chairman, DDA apprised that a notification number SO 3348 (E) has been issued by the Government of India on 17/10/2017, whereby as per Master Plan for Delhi (MPD) - 2021, 'Central Government Offices' are permitted use premise in 'Public and Semi Public facilities' (PSP) land use zones. Therefore, Authority is competent to allow Plot No. 3, 4, 5 & 6, which are currently under PSP land use for housing 'Central Government Offices' with 1.88 acres each in the plot No. 3, 4 and 6 earmarked as Recreational (District Park).

g) Additional Secretary (D), MoHUA and Member, Delhi Development Authority, explained that the Authority is competent to make the proposed modification in the Master Plan for the land uses as these will not alter the character of the Master Plan since they are in line with the Lutyens & Bakers' plan of housing Government buildings in the Central Vista. Further, the proposal does not impact the extent of the land uses and the standards of population density as has been envisaged in the Master Plan for Delhi, (MPD) -2021. Hence, Section 11(A)(1) or Delhi Development Act, 1957, empowers the Authority to make proposed changes under consideration. Vice-Chairman DDA further corroborated this and stated that only after being satisfied that the Authority is competent under 11(A)(1) of the Act, that the proposal has been considered and submitted for Authority's approval.

Decision : After detailed deliberations, the proposal is approved as follows:

i. A public notice shall be issued for change of land use for plot number 01 from 'Transportation' (Bus Terminal/parking) and 'Recreational' to 'Residential' and to be processed under Section 11-A of DD Act 1957.

ii. With respect to plot Nos. 02 to 07; the proposal of land use change of L&DO is approved. The proposal be submitted to MoHUA for approval/notification.

iii. Change of Land Use for plot No. 8 is approved and the proposal be

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forwarded to MoHUA for approval/notification."

(l) On 4th March 2020, a public notice was issued with regards to plot no. 1 for which L&DO had sent a revised proposal.

(m) On 9th March 2020, the Special Advisory Group of Central Vista and Central Secretariat (for short, 'Central Vista Committee') gave its approval for the proposed change of land use in respect of plots at serial nos. 2 to 8. We shall subsequently refer to the minutes of this meeting and examine the challenge to the validity of this permission/approval.

(n) On 20th March 2020, a public notice was issued by the MoHUA accepting the modifications to the Master Plan of Delhi - 2021 and the zonal development plan for Zone D & C. The notification dated 20th March, 2020 is as under:

"**MINISTRY OF HOUSING AND URBAN AFFAIRS**
(Delhi Division)
NOTIFICATION

New Delhi, the 20th March, 2020

S.O. 1192(E).—Whereas, certain modifications which the Central Government proposed to make in the Master Plan for Delhi-2021/Zonal Development Plan of Zone-D (for Plot No. 02 to 07) and Zone-C (for Plot No. 08) regarding the area mentioned here under were published in the Gazette of India, Extraordinary, as Public Notice vide No. S.O. 4587(E) dated 21.12.2019 by the Delhi Development Authority in accordance with the provisions of Section 44 of the Delhi Development Act, 1957 (61 of 1957) inviting objections/suggestions as required by sub-section (3) of Section 11-A of the said Act, within thirty days from the date of the said notice;

2. Whereas, 1,292 objections/suggestions received with regard to the proposed modifications have been considered by the Board of Enquiry and Hearing, set up by the Delhi Development Authority and the proposed modifications were recommended in the meeting of Delhi Development Authority held on 10.02.2020;

3. Whereas, the Central Government have after carefully considering all aspects of the matter, have decided to modify the Master Plan for Delhi-2021/Zonal Development Plan of Zone-D & Zone-C;

4. Now, therefore, in exercise of the powers conferred under Sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modifications in the said Master Plan for Delhi-2021/Zonal Development Plan of Zone-D & Zone-C, with effect from the date of Publication of this Notification in the Gazette of India.

Modifications:

The land use of the following area of land falling in Zone-D and Zone-C is changed as per description listed below:

S. No.	**Location**	**Area (in acres)**	**Land use as per MPD 2021/ZDP Zone D 2001**	**Land use Changed to**	**Boundaries**
1.	**Plot No. 2** Opposite to Parliament House	9.5	Recreational (District Park)	**Government (Parliament House)**	North : Red Cross Road South : West : Raisina Road Parliament of India
2.	**Plot No. 3** Located on South of Dr. Rajendra	7.7	Public and Semi Public Facilities	**Govt Office (5.88 acres) and Recreational**	North : Dr Rajendra Prasad Road South : Green Area and Rajpath East :

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	Prasad Road and houses National Archives			**(District Park) (1.88 acres)**	Janpath West : Shastri Bhavan
3.	**Plot No. 4** Located on South of Dr. Rajendra Prasad Road and East of Janpath	24.7	Public and Semi Public Facilities (SC)	**Govt. Office (22.82 acres) and Recreational (District Park) (1.88 acres)**	North : Dr Rajendra Prasad Road South : Green Area and Rajpath East : Man Singh Road West : Janpath
4.	**Plot No. 5** Located on East of Man Singh Road and South of Ashoka Road	4.5	Public and Semi Public Facilities (SC)	**Govt. Office**	North : Ashoka Road South : Green Area and Rajpath East : C-Hexagon West : Man Singh Road
5.	**Plot No. 6** Located on North of Maulana Azad Road and East of Janpath	24.7	Public and Semi Public Facilities (SC)	**Govt. Office (22.82 acres) and Recreational (District Park) (1.88 acres)**	North : Green Area and Rajpath South : Maulana Azad Road East : Man Singh Road West : Janpath
6.	**Plot No. 7** Located on North of Dalhausi Road near South Block	15	MPD-2021-Government Office ZDP Zone-D-2001 Recreational (Neighborhood Play Area)	**Residential**	North : South Block South : Dara Shikoh Road East : Part of South Block West : Rashtrapati Bhavan
7.	**Plot No. 8** Located on Lucknow Road near Timarpur	3.9	Public and Semi Public Facilities	**Recreational (District Park)**	North : CGHS Dispensary South : Government Land East : Lucknow Road West : Government Land

[F. No. K-13011/6/2019-DD-I]
VIRENDRA KUMAR KUSHWAHA, Under Secy."

(o) On 23rd April 2020, the Central Vista Committee granted "no objection" to the proposed new Parliament building. We shall be referring to these minutes and the challenge subsequently.

600. Conventionally, judicial review is not much concerned with the merits of an administrative decision, but rather, with the process of arriving at it, and with the question of jurisdiction. The question of procedure can be categorised under three principal heads - illegality, procedural impropriety and irrationality. Illegality occurs when the decision-maker acts in excess of his powers such as when he acts *ultra vires* or in error of law and/or fact, unauthorisedly delegates his power, acts for improper purpose or in bad faith or fails to act, considers irrelevant factors, imposes onerous conditions etc. Procedural impropriety may be due to failure to comply with the mandatory procedure of law or breach of principles of natural justice such as *audi*

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alteram partem, rule against bias, duty to act fairly, duty to give reasons, respecting legitimate expectation, etc. Irrationality takes into its umbrella Wednesbury unreasonableness,[1] which considers a decision as unreasonable if it is so outrageous in its defiance of logic or accepted moral standards that no sensible person, applying his mind to the question, could have arrived at it.[2] Another ground for review is the test of proportionality, considered by many as more intensive, and distinct from Wednesbury unreasonableness. To some jurists it requires the court to make a value judgment, independent of the decision-maker, based on factors such as suitability or appropriateness, necessity and the balance or imbalance of benefits and disadvantages. We would subsequently refer to and elaborate on the test of proportionality as judicially accepted and applied in India. Presently, it would suffice to state that proportionality incorporates and effectuates reasonableness. Proportionality is based on the principle that administrative or even legislative action ought not to go beyond what is necessary to achieve its desired aims or objectives. Even while examining the question of Wednesbury unreasonableness the court can ask whether the decision was within the range of rational balances that may be struck.[3]

601. In *Anuradha Bhasin* v. *Union of India*,[4] reference was made to the earlier decision of this Court in *Modern Dental College and Research Centre* v. *State of Madhya Pradesh*,[5] wherein reliance was placed on Aharon Barak's work on proportionality[6], to observe:

> "60…a limitation of a constitutional right will be constitutionally permissible if:
>
> (i) it is designated for a *proper purpose*;
>
> (ii) the measures undertaken to effectuate such a limitation are *rationally connected* to the fulfilment of that purpose;
>
> (iii) the measures undertaken are *necessary* in that there are *no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation*; and finally
>
> (iv) there needs to be a proper relation *proportionality strictosensu balancing* between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right."

602. This court in *Anuradha Bhasin* held that the principle of proportionality is inherently embedded in the Indian Constitution under the doctrine of reasonable restriction, which means the limitation imposed on a person should not be arbitrary or of an excessive nature beyond what is required in the interest of public. Thereupon, reference was made to works of scholars/jurists and judgment of the Canadian Supreme Court in *R. Oakes*,[7] to observe that some jurists have argued that if the necessity stage is interpreted strictly, the legislation and policies, no matter how well intended, will fail to pass the proportionality enquiry if any other slightly less drastic measure exists. Therefore, David Bilchitz has suggested a moderate interpretation of the necessity test by stating that necessity involves a process of reasoning designed to ensure that only measures with a strong relationship to the objective they seek to achieve can justify an invasion of fundamental rights. The process thus requires courts to reason through the various stages of moderate interpretation of necessity in the following manner:

> "(MN1) All feasible alternatives need to be identified, with courts being explicit as to criteria of feasibility;
>
> (MN2) The relationship between the government measure under consideration, the alternatives identified in MN1 and the objective sought to be achieved must be determined. An attempt must be made to retain only those alternatives to the measure that realise the objective in a real and substantial manner;
>
> (MN3) The differing impact of the measure and the alternatives (identified in MN2) upon fundamental rights must be determined, with it being recognised that

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this requires a recognition of approximate impact; and

(MN4) Given the findings in MN2 and MN3, an overall comparison (and balancing exercise) must be undertaken between the measure and the alternatives. A judgment must be made whether the government measure is the best of all feasible alternatives, considering both the degree to which it realises the government objective and the degree of impact upon fundamental rights ("the comparative component")."

603. This approach was also adopted and preferred by A.K. Sikri, J. in *K.S. Puttaswamy* (Aadhaar-5J).[8] D.Y. Chandrachud, J., in the same judgment, had referred to the threefold requirement of legality which postulates the existence of law; need defined in terms of a legitimate state action; and proportionality which ensures rational nexus between the objects and means adopted to achieve them. The third principle, it was held, is the essential role of test of proportionality. *Anuradha Bhasin* also refers to the four-pronged test suggested by Sanjay Kishan Kaul, J. in his concurring opinion in the Aadhar (5 Judge Bench) judgment, to elucidate that the action must be sanctioned by law; the proposed action must be necessary in a democratic society for legitimate aim; the extent of interference must be proportionate to need for such interference; and there must be procedural guarantees against abuse of such interference. Accordingly, in *Anuradha Bhasin* it is observed that the current state of doctrine of proportionality, as it exists in India, is the key tool to achieve judicial balance. But scholars are not agreeable to recognise proportionality equivalent to that of balancing.

604. However the exercise of balancing involved in the proportionality or reasonableness, in the context of the statutory provisions quoted above and as noticed below, necessitates knowledge of various alternatives available to the Authority/Central Government, and this is a mandate enabled *inter alia* by the process requiring public consultation. Legislation is often an exercise to select between options. Therefore issue of choice between alternatives, when public participation in quasi legislative or statutory exercise is mandated by law, has different implications, for example under the Environment Protection Act. This aspect would be considered subsequently.

605. In *Gwalior Rayon Silk Mfg. Co. Ltd.* v. *Assistant Commissioner of Sale Tax*,[9] the Constitutional Bench of this Court had referred to the precedents on constitutional limitation on delegation, including the decision in *In Re. : The Delhi Laws Act*.[10] It observed that there are limits to delegation which flow from the rule and necessary postulate of the sovereignty of the people and, therefore, it is not permissible in the matter of legislative policy to substitute the views of individual officers or other authorities, however competent they may be, for that of the popular will as expressed by the representatives of the people in the primary legislation. Nevertheless the court accepted that growth of legislative powers of the executive is a significant development of the last century consequent to need and necessity, as delegated legislation gives flexibility, elasticity, expedition and opportunity for experimentation. However, it was emphasised that constitution-makers have entrusted the power of legislation to the representative legislature so that the legislative power may be exercised not only in the name of the people, but also by the people speaking through their representatives.

606. *Indian Express Newspapers* v. *Union of India*[11] holds that subordinate legislation does not carry the same degree of immunity as enjoyed by a statute passed by a competent legislature. In addition to the grounds on which primary legislation may be contested, subordinate legislation can also be questioned on the ground that it does not conform to the statute under which it was made, it is contrary to some other statute, or that it was not formed in consonance with the legislative intent as reflected

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in the rule making power given under the statute. Under Article 14 of the Constitution of India, administrative decisions and subordinate legislations can be challenged and struck down when an action exhibits manifest arbitrariness. Quoting Diplock, L.J. in *Mixnam's Properties Ltd.* v. *Chertsey Urban District Council*,[12] this court noted that subordinate legislation can be questioned on the ground of unreasonableness - not in the sense in which this expression is used in common law-but manifest arbitrariness, injustice or partiality when the court finds that the legislature would have never intended and given authority to make the rules under challenge or when there is uncertainty (as distinct from unenforceability) that it can be said that the legislature had not intended to authorise the subordinate legislative authority to make changes in the existing law which are uncertain. In *Kruse* v. *Johnson*,[13] Lord Russell, C.J. observed that by-laws can be held illegal on account of being unreasonable - in the sense that if they are found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclose bad faith; if they involve such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men. Referring to the said aspects, in *Kerala Samsthana Chetu Thozhilali Union* v. *State of Kerala*,[14] it was observed that subordinate legislation it is trite must be reasonable, in consonance with the legislative policy and also give effect to the purport in the main enactment and in good faith. The reason being that the subordinate law making body is bound by the terms of the delegative and the derived authority and the court, as a general rule, shall not give effect to the rules except where it is satisfied that all the conditions precedent for validity of the rules have been fulfilled. Reference was made to the 7th Edition of Craies on Statute Law at pages 297-298 wherein it is observed:

> "31…The courts therefore (1) will require due proof that the rules have been made and promulgated in accordance with the statutory authority, unless the statute directs them to be judicially noticed; (2) in the absence of express statutory provision to the contrary, may inquire whether the rule-making power has been exercised in accordance with the provisions of the statute by which it is created, either with respect to the procedure adopted, the form or substance of the regulation, or the sanction, if any, attached to the regulation; and it follows that the court may reject as invalid and ultra vires a regulation which fails to comply with the statutory essentials."

607. Similarly, G.P. Singh in *Principles in Statutory Interpretation*(14th edition) at page 916 observes that delegated legislations are open to scrutiny of courts and may be declared as invalid particularly on two grounds - (i) violation of the constitution; and (ii) violation of the enabling act. The second ground includes not only cases of violation of substantive provisions of the enabling act but also cases of violation of the mandatory procedure prescribed. Compliance with the laying down requirement which includes approval of the Parliament through a resolution would not confer any immunity to delegated legislation though it may be a circumstance to be taken into account along with other factors to uphold validity though it has been held that laying down clause may prevent the subordinate legislation from being declared invalid for excessive delegation.

608. In *Ispat Industries Limited* v. *Commissioner of Customs*,[15] reference was made to pure theory of law and that in every legal system there is hierarchy of laws, and whenever there is conflict between a norm in a higher layer in this hierarchy and the norm in the lower layer, the norm in the higher layer will prevail. In India, the hierarchy puts the Constitution at the highest level followed by statutory law either by the Parliament or the State Legislature, delegated or subordinate legislation which are in the form of rules made under the Act, regulations made under the Act and then at the lowest level are the administrative orders or executive instructions without any statutory backing.

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609. It has been argued before us that formulation or amendment/modification of a city's Master Plan is not an administrative but a legislative exercise. Relying on the decisions in *Union of India* v. *Cynamide India Ltd.*,[16] and *Pune Municipal Corporation* v. *Promoters and Builders' Association*,[17] the respondents submit that the distinction is that a legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases and usually operates in future; whereas administrative act applies to specific individuals or situations or making decisions by applying general rules to particular cases.

610. In *Cynamide*, this Court observed that price fixation under the Essential Commodities Act and the Drugs (Price Control) Order, 1979 is neither the function nor forte of the court but that of experts and is more or less legislative in character. Nevertheless, the court would not totally deny jurisdiction to inquire into the question whether relevant considerations have been gone into and irrelevant considerations have been kept out of the determination of the price, especially when the legislature has decreed the pricing policy and prescribed the factors which should guide the determination. Observations of Chinnappa Reddy, J., quoted with approval in *State of U.P.* v. *Renusagar Power Co.*,[18] refers to proliferation of delegated legislation, due to which there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative and quasi-judicial actions tend to merge into legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or a quasi-judicial activity. Chinnappa Reddy, J. insisted that it may be necessary that a line must sometimes be drawn as different legal rights and consequences may ensue. Nevertheless, such decision must be arrived at objectively and in consonance with the principles of natural justice.

611. In *Cynamide*, this court while accepting that legislative action, preliminary or subordinate, is not subject to rules of natural justice, nevertheless held that there are several instances of the legislation requiring the subordinate legislating authority to give notice and conduct public hearing before they legislate. Occasionally, legislature directs the subordinate legislating body to make 'such enquiry as it thinks fit' before making the subordinate legislation. In such situations, the nature and extent of inquiry is in the discretion of the subordinate legislating body and is not open to question on the ground that the inquiry was not as full as it might have been. This would not confer any right on anyone.[19] The position, however, would be different where the legislature specifically directs the subordinate legislating body to invite objections and suggestions from the general public which must be considered before the subordinate legislation is made and enacted. Therefore, decision in *Cynamide* while observing that rules of natural justice are not applicable to legislative action, primary or subordinate, draws a clear caveat, that this dictum is not applicable when the legislation has itself provided for duty and obligation to consult. When the legislation stipulates such a right, then the ordinary rule of non-application of right to consult for a legislative action is irrelevant. In such a case, obligation to consult and right to hearing may be a substantive right.

612. In *Cellular Operators Association of India* v. *Telecom Regulatory Authority of India*,[20] the dictum in *Cynamide India Ltd.* was followed. Section 11(4) of the Telecom Regulatory Authority of India Act, 1997, it was held, requires that the authority (i.e. TRAI) shall ensure transparency in exercise of its power in discharging the functions. In the said case, the authority had failed to hold consultation with all stakeholders and had not allowed stakeholders to make their submissions to the authority. Further, there was no discussion or reasoning dealing with the arguments put forward by the service providers that call drops occurred for a variety of reasons, some of which were beyond the control of the service provider and were because of the consumer himself. Therefore, the conclusion that the service providers alone were to be blamed and

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consequently deficiency in service was not a conclusion which a reasonable person can reasonably arrive at.

613. On the question of transparency, *Cellular Operators Association of India* observes that these are fundamental questions relating to openness of governance. Right to Information Act, 2005 has gone a long way to strengthen democracy by requiring that the government be transparent and open in its actions. Only then an informed citizenry would be able to contain corruption and hold the government and its' instrumentalities accountable to the people. Preamble of the Right to Information Act echoes this sentiment stating that informed citizenry and transparency of information are vital for functioning of the government and its' instrumentalities. On the question of open governance, observations by Mathew, J., in *State of U.P.* v. *Raj Narain*,[21] was reproduced:

> "74…The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired."

614. Thereafter, it was observed that right to information is basically founded on the right to know which is an intrinsic part of the fundamental right to free speech and expression. Reference was also made to decisions in *Secretary, Ministry of Information & Broadcasting* v. *Cricket Association of Bengal*,[22] *Reliance Petrochemicals Ltd.* v. *Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd.*[23] and *People's Union for Civil Liberties* v. *Union of India*.[24] The decision in *Reliance Petrochemicals* recognised the right to information as a fundamental right under Article 21 of the Constitution. Sabyasachi Mukharji, J., as His Lordship then was, has held:

> "34…We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform."

615. Earlier, in *Central Board of Secondary Education* v. *Aditya Bandopadhyay*,[25] this Court had divided information into three categories, namely, (i) information, that promotes transparency and accountability in the working of every public authority, and may also help contain or discourage corruption, enumerated in clauses (b) and (c) of Section 4(1) of the Right to Information Act; (ii) other information, that is, information not falling within clauses (b) and (c) of Section 4(1) of the Right to Information Act; and (iii) information not held by, or under the control of the public authority, which cannot be accessed by a public authority under the law for the time being in force. The third category information is excluded and does not fall within the scope of the Right to Information Act. Significant for our purpose are observations that there is also a special responsibility upon the public authorities to *suo moto* publish and disseminate information falling in the first category so that they will be easily and readily accessible to public without any need to assess them through recourse of Section 6 of the Right to Information Act. This is a statutory obligation imposed by Section 4(1)(b) and (c) as also sub-sections (2), (3) and (4) of Section 4 relating to dissemination of information. Thereupon, reference was made to section 19(8) of the Right to Information Act which entrusts the Information Commissions with the power to require any public authority to take any steps as may be necessary to secure compliance with the provisions of the Right to Information Act. It states that every public authority shall maintain its records duly catalogued and indexed in the manner

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and form which facilitates the right to information so as to ensure that information enumerated in clauses (d) and (e) of Section 4(1) of the Right to Information Act are published, disseminated and periodically updated. This, it was observed, would ensure transparency and accountability and enable the citizens to have access to relevant information and avoid unnecessary applications *qua* information under the Right to Information Act.

616. Public consultation in a legislation as a statutory mandate was examined by a Constitutional Bench in *Raza Buland Sugar Co. Ltd.* v. *Municipal Board, Rampur*[26] to observe that the procedure for imposition of tax by the Municipal Board which required framing of a proposal and permitted any inhabitant of a municipality to submit an objection to all or any of the proposals within a fortnight, and the Board upon consideration could pass orders, was necessary or mandatory. The Constitutional Bench elucidated that while use of the word 'shall' in the statute, whether mandatory or directory, cannot be resolved by laying down general rule; the object of the statute in making the provision is a determining factor. The intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision have to be taken into account for arriving at the conclusion whether the provision is directory or mandatory. The majority judgment thereafter referred to the statutory position and the facts of the case at hand to observe that publication of proposals was obviously to further the democratic process and to provide reasonable opportunity of being heard to those who are likely to be affected by the tax proposal. The object behind the publication was to elicit the reaction of the taxpayers, and the Board could even drop the proposal altogether if reaction of tax payers in general merited disapprobation. However, another provision of the statute relating to manner of publication, it was observed, was not mandatory and therefore so long as substantial compliance of the manner as provided was observed, it would be sufficient. The contention that the publication as per the mandate of the statute needs to be in Hindi though the paper itself was published in Urdu was not a good ground to strike down the delegated legislation.

617. In *Lachmi Narain* v. *Union of India*[27] in the context of legislation requiring publication of notice and public consultation three observations were made. Firstly, the requirement for publication of notice of not less than three months before amending the Second Schedule of the Sales Tax Act was held to be mandatory and not directory as the intention of the law makers was expressed in the law itself - the word 'must' instead of 'shall' had been used. When the provision is couched in prohibitive or negative language it can rarely be directory; pre-emptory language in negative form is *per se* indicative of the intent that the provision is mandatory. Secondly, the period fixed in the notice, was mandatory keeping in view several factors such as the imposition of new tax burden or exemption from taxes should cause least dislocation or inconvenience to the dealer in collecting tax for the government, keeping accounts and filing proper returns, and to the Revenue in assessing and collecting the same. Thirdly, dealers and others likely to be affected by the amendment, must get sufficient time and opportunity for making representation, objection, suggestion, in respect of the intended amendment. Accordingly, period of not less than three months was absolute and the span of the notice was thus the essence of the legislative mandate.

618. In *Bhausaheb Tavanappa Mahajan* v. *State of Maharashtra*,[28] Madan, J., as His Lordship's then was, observed that the mode of publication under the Maharashtra Agricultural Produce Marketing Act was mandatory as the word 'shall' *prima facie* requires strict compliance and when read with the other provisions, and, the consequences which flow from construing the word one way or the other as it would

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affect the trade and business of several persons, including agriculturists, it would be proper to hold that the legislative intent was to make the requirement of publication mandatory and not leave it to individual notice of different officers of the State.

619. On general observations and need for public consultation in delegated legislation in *Harvinder Singh* v. *State of Punjab*,[29] reference was made to a working paper presented by Professor Upendra Baxi that executive law making gives exclusive prerogative to a small cross-section of people which necessarily effects both the quality of law making as well as its social communication, acceptance and effectiveness, resulting in a highly centralised system of power. He observed that it is time that India considered desirability and feasibility of building into public law-making process a substantial amount of public participation. Mr. Justice Krishna Iyer in rather strong words in paragraph 52 and 53 observed that subordinate legislation being bureaucratic driven, even when well-meaning and well-informed, could sometimes be para-babel to local self-government. Further, doctrine of delegation in its extreme proportions is fraught with danger which we in naivety may not be fully cognizant. The system of government needs careful, yet radical restructuring, if participative and pluralistic government by the people is to be jettisoned. Similarly, in *Cellular Operators Association of India*, this court consciously referred to U.S. Administrative Procedure Act and *Corpus Juris Secundum* to observe that it would be a healthy function of our democracy, if all subordinate legislation, subject to some well-defined exceptions, are made by transparent process together with explanatory memorandum; after due consultation is held and the rule and regulation making power is exercised after due consideration and by giving reasons for agreeing and disagreeing with the concerns. This would be conducive to openness, improved governance, and would also take care of most grievances and thereby reduce litigation. These observations may not be binding dictums enforceable in law, but should be effectively applied when the legislation itself mandates and requires public participation, thereby making it a worthy and meaningful exercise.

620. In *R (Moseley)* v. *London Borough of Haringey*,[30] the United Kingdom Supreme Court examined the question of what are the essential ingredients of requisite consultation when the Parliament requires a local authority to consult interested persons before making a decision which would potentially affect all its inhabitants. Lord Wilson approved the four gunning principles propounded in *R* v. *Brent London Borough Council, ex parte Gunning*[31] and read:

> "Mr Sedley submits that these basic requirements are essential if the consultation process is to have a sensible content. First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third,... that adequate time must be given for consideration and response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals."

621. Lord Wilson observed that it was hard to see how any of the four requirements could be rejected or indeed improved. It was also observed that the public authority's duty to consult those interested before taking a decision may arise in variety of ways - most commonly where the duty is generated by a statute. It can also arise under common law duty of procedural fairness in the form of doctrine of legitimate expectation. But, irrespective of how the duty to consult has arisen, it is the common law duty of procedural fairness to inform the manner in which the consultation should be conducted. Fairness is a protean concept not susceptible to much generalised enlargement, but its requirements in the context must be linked to the purposes of consultation. The first objective obviously is to address the common law duty of procedural fairness in determination of a person's legal right. Three other underlying

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purposes are : (i) that consultation results in better decisions by ensuring that the decision maker receives all relevant information and is properly tested; (ii) it avoids the sense of injustice which the person who is the subject of the decision will otherwise feel; and (iii) it is reflective of democratic principle at the heart of our society. At the same time, it was observed that the degree of specificity with which the public authority should conduct its consultation exercise may be influenced by the identity of those it is consulting and the effect which the proposal has. In a given case, it may also include information relatable to arguable yet discarded alternative options, though consulting about a proposal may not inevitably involve inviting and considering use of possible alternatives. Therefore, it would be situation specific. Lord Reed observed that the common law imposes a general duty of procedural fairness upon public authorities exercising a wide range of functions which affect the interest of individuals, but the content of that duty varies almost infinitely depending upon the circumstances. Duty to consult, though not a general common law duty, can exist in circumstances where there is legitimate expectation of such consultation which is founded on an expectation, or from a practice of consultation. It may also arise from statutory duty of consultation. In some cases, the statute may give discretion to the public authority to restrict such consultation to a particular consultancy or may involve general public. The consultation may take the form of taking views of the public or holding public meetings etc. A mechanistic approach to the requirement of consultation should be avoided. Depending upon circumstances, issues of fairness may be relevant to the explication of the duty to consult. The purpose of this statutory duty to consult is to ensure public participation in the local authority's decision-making process. In order for the consultation to achieve that objective it must fulfil certain minimum requirements to ensure meaningful public participation in the particular decision-making process. Thus, the public should be provided not only with information about the draft scheme but also an outline of realistic alternatives and indication of main reasons for the authority's adoption of the draft scheme. It is a general obligation to inform as to what the proposal is and exactly why it is under positive consideration. It should tell enough to enable the public to make an intelligent response. (We have subsequently discussed the principle of procedural legitimate expectation.)

622. Gunning principles, first established in 1985, can be crystallised as under:

a. consultation must occur when the proposals are still at a formative stage;

b. the proponent must give sufficient reasons for the proposal that permit intelligent consideration and response;

c. adequate time must be given for consideration and response; and

d. the product of consultation must be conscientiously taken into account in finalising any statutory proposals.

623. These principles reflect the basic requirements essential if the public consultation process is to be sensible and meaningful. They would normally form the basis and foundation for proper application of the duty to consult and right to be consulted. Nevertheless, these principles should not be put in a strait-jacket and the degree of application would depend upon the factual matrix and is situation specific. In United Kingdom grant of relief is now covered by Criminal Justice and Courts Act, 2015 which defines the circumstances in which the court must refuse relief. One of the grounds is when it appears to the court that it is highly unlikely that the outcome for the applicant would have been substantially different if the conduct complained of had not occurred. However, the court may not apply the 'no difference test' where it considers it appropriate to do so for exceptional public interest. There are similar principles relating to undue delay in making a claim for judicial review; extent of sufficient interest of the claimant; whether or not no harm is suffered or prejudice is

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caused by an unlawful act; the courts' discretion not to provide a remedy to make an order would serve no practical purpose; financial implications of the remedy, etc. are to be taken into consideration. Referring to the relief aspect, in *Stephen Viera* v. *London Borough of Camden*,[32] it was observed as follows:

> "106. A quashing order should only be refused if it is inevitable that the outcome would have been the same had the correct procedures been followed (see *R (Copeland)* v. *London Borough of Tower Hamlets*, (2011) J.P.L. 40 at para 36, 37 citing *Smith* v. *North Derbyshire Primary Care Trust*, (2006) EWCA Civ 1291, per May LJ at (10):
>
> > "…Probability is not enough. The defendants would have to show that the decision would inevitably have been the same and the court must not unconsciously stray from its proper province of reviewing the propriety of the decision making process into the forbidden territory of evaluating the substantial merits of the decision…"

624. In *Cellular Operators Association*, this Court had quoted the decision of Court of Appeal in England, *R.* v. *North and East Devon Health Authority, ex p Coughlan*[33] as to the meaning of the term 'consultation':

> "108. It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; *and the product of consultation must be conscientiously taken into account when the ultimate decision is taken…*"

(emphasis as originally supplied)

625. We have already referred to Sections 7 to 11-A of the Development Act which decree detailed procedure for preparation of a Master Plan and the Zonal Development Plan(s) including direction that the Authority shall prepare a draft and make a copy available for inspection to general public and invite objections and suggestions from any person. Every local authority within whose limit any land, as per the plan, is situated is to be given a reasonable opportunity to make representation. Only on considering all representations, suggestions and objections, the Authority, under sub-section (3) to Section 10, can prepare a final plan and submit it to the Central Government for its approval. Sub-section (4) to Section 10 makes provisions of the rules made in this behalf with respect to form and content of the plan(s) and the procedure binding. Consequently, the Development Rules, which are the subordinate legislation, are a part of the Development Act. The Authority, Central Government and common public are bound by the Development Rules, as they are bound to follow and abide by the Development Act. This Court in *Rajasthan State Road Transport Corporation* v. *Bal Mukund Bairwa*[34] and *Annamalai University* v. *Secretary to Government, Information and Tourism Department*,[35] has held that subordinate legislation when validly framed becomes a part of the main enactment. The consequence thereof clearly is that the Development Rules should be read as part and are equally enforceable as the Development Act. In this context, we would refer to Rule 4 of the Development Rules as it elucidates the form and contents of the draft Master Plan to be made public to invite objections, suggestions and representations. As per sub-rule (1) to Rule 4, the draft plan is to consist of such maps, diagrams, charts, reports, and other written matter of explanatory or descriptive nature as pertained to the development of whole or any part of Delhi. Sub-rule (2) to Rule 4 states that the written matter forming part of the Master Plan shall include such summary of main proposals and such descriptive matter as the Authority may consider

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necessary to illustrate and/or explain the proposal indicated by maps, charts, diagrams and other documents. Clauses (a) to (j) of sub-rule (3) to Rule 4 list out other details which may be included. For the purpose of record, we must state that the expression 'Master Plan' as per sub-section (1) to Section 9, for purposes of Sections 10, 11, 12 and 14, would also mean the Zonal Development Plan for a zone.

626. Gunning principles can be substantially read as resonating in Sections 10, 11 and 11-A of the Development Act and Rules 4, 8, 9 and 10 of the Development Rules. To ignore their salutary mandate as to the manner and nature of consultation in the participatory exercise, would be defeat the benefic objective of exercise of deliberation. Public participation to be fruitful and constructive is not to be a mechanical exercise or formality, it must comply with the least and basic requirements. Thus, mere uploading of the gazette notification giving the present and the proposed land use with plot numbers was not sufficient compliance, but rather an exercise violating the express as well as implied stipulations, that is, necessity and requirement to make adequate and intelligible disclosure. This condition also flows from the common law general duty of procedural fairness. Doctrine of procedural legitimate expectation as explained below would be attracted. Intelligible and adequate disclosure of information in the context of the Development Act and the Development Rules means and refers to the degree to which information should be available to public to enable them to have an informed voice in the deliberative decision making legislative exercise before a final decision is taken on the proposals. In the present matter this lapse and failure was acknowledged and accepted by the BoEH, which had recommended disclosure and furnishing of details. Intelligible and adequate disclosure was critical given the nature of the proposals which would affect the iconic and historical Central Vista. The citizenry clearly had the right to know intelligible details explaining the proposal to participate and express themselves, give suggestions and submit objections. The proposed changes, unlike policy decisions, would be largely irreversible. Physical construction or demolition once done, cannot be undone or corrected for future by repeal, amendment or modification as in case of most policies or even enactments. They have far more permanent consequences. It was therefore necessary for the respondents to inform and put in public domain the redevelopment plan, layouts, etc. with justification and explanatory memorandum relating to the need and necessity, with studies and reports. Of particular importance is whether by the changes, the access of the common people to the green and other areas in the Central Vista would be curtailed/restricted and the visual and integrity impact, and proposed change in use of the iconic and heritage buildings.

627. In *Hanuman Laxman Aroskar* v. *Union of India*,[36] on the question of public consultation in the case of environment clearance had observed:

> "112.8… Public consultation cannot be reduced to a mere incantation or a procedural formality which has to be completed to move on to the next stage. Underlying public consultation is the important constitutional value that decisions which affect the lives of individuals must, in a system of democratic governance, factor in their concerns which have been expressed after obtaining full knowledge of a project and its potential environmental effects.

628. Similarly, in *M.C. Mehta* v. *Union of India*,[37] on the question of amendment of Master Plan and the need for proper public participation, this Court had held:

> "15. We may mention that it has been recorded that Delhi is being ravaged by unauthorised encroachments and illegal constructions with impunity and none of the civic authorities including the Delhi Development Authority was sincerely carrying out its statutory duties. It is painful to require the issuance of directions to statutory authorities to carry out their mandatory functions in accordance with the law enacted by Parliament. Unfortunately, the situation in Delhi warranted such a

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direction due to the apathy of the civic authorities.

16. Again unfortunately, instead of taking the people of Delhi into confidence with regard to amendments to the Master Plan, a bogey of public order and rioting has been sought to be communicated to us as if the law and order situation in Delhi was getting out of control. We are at a loss to understand the hyper reaction and how changes in the Master Plan are sought to be brought about without any meaningful public participation with perhaps an intent to satisfy some lobbies and curtailing a period of 90 days to just 3 days on some unfounded basis. It must be appreciated that the people of Delhi come first.

17. It is for the purpose of taking the public in Delhi into confidence and working for their benefit that an opportunity was granted to make suggestions and raise objections to the proposed amendments to the Master Plan and which were not objected to by the learned Attorney General on 15-5-2018 keeping in view the spirit behind the invitation to object and make suggestions and curtailment of the normal statutory period.

18. In view of the above, the oral request of the learned Attorney General to modify the order dated 15-5-2018 is rejected. The Central Government should expeditiously implement the order dated 15-5-2018 in letter and spirit keeping the interest of the public of Delhi in mind."

629. In *R.K. Mittal* v. *State of Uttar Pradesh*,[38] this Court dealing with the action taken by the development authority and the allegation that it was not in conformity with the Master Plan, the regulations and the statutory enactment, this Court observed:

"49. The Development Authority is inter alia performing regulatory functions. There has been imposition of statutory duties on the power of this regulatory authority exercising specified regulatory functions. Such duties and activities should be carried out in a way which is transparent, accountable, proportionate and consistent. It should target those cases in which action is called for and the same be exercised free of arbitrariness. The Development Authority is vested with drastic regulatory powers to investigate, make regulations, impute fault and even to impose penalties of a grave nature to an extent of cancelling the lease. The principles of administrative justice squarely apply to such functioning and are subject to judicial review. The Development Authority, therefore, cannot transgress its powers as stipulated in law and act in a discriminatory manner. The Development Authority should always be reluctant to mould the statutory provisions for individual, or even for public convenience as this would bring an inbuilt element of arbitrariness into the action of the authorities. Permitting mixed user, where the Master Plan does not so provide, would be glaring example of this kind."

630. Similar are the observations in *Rajendra Shankar Shukla* v. *State of Chhattisgarh*[39], wherein with regard to town planning and development reference was made to the 'principles of natural justice', when the town planning and development authority wanted to reconstitute the plots and change the land use. Referring to the functioning of the committee which had to hear the objections of the parties, it was observed:

"103. The functioning of the Committee under Section 50(5) of the 1973 Act is dissatisfactory and required the process to be followed afresh. The Committee constituted under the aforesaid Act to hear objections of the desirous parties, was a mere eyewash. The Committee rejected the objections submitted by the appellants without providing any reasons for the same and not even providing any hearing opportunities to put forth their objections before the said Committee. Therefore, the recommendations of the Committee did not carry any weight. This action of the State Government is vitiated in law and therefore liable to be set aside."

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631. Reference can also be made to *Indore Development Authority* v. *Madan Lal*,[40] wherein it has been held as follows:

> "10. We do not think that the Development Authority was justified in following a short cut in this case. The procedure followed under the Trust Act could not be sufficient to dispense with all the requirements of Section 50 of the Adhiniyam. As earlier noticed that Section 50 of the Adhiniyam provides procedure for preparation and approval of scheme for development. After preparing a draft scheme, the Development Authority must invite objections and suggestions from the public. There must be due consideration of the objections and suggestions received in the light of the Master Plan of Indore. Indeed, the public must also have an opportunity to examine the scheme and file objections in the light of the Master Plan if the Development Authority wants to adopt the scheme. Since the scheme in question was not an approved scheme under the Trust Act, the Development Authority could not have dispensed with the procedure prescribed under Section 50 of the Adhiniyam."

632. More direct and relevant is the decision in *Syed Hasan Rasul Numa* v. *Union of India*[41] in which this Court had interpreted Section 44 of the Development Act requiring issue of public notice inviting objections to the proposed modifications in the Master Plan. On the aspect of consideration of objections, reliance was placed on the affidavit filed by the Secretary of the Authority stating that the objections were transmitted to the Central government for consideration as in the case it was the Central Government alone that was competent to consider the objections received from the interested persons. However, it was held that in the absence of any discussion in the minutes of the meeting it was difficult to accept that objections of the appellant before this Court like other objections were considered by the Central Government. Accordingly, the High Court was in error in assuming that no prejudice has been caused to the persons who had filed objections and suggestions. On the question of consideration of the objections, this Court has observed:

> "It is evident from these averments that the appellants' statement of objections was not listed in the agenda of the meeting convened for consideration of all the objections received. It is, however, claimed that the appellants' objection was read and ruled out in the meeting. But there is no record to indicate that it was considered and rejected. At any rate, it is not borne out from the proceedings of the meeting. In fact, it is admitted that there is no record with regard to disposal of the objection in question. It is not as if the proceedings of the meeting are not recorded and maintained. It is very much there, but it is confined only to the listed items in the agenda of the meeting. When the proceedings of the meeting are recorded, one would naturally expect that all that transpired in the meeting should find a place in the minutes of the meeting. In the absence of any such record, we find it difficult to accept the mere allegation of the respondents that the appellants' objection like any other objection was considered by the authorities. The High Court therefore, seems to be in error in assuming that there was no prejudice to the appellants. We do not however, mean to say that the appellants have a right to have their belated objection considered by the authorities. If there was valid publication of the notice as prescribed under the law, they ought to have filed the objection within the period specified in the notice. They could not file their objection after the prescribed period and complain that they have been prejudiced by the non-consideration of the objection. The prejudice could be presumed only when the objection filed within the prescribed period is not considered by the competent authorities."

633. Secondly, with reference to Section 44 which requires issuance of a public notice, it was observed that the provision though not happily worded, the case for violation has been made out as the authorities had to follow two out of the three alternative methods prescribed. This is mandatory. Thereafter, it was held:

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> "Section 11-A of the Act provides procedure for modification to the Master Plan and the zonal development plan. Sub-section (3) thereof provides that before making any modifications to any plan, the Authority or, as the case may be, the Central Government shall publish a notice inviting objections and suggestions from persons with respect to the proposed modification before the date specified in the notice. This is to give an opportunity to persons who are likely to be affected by the modification of the Plan to file objections and suggestions. Indeed, the interested persons or the persons who are likely to be affected have a right to file their objections and representations within the time specified. They have further right to have the objections considered by the competent authorities. In order to effectuate these rights, the prescribed means of publication must be faithfully followed giving the persons clear notice as specified in the statute. The provision providing such notice to persons whose rights or interests are likely to be impaired must always be considered as mandatory. As otherwise, it would defeat the very purpose of giving public notice inviting objections and suggestions against the proposed action."

634. In the said case, only one out of three means for publication provided in Section 44 was adopted, which it was observed falls short of the mandatory requirement. The public notice was therefore quashed with costs. This decision would be also relevant when we examine the question of failure of the Central Government to pass an order under sub-section (6) to Section 11-A and apply its mind to the objections and suggestions received from the public in respect of the proposed modifications. Instead, as noticed below the exercise was undertaken by the Authority.

635. We have already quoted observations in *Raza Buland Sugar* (approving the dictum recorded in *State of U.P.* v. *Manbodhan Lal Srivastava*[42], which cites *Montral Street Railway Company* v. *Normandin*[43]) that any determination whether a statutory provision is mandatory or directory must be made not only in the light of the language of the provision but also based on whether the provisions of the statute relate to performance of public duty and the case is such that to hold null and void acts done in neglect of this duty would work against serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main objective of the legislation. This is not so in the present case. Further, it is the duty of the courts to get at the real intention of the legislature by carefully attending to the scope of the statute considered and not merely upon the language in which the intent is clothed. This can be done by considering the phraseology of the provision, its nature, its design and consequences that would follow from construing it one way or the other. The court can also take into account that if the necessity of complying with the provision in question is avoided, whether the statute provides for contingency for non-compliance and whether or not the same is visited with some penalty, the serious or trivial consequences that flow therefrom and above all whether the object of the legislation would be defeated or furthered (See *State of U.P.* v. *Babu Ram Upadhyay*[44]). If the provision is mandatory the breach whereof will make the action invalid. If it is directory, the act will be valid although non-compliance may give rise to other penalty provided by the statute. The correct proposition appears to be that substantial compliance of the enactment is insisted, where mandatory and directory requirements are clubbed together for in such case if the mandatory requirements are complied with, it will be proper to say that enactment has been substantially complied with notwithstanding the non-compliance of the directory requirements.[45]

636. Principles to determine the effect of failure to comply with statutory requirements has been noted in De Smith's *Judicial Review*[46] as follows:

> "5-062 In order to decide whether a presumption that a provision is "mandatory" is in fact rebutted, the whole scope and purpose of the enactment must be

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considered and one must assess "the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act". In Assessing the importance of the provision, particular regard should be given to its significance as a protection of individual rights; the relative value that is normally attached to the rights that may be adversely affected by the decision, and the importance of the procedural requirement in the overall administrative scheme established by the statute. Breach of procedural or formal rules is likely to be treated as a mere irregularity if the departure from the terms of the Act is of a trivial nature, or if no substantial prejudice has been suffered by those for whose benefit the requirements were introduced. But the requirement will be treated as "fundamental" and "of central importance" if members of the public might suffer from its breach. Another factor influencing the categorisation is whether there may be another opportunity to rectify the situation; of putting right the failure to observe the requirement."

637. De Smith however records that the courts in appropriate cases and on accepted grounds may, in their discretion, refuse to strike down a decision or action or award any other remedy. This principle does not so much relate to determination of whether a particular provision or statutory obligation is itself mandatory or directory; rather, they are relevant for the question that if the statutory provision is mandatory and is not fulfilled, what should be the nature of relief to be granted by the court [See - *Regina* v. *Secretary of State for Social Services*[47]]. The general approach is that a complainant who succeeds in establishing unlawfulness of an action is entitled to a remedial order, but the court has discretion in the sense of determining what is fair and just to do in the particular case, and therefore could restrict or withhold the relief or grant a declaration rather than more coercive quashing, prohibiting, or mandatory order or injunction.

638. In the context of the present case, given the nature and importance the statutory provisions which emphasise on fair participation of the public in the deliberations, and the importance and significance of Central Vista, we do not think it would be appropriate and correct to ignore failure on the part of the respondents to ascribe to the principle of intelligible and adequate disclosure to fulfil the requirement of public participation. Right to make objections and suggestions in the true sense, would include right to intelligible and adequate information regarding the proposal. Formative and constructive participation forms the very fulcrum of the legislative scheme prescribed by the Development Act and the Development Rules. Every effort must be made to effectuate and actualise the participatory rights to the maximum extent, rather than read them down as mere irregularity or dilute them as unnecessary or not mandated.

639. Deliberative democracy accentuates the right of participation in deliberation, in decision-making, and in contestation of public decision-making. Contestation before the courts post the decision or legislation is one form of participation. Adjudication by courts, structured by the legal principles of procedural fairness and deferential power of judicial review, is not a substitute for public participation before and at the decision-making stage. In a republican or representative democracy, citizens delegate the responsibility to make and execute laws to the elected government, which takes decisions on their behalf. This is unavoidable and necessary as deliberation and decision-making is more efficient in smaller groups. The process requires gathering, processing and drawing inferences from information especially in contentious matters. Vested interests can be checked. Difficult, yet beneficial decisions can be implemented. Government officers, skilled, informed and conversant with the issues, and political executive backed by the election mandate and connected with electorate, are better equipped and positioned to take decisions. This enables the elected political executive to carry out their policies and promises into actual practice. Further, citizens

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approach elected representatives and through them express their views both in favour and against proposed legislations and policy measures. Nevertheless, when required draft legislations are referred to Parliamentary Committees for holding elaborate consultation with experts and stakeholders. The process of making primary legislation by elected representatives is structured by scrutiny, consultation and deliberation on different views and choices infused with an element of garnering consensus.

640. Indirect participation of the citizens is critical to democracy and this thought has been appropriately expressed by Justice Sachs in *Doctors for Life International* v. *Speaker of the National Assembly*[48] in the following words:

> ""The Constitution predicates and incorporates within its vision the existence of a permanently engaged citizenry alerted to and involved with all legislative programmes. The people have more than the right to vote in periodical elections, fundamental though that is. And more is guaranteed to them than the opportunity to object to legislation before and after it is passed, and to criticise it from the sidelines while it is being adopted. They are accorded the right on an ongoing basis and in a very direct manner, to be (and to feel themselves to be) involved in the actual processes of law-making. Elections are of necessity periodical. Accountability, responsiveness and openness, on the other hand, are by their very nature ubiquitous and timeless. They are constants of our democracy, to be ceaselessly asserted in relation to ongoing legislative and other activities of government … thus it would be a travesty of our Constitution to treat democracy as going into a deep sleep after elections, only to be kissed back to short spells of life every five years (**paragraph 230**)."

641. It is no doubt true that the South African Constitution obligates the duty to inform and consult; albeit it would be wrong to state that this obligation and the right is a utopian and an impractical proposition in electoral democracies. India itself is a shining exemplar of how the citizens have been indirect participants in primary legislations.

642. By contrast, indirect public participation in delegated legislation gets restricted, an aspect highlighted with reservations in earlier judgments of this court[49]. Traditionally this has passed judicial acceptance for several reasons, including exercise of keen legislative oversight over the executive agencies thereby ensuring integrity of the collective rule. This concern can be however addressed by adopting good governance principles, or by way of legislative mandate in the enacted statutes, rules and regulations. In fact, we have several legislations which mandate pubic participation in the form of consultation and even hearing, with an objective that the decisions and policies take into account people's concerns and opinions. Public participation in this manner is more direct and of a higher order, than primary legislations enacted by elected representatives.

643. However, delegation of the power to legislate and govern to elected representatives is not meant to deny the citizenry's right to know and be informed. Democracy, by the people, is not a right to periodical referendum; or exercise of the right to vote, and thereby choose elected representatives, express satisfaction, disappointment, approve or disapprove projected policies. Citizens' right to know and the government's duty to inform are embedded in democratic form of governance as well as the fundamental right to freedom of speech and expression. Transparency and receptiveness are two key propellants as even the most competent and honest decision-makers require information regarding the needs of the constituency as well as feedback on how the extant policies and decisions are operating in practice. This requires free flow of information in both directions. When information is withheld/denied suspicion and doubt gain ground and the fringe and vested interest groups take advantage. This may result in social volatility.[50]

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644. This is not to say that consultation should be open ended and indefinite, or the government must release all information, as disclosure of certain information may violate the right to privacy of individuals, cause breach of national security, impinge on confidentiality etc. Information may be abridged or even denied for larger public interest. This implies that there should be good grounds and justification to withhold information. Boundaries of what constitutes legitimate with holding can at times be debatable; but in the present case, there is no contestation between transparency and the right to know on the one hand, and the concerns of privacy, confidentiality and national security on the other. Further, the Development Act and Development Rules demand and require openness and transparency, and embody without exception the right to know which is implicit in the right to participate and duty to consult.

645. The historic and iconic nature of the Central Vista is too apparent to even consider any counter argument. This is evident from the formation of the Central Vista Committee, 1962, declaration of the entire Central Vista as a heritage zone in the Master Plan of Delhi as well as Annexure-II of the Unified Building Bye-Laws, which we would be referring to subsequently. Paragraph 10.2 of the Master Plan as per the heading 'Conservation Strategy' reads:

> "10.2 Built heritage of Delhi needs to be protected, nourished and nurtured by all citizens and passed on to the coming generations. It is suggested that with the aim of framing policies and strategies for conservation, appropriate action plans may be prepared by all the agencies. These should include promotion of conservation of the civic and urban heritage, architecturally significant historical landmarks, living monuments, memorials and historical gardens, riverfront, city wall, gates, bridges, vistas, public places, edicts and the ridge."

646. Paragraph 10.3 of the Master Plan, which relates to heritage zones, reads:

> Heritage Zone is an area, which has significant concentration, linkage or continuity of buildings, structures, groups or complexes united historically or aesthetically by plan or physical development. The following areas have been identified as Heritage Zones as indicated in the Zonal Plan:
>
> (ii) Specific heritage complex within Lutyens Bungalow Zone.
>
> xx xx xx"

647. Paragraph 10.5 of the Master Plan reads:

> "Each local body/land owning agency should formulate "Special Development Plans" for the conservation and improvement of listed heritage complexes and their appurtenant areas. Alternation or demolition of any listed heritage building is prohibited without the prior approval of the Competent Authority.
>
> The development plans/schemes for such areas shall conform to the provisions, in respect of Conservation of Heritage Sites including Heritage Buildings, Heritage Precincts and Natural Feature Areas."

648. Questions would, therefore, arise whether mere change in the land use would be sufficient or the respondents were required to draw out a special conservation plan under paragraph 10.5 of the Master Plan. These aspects have not been examined by the sanctioning and approving authorities. Suffice would be to notice and record merit in the contention raised by the petitioners that mere change in land use of the six plots in the Central Vista would not be sufficient without specific amendments and modifications of the Master Plan of Delhi, including the following stipulation:

> **"8.1 DECENTRALIZATION OF OFFICES**
>
> As per NCR Plan, no new Central Government and Public Sector Undertaking offices should be located in NCTD. However, the issue of shifting existing Government/PSU offices from Delhi as well as restricting the setting up of new offices would only be possible after a time bound action plan is prepared together

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with suitable incentives and disincentives.

8.2 OPTIMUM UTILIZATION OF GOVERNMENT LAND

Government of India, Govt. of NCTD and local bodies are occupying prime land in Delhi for their offices. Most of the offices have been setup immediately after Independence. Large areas are underutilized and have completed their economic life. Due to downsizing of government employment and need for generation of resources by ministries, optimum utilization of existing government offices/land could be achieved by the following measures:

(i) Intensive utilization of existing government offices/land.

(ii) Utilization of surplus land by the government for residential development.

(iii) Utilization of 10% of total FAR for commercial uses to make the restructuring process financially feasible. This shall be subject to approval of land owning agency and concerned local body.

XX XX XX"

649. The Government of India, Ministry of Housing and Urban Affairs, Central Public Works Department in September 2019 had published a handbook called "Conservation and Audit of Heritage Buildings". The handbook emphasises on the need to protect and conserve heritage which was described as tangible and intangible values passed on to us from the past. Conservation of built heritage is generally perceived to be in long term interest of the society. On the question of identifying heritage properties, specific reference is made to the Parliament House at New Delhi being a building associated with historical events, activities or patterns. Reference is also made to the model building by-laws of 2016 which have specific provisions relating to heritage buildings, heritage precincts and natural feature areas identical to the unified building by-laws as applicable to Delhi. The process of identification of heritage buildings is determined by three concepts, namely, significance, integrity and context and observes as under:

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"

Historic significance is the importance of a property to the history, architecture, archaeology, engineering or culture of a community, region or nation.

In selecting a building, particular attention should be paid to the following:

- Association with events, activities or patterns
- Association with important persons
- Distinctive physical characteristics of design, construction or form, representing work of a master
- Potential to yield important information such as illustrating social, economic history such as railway stations, town halls, clubs, markets, water works, etc.
- Technological innovations such as dams, bridges, etc.
- Distinct town planning features like squares, streets, avenues, e.g Rajpath in Lutyens, New Delhi

Historic integrity is the authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's historic period.

Historic integrity enables a property to illustrate significant aspects of its past. Not only must a property resemble the historic appearance but it must also retain physical materials, design features and aspects of construction dating from the period when it attained significance.

Historic context is information about historic trends and properties grouped by an important theme in the history of a community, region or nation during a particular period of time. A knowledge of historic context enables listeners to understand a historic property as a product of its time

650. Significantly, the handbook on the basis of criteria identifies Rajpath in Lyutens' New Delhi as a heritage building/precinct because of its distinct town planning features like squares, streets and avenues.

651. While the Respondents have claimed that modifications to the Master Plan of Delhi would not result in change in character of the plan, a reading of the notice inviting tenders published by the Central Public Works Department inviting design and planning firms for the "Development/Redevelopment of Parliament Building, Common Central Secretariat and Central Vista at New Delhi" indicates that the proposed project does envisage extensive change to the landscape. The scope of the project has been described as - "The objective of this bid document is to replan the entire Central Vista area…" The Terms of Reference of the bid similarly states:

> "There is a need for a visionary Master Plan to be drawn up for the entire Central Vista area. The new Master Plan shall be a blue-print for the redevelopment of the entire area - locating modern government office building blocks complete with building design, engineering services design, site development infrastructure, landscape, water bodies, lighting amongst other components. The Master Plan shall also provide intelligent and sustainable solutions for present issues pertaining to inefficient land-use, traffic congestion, pollution etc. The new Master Plan shall identify and detail out all works including building design, engineering services and infrastructure design, site development, landscape design, engineering services and infrastructure design, site development, landscape design, mobility plan, lighting design, water bodies etc."

652. The impact of the changes envisaged are not minor and what is envisaged is complete redevelopment of the entire Central Vista, with site development infrastructure, landscape design, engineering design and services, mobility plan etc.

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The expenditure to be incurred and demolition and constructions as proposed indicate the expansive and sweeping modifications/changes purposed.

653. We have noticed the marked difference between the scope and amplitude of power conferred on the Authority under sub-section (1) and the power conferred on the Central Government under subsection (2). Sub-section (1) grants restricted and limited power to the Authority to make modifications to the Master Plan and the Zonal Development Plan as it thinks fit, which in the Authority's opinion do not : (i) effect important alterations in the character of the plan, i.e. the Master Plan or the Zonal Development Plan; and (ii) relate to the extent of the land-uses or the standards of population density. Sub-section (2) confers a separate and wider power on the Central Government to make any modification to the Master Plan or the Zonal Development Plan, whether such modifications are of the nature which the Authority (i.e. the DDA) is authorised to do or otherwise. Sub-section (3) to Section 11A mandates that the Authority or the Central Government, as the case may be, shall publish a notice as per prescribed rules inviting objections/suggestions from any person with regard to the proposed modification before a specified date and that the Authority or the Central Government shall consider all the objections/suggestions that may be received. Thus, sub-section (3) to Section 11-A proceeds on the distinction between the power conferred on the Authority and the Central Government under sub-sections (1) and (2) of Section 11-A of the Development Act. It states that the objections and suggestions can be received by the Authority or the Central Government. Sub-section (4) to Section 11-A states that every modification shall be published in the manner as the Authority or the Central Government, as the case may be, shall specify and the modification shall come into operation on the date of publication or such other date as the Authority or Central Government may fix. Sub-section (5) to Section 11-A states that where an Authority makes modifications to the plan under sub-section (1), it shall report to the Central Government full particulars of such modifications within thirty days of the date on which such modifications come into operation. In other words, in modifications covered by sub-section (1), the requirement is that the Authority post the approval shall report to the Central Government within thirty days from the date on which modifications have come into operation. In case of modifications covered by sub-section (2) to Section 11-A, it is the Central Government which considers the objections and suggestions and thereafter may notify the proposed modification in entirety or in part. Central Government on consideration may even drop and not notify the proposed modifications. It is in this context that the judgment of this Court in *Syed Hasan Rasul Numa* quoted above, had quashed the modifications as there was no record of the objections/suggestions to the modifications being considered and decided by the Central Government.

654. The respondents have placed on record the notification dated 27th September 2012, SO No. 2318(E) published in the Gazette of India on 27th September 2012 whereby, in exercise of powers conferred by sub-section (2) of Section 52 of the Act, the Central Government has directed that the power exercisable by it "under Section 11-A for the purpose of review/modification of the Master Plan of Delhi 2021 shall be exercisable by the Vice Chairman of DDA insofar as it relates to issue of public notice for inviting objections and suggestions from any person". Clearly, the Central Government recognises and accepts the difference between the power under sub-section (1) and (2) to Section 11-A and that the Central Government alone has the power to consider the objections/suggestions and make modifications which are excluded from the ambit of sub-section (1).

655. Two other aspects need to be noticed before we elucidate and refer to other lapses in the decision-making process. Given the nature of changes in the proposal, sub-section (2) to Section 11-A applies. Indeed, the notification dated 20th of March, 2020 approving the proposal states that the Ministry of Housing and Urban Affairs, in

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exercise of powers conferred under sub-section (2) to Section 11-A, had made the modifications in the Master Plan of Delhi and Zonal Development Plan of Zone B and C (see paragraph 17). However, it is clear that the procedure followed is the one applicable to modifications under sub-section (1) to Section 11-A. Secondly, the Central Government in the present case has not passed an order under sub-section (6) to Section 11-A of the Development Act.

656. The Respondents in the consolidated affidavit dated 24th July 2020 have pleaded that there is no change in the character of the plan, i.e. the Master Plan, and the Zonal Development Plan for Zone D and C. Accordingly, contrary to the Notification dated 20th March, 2020 which specifically refers to the Central Government exercising power under sub-section (2) to Section11A, they have relied upon sub-section (1) to Section 11A. Relevant portion of the consolidated affidavit of the Respondents reads:—

> "**No Change in the Character of Plan**
>
> 39. it is submitted that change in land use is in the direction of aligning the existing land use with the proposed Central Vista Development/Redevelopment Plan and it is not going to alter any fundamental character or historicity of this area. It is only a readjustment/reorganization of the Central Government Ministry offices. The present District Park area of 9.5 acre has been compensated by providing 5.64 acre in D Zone (Central Vista) and 3.9 acre in C Zone, thereby keeping the green spaces intact. It is pertinent to mention that as per modified Plan the green area along the Rajpath will increase by 5.64 acre. It is submitted that after the land use modification of six plots, the character of the plan is not changing as they shall be utilised for Government offices as already functional in the area. Therefore, there is no change in the character of usage, rather it will be more organised and planned. The Government funds which are being utilised for maintenance shall now be utilised to construct state of the art buildings, with provisions of modern infrastructure, architecture and structurally safe buildings. The buildings currently are more than 60 years old and as per civil engineering design norms have completed their life."

657. The Authority in its affidavit has pleaded somewhat similarly, stating:

> "No Change in the Character of Plan/Extent of Land Use
>
> The Change in land use is in the direction of aligning the existing land use with the proposed Central Vista Development/Redevelopment Plan and it is not going to alter any fundamental character or historicity of this area. It is only a readjustment/reorganisation of the Central Government Ministry offices. The present District Park area of 9.5 acre has been compensated by providing 5.64 acre in D Zone (Central Vista) and 3.9 acre in C Zone, thereby keeping the green spaces intact. It is pertinent to mention that as per modified Plan the green area along the Rajpath will increase by 5.64 acres."

658. At another place in the consolidated affidavit filed by the Respondents with reference to the power of the Authority under Section 11-A, it is pleaded:

> "…Section 11A, Chapter IIIA of the Delhi Development Act, 1957 empowers the Delhi Development Authority (DDA) to modify the Master Plan or the Zonal Development Plan as it things fit; and as such answering Respondent DDA was empowered and fully competent to issue the said Public Notice and the subsequent modification.
>
> It is further submitted that in the context of the subject Notification dated 21.12.2019, it is submitted that the proposal did not make any important alteration in the character of the plan, extent of land use or standards of population density."

659. In the written submissions filed by the respondents on issues of change of land use, with reference to sub-section (1) and (2) of Section 11-A, it is stated as under:

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"23. In light of the above, it is unequivocally submitted that the present process culminating in to the notification dated 20.03.2020, is issued under sub-section 2 of Section 11-A the DDA Act. It is submitted that as stated above, the power of the Central Government under sub section 2 are untrammelled and uninhibited by the conditionalities of sub-section 1. It is submitted that following language in the present impugned notification represents a clear application of mind by the Central Government to the material presented by the specialised body and therefore, is clearly a decision taken after due consideration and after due analysis of the material. The said part of the notification dated 20.03.2020 is as under:

"S.O. 1192(E).—Whereas, certain modifications which the Central Government proposed to make in the Master Plan for Delhi-2021/Zonal Development Plan of Zone-D (for Plot No. 02 to 07) and Zone-C (for Plot No. 08) regarding the area mentioned here under were published in the Gazette of India, Extraordinary, as Public Notice vide No. S.O. 4587(E) dated 21.12.2019 by the Delhi Development Authority in accordance with the provisions of Section 44 of the Delhi Development Act, 1957 (61 of 1957) inviting objections/suggestions as required by subsection (3) of Section 11-A of the said Act, within thirty days from the date of the said notice;

2. Whereas, 1,292 objections/suggestions received with regard to the proposed modifications have been considered by the Board of Enquiry and Hearing, set up by the Delhi Development Authority and the proposed modifications were recommended in the meeting of Delhi Development Authority held on 10.02.2020;

3. Whereas, the Central Government have after carefully considering all aspects of the matter, have decided to modify the Master Plan for Delhi-2021/Zonal Development Plan of Zone-D & Zone-C;

4. Now, therefore, in exercise of the powers conferred under Sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modifications in the said Master Plan for Delhi-2021/Zonal Development Plan of Zone-D & Zone-C, with effect from the date of Publication of this Notification in the Gazette of India.

24. Therefore it is submitted that the challenge to the process and the notification, as presented by the Petitioners, is meritless. It is submitted that without prejudice to the above, it is submitted that even if the present notification is considered to be one issued under sub-section 1 of Section 11-A, the present change of land use does not after the conditionalities of the said subsection which will be dealt with separately."

660. Paragraph 23 makes an interesting reading as it accepts that the modifications were covered by Section 11-A(2) and not Section 11-A(1) of the Development Act. However, in paragraph 24, it is pleaded that the notification may also be considered to have been issued under sub-section (1) to Section 11-A as the present land use does not impinge upon the conditionalities of the sub-section which have been dealt with independently. This ambiguous and oscillating stand, which is also contradictory, goes to the root of the issue and question of the authority empowered and competent to legislate. First there is failure of the Central Government to pass any order under sub-section(6) to Section 11A. Secondly, this oscillation is for a reason; fatal failure to follow the procedure prescribed under sub-section (2) to section 11A of the Development Act as explained and elucidated in paragraph 51 below. Faced with this situation in the written submissions filed by the respondents, a different version has been given in the list of dates and events, wherein it has been stated as under:

"06.02.2020 - A background note was placed by the L&DO in response to the objections raised.

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Note 1 : It is clear that the L&DO being the Central Government, at this stage, applied its mind to the objections and suggestions made before the DDA."

661. This assertion in the list of dates is not supported by an affidavit on record. It would be hypothetical and incongruous to accept that L&DO had applied its mind to the objections and suggestions even before the public hearing, and therefore, the court should assume that the Central Government had considered the objections and suggestions. The stands would fall foul of duty to follow procedural fairness and legitimate expectation expected from a public authority required to comply with the statutory duty of consultation in the decision making process. Final decision must be conscientiously and objectively taken by the competent authority post the hearing. This plea must be reject, as the public hearing was slated on 6th and 7th of February 2020. *Cellular Operators Association of India* holds that public consultations must be undertaken when the proposals are at a formative stage. Further, the assertion is contrary to the minutes of the meeting of the Authority, i.e. the DDA, on 10th February 2020 in which the Additional Secretary (G), MoHUA and Member of the Delhi Development Authority had participated. A perusal of the note dated 6th February 2020 also affirms the position that particulars and details of the proposal were not uploaded and made available for the public. The letter written by the L&DO dated 6th February 2020 with reference to the background note does not reflect consideration of the objections and suggestions but *inter alia* states that by an earlier letter dated 4th December 2019, agenda for change of land use of eight blocks has been forwarded for placing before the technical committee of the Authority and a background note was being enclosed. Authority was requested to take necessary action accordingly. This is not a letter or communication showing consideration of the suggestions and objections.

662. The Central Government has not placed on record even a single document or minutes to show that the objections and suggestions were considered by the Central Government, albeit they place reliance on the gazette notification 20th March, 2020 which does not specifically talk about considerations of objections and suggestions but states 'whereas the Central Government have after carefully considering all aspects of the matter, have decided to modify the Master Plan for Delhi 2021/Zonal Development Plan for Zone D and Zone C'.

663. Relevant also on the said aspect are the minutes of the meeting of the Authority held on 10th February 2020 at Raj Niwas, Delhi wherein it is observed as under:

"(g) Additional Secretary (D), MoHUA and Member, Delhi Development Authority, explained that the Authority is competent to make the proposed modification in the Master Plan for the land uses as these will not alter the character of the Master Plan sine they are in line with the Lutyens & Bakers' plan of housing Government buildings in the Central Vista. Further, the proposal does not impact the extent of the land uses and the standards of population density as has been envisaged in the Master Plan for Delhi, (MPD) - 2021. Hence, Section 11(A)(1) of Delhi Development Act, 1957, empowers the Authority to make proposed changes under consideration. Vice-Chairman DDA further corroborated this and stated that only after being satisfied that the Authority is competent under section 11(A)(1) of the Act, that the proposal has been considered and submitted for Authority's approval."

664. Clearly, therefore, the Authority and the Central Government were of the view that sub-section (1) to Section 11-A would apply and the procedure as applicable should be followed, but notwithstanding objections and challenge no order under subsection (6) to Section 11-A of the Development Act was passed. Indeed, if there had been an order under sub-section (6) to Section 11-A, it would have been filed as part of the pleadings with liberty to the petitioners to challenge the same in

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accordance with law which would include unreasonableness as covered by Wednesbury principles. Sub-section (6) to Section 11-A of the Development Act in our opinion are mandatory. Sub-sections (1) to (6) to Section 11-A envision the Authority and the Central Government as two separate and distinct authorities with limited and broader powers for 'legislating' proposals for modifications of the Plans.

665. Faced with the aforesaid position, the respondents had argued that Development Rules 4, 8, 9 and 10, would not be applicable as they relate to preparation of Master Plan or the Zonal Development Plan and not to the amendment or modifications envisaged by subsection (2) or even (1) to Section 11-A of the Development Act. Our attention was drawn to Rule 12, which stands deleted. Rule 12 had stipulated that amendments to whole or any part of the Master Plan, if necessary, after expiry of five years can be undertaken by the Authority in accordance with the procedure prescribed by the Development Act and Development Rules as if the proposed amendment were a new Master Plan. Therefore on deletion of Rule 12 in 1966, Rules 4, 8, 9 and 10 of the Development Rules do not apply to modification of the Master Plan or Zonal Development Plans. This contention, through attractive, must be rejected for several reasons. In any case, it cannot be denied that Section 11A and Rule 16 mandate issue of public notice for inviting objections and suggestions from the public and due consideration by the Authority or the Central Government, as the case may be. As elucidated above this requires intelligible and adequate disclosure to enable public to make suggestions/objections. We would now elucidate reasons why the procedure as per Rules 4, 7, 8 to 10 of the Development Rules is necessary:—

a. Sub-section (4) to Section 10 states that provisions can be made by the rules in respect of form and content of the plan and with regard to the procedure to be followed and any other matter in connection with the preparation, submission and approval of the plan. This sub-section could equally apply to modification of a plan. Sub-section (3) to Section 11-A is similarly worded as it states that the Authority or the Central Government, as the case may be, shall publish a notice in such form and manner as may be prescribed in this behalf and thereby invite objections and suggestions from any person in respect of the proposed modifications before such date as may be specified in the notice. It mandates that the Authority or the Central Government, as the case may be, shall consider the objections and suggestions. The sub-section (3) to Section 11-A makes reference to the rules which are applicable, i.e. the Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959. Therefore, the modification of the Plan as per Section 11-A of the Development Act has to be done as per the procedure prescribed by the Development Rules and not *de hors* these rules. As per Rule 15, Rules 5 to 11 relating to the Master Plan apply *mutatis mutandis* to the Zonal Development Plan. There are several good reasons why this interpretation is more acceptable and should be adopted.

b. In *Superintendent and Legal Remembrancer, State of West Bengal* v. *Corporation of Calcutta*[51], a nine judges bench of this Court had held that the interpretative tool of necessary implication can be drawn when it would hamper the working of the statute or would lead to the anomalous position that the statute may lose its efficacy. It is also well settled that provisions have to be read harmoniously to effectuate them and give effect to the legislative intention. In the present case, the said interpretative tool of necessary implication would apply as modifications, which can be major or substantive in nature as in the present case, should follow and comply with Rules 4, 8, 9 and 10 of the Development Rules. Otherwise, an anomalous position would arise permitting modifications that have a far reaching impact being made post the enactment of the plan without following the rigours prescribed for the original enactment of the plan.

c. Section 21 of the General Clauses Act reads:

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"Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws — Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

Mandate of this section would apply as there is nothing expressly or impliedly in Section 11-A that seeks to obliterate or even limit the need for public hearing. Silence does impede applicability of Rules 4, 8, 9 and 10 of the Development Rules. Rather in terms of Section 21, silence enforces applicability of these rules. Inconsistency is the test. In other words, the power to add to, amend, verify or rescind the Master Plan under Section 11A are subject to the condition of public hearing as required by the Development Act, and Development Rules, as they prescribe to enactment of the Master Plan or Zonal Development Plan. The procedure to modify the plan has to follow procedure as it would apply to approve and modify the initial plan. Therefore for modification of a plan, the BoEH has to be constituted and hearing has to be afforded to those who have submitted representations, suggestions and objections to the proposal under consideration. Any amendment or modification of a plan under Section 11-A of the Development Act contrary to or de hors the procedure prescribed in Rules 4, 8 and 9 will be contrary to law. Referring to Section 21 of the General Clauses Act, in *Kamla Prasad Khetan* v. *Union of India*,[52] this Court had observed that the power to issue an order under the Central Act includes the power to amend an order, but this power is subject to an important qualification contained in the words 'exercisable in the like manner and subject to the like sanction and conditions (if any)'. Therefore, the amending or modifying order has to be made in the same manner as the original order and is subject to the same conditions that govern the making of the original order. In *Scheduled Caste and Weaker Sections Welfare Association* v. *State of Karnataka*,[53] this Court struck down a notification issued under the Karnataka Slum Areas (Improvement and Clearance) Act, 1973 which had rescinded the original notification and had thereby reduced the slum area. After referring to earlier decisions, it was observed that Section 21 of the General Clauses Act would apply as there was nothing in the subject matter, context or effect of the concerned provision so as to be inconsistent with the application of Section 21 as the procedure for issue of notification had required and could be exercised only after hearing the affected parties. It was held that the amendment and redeclaration would also require the same procedure to be followed. The rule of personal hearing, it was observed, was incorporated to protect every citizen against arbitrary power of the State or its officers and is mandated by law as it is the duty of the State to act judicially.

d. Doctrine of *contemporanea expositio* is applicable as the respondents have in the past followed and applied Development Rules 4, 8, 9 and 10 while considering proposals for modification of plan (s) under Section 11-A of the Development Act. Authorities on interpretation of Section 11A have held that Rules 4, 8, 9 and 10 would be applicable to modifications undertaken in terms of Section 11-A of the Act. The maxim '*Contemporanea exposition est optima et fortissimo in lege*' means that the best way to construe a provision or document is to read it as it would have been read when it was made. Explaining this principle of interpretation, it has been held that contemporaneous construction placed by the authorities charged with executing the statute should be accepted by giving weight unless it is clearly wrong, in which case it should be overturned. The

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construction given by the authorities whose duty is to construe, execute and apply an enactment is highly persuasive though when the court feels that this is a case of an error, it may refuse to follow such construction. G.P. Singh, in *The Principles of Statutory Interpretation* (14th edition) has explained that usage and practice developed under the statute is indicative of the meaning ascribed to its words by contemporary opinion as an external interpretive aid to construction. However, it is subject to the condition that the court is not prevented from giving the true construction as interpretation received from contemporary authority is not binding on the court, which may even disregard such interpretation if it is clearly wrong. Suffice to say, in the present case, reject the interpretation that Rules 4, 8, 9 and 10 do not apply to the process of modification of the Master Plan, as inimical to the language as well as the spirit of the Development Act. On the contrary, application of Rules 4, 8, 9 and 10 has been accepted by *contemporanea expositio* by the Authority and the Central Government. We agree there are limitations to the principle of *contemporanea expositio* when the statutes are old as this principle has not been applied to the Evidence Act, 1872 and the Telegraph Act, 1885. Nevertheless, in the present case, the interpretation given above is in consonance with the interpretation given by the Respondents, i.e. the authorities who had made the Development Rules.

e. Any change or modification in the practice adopted by the respondents viz. Rules 4, 8, 9 and 10 and their application to modifications under Section 11-A of the Act would also be governed by the principle of procedural legitimate expectation which has special application in planning law. Recently, this Court in *State of Jharkhand* v. *Brahmputra Metallics Limited Civil*,[54] has elaborately referred to the doctrine of legitimate expectation by referring to the English Law, some of which has been quoted below, to observe that in Indian jurisprudence there appears certain doctrinal confusion which needs to be corrected. The doctrine means that the public authorities should be held bound by the representations since citizens continue to live their lives based on the trust they repose in the State. When public authorities fail to adhere to their representations without providing adequate reasons, it violates the trust reposed by the citizens in the State. The basis of the doctrine of legitimate expectation is reasonableness and fairness, the denial of which may amount to abuse of power. The remedies against public authority must also take into account the interest of general public which the authority seeks to promote. There is denial of legitimate expectation when in a given case it amounts to denial of a right that is guaranteed, or is arbitrary, discriminatory, unfair or biased or gross abuse of power or in violation of principles of natural justice so as to attract Article 14 of the Constitution. However, mere legitimate expectation without anything more cannot *ipso facto* give a right to invoke these principles. This means that public authorities cannot play fast and loose with the powers vested in them which have to be exercised in the larger public and social interests. Every authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which powers were conferred. In this context, good faith for legitimate reasons, that is, *bona fide* for the purpose and none other. In this way, legitimate expectation is a way in which the constitutional law guarantees non-arbitrariness enshrined under Article 14. Procedural legitimate expectation is distinct from substantive legitimate expectation as explained in *R (Bhatt Murphy)* v. *Independent Assessor*[55], as procedural expectation arises where a public authority has provided an unequivocal assurance, whether by means of express promise or established practice that it will give notice and a chance of hearing to the affected party before it changes an existing substantive policy. In such cases, the court will not allow the decision maker to effect proposed change

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without notice or consultation, as the case may be, unless there is overriding legal duty to the contrary or countervailing public interest which requires departure from the express promise or established practice. In the latter case, i.e. in case of departure, the onus would be on the authority to justify such departure. The reason for applying the principle of procedural legitimate expectation is not only to check the decisions which may have harsh impact, or to prevent unfairness or abuse of power, but to enforce the principle of good governance, i.e. the public bodies ought to deal straight forwardly and consistently with the public. This is an objective standard of public decision making on which the courts would insist. Procedural legitimate expectation does not suffer and have the same constraints in application which the courts are faced when parties invoke substantive legitimate expectation against the Government or public authority challenging the change or abolition of the earlier policy. It is generally agreed that ordinarily every government or authority, has the right to change the existing policy unless such change is hit by Wednesbury principle of unreasonableness, etc. Therefore, normally substantive legitimate expectation rarely results in a relief unless there is a specific undertaking directed to a particular individual or a group by which the relevant policy's continuance is assured. Even in such cases, substantive promise cannot be binding if it is *ultra vires* or inconsistent with the statutory duties imposed on the authority. The third category of legitimate expectation is related to the second and was described in *Bhatt Murphy's case* as 'secondary case of procedural expectation' which applies in situations where, without any express promise, the public authority has established a policy substantially affecting a person or persons who have reasonably relied on its continuance, can well claim a right to present their views and contest the proposed change before it is withdrawn. In the present case, we are not concerned with the second and third category but with the first category, i.e. procedural legitimate expectation. This principle has often been applied when there is lack of consultation which results in failure to follow procedural promises or established practice in municipal law as has been held in *R (Majid)* v. *London Borough of Camden*[56], and *R (Kelly)* v. *London Borough of Hounston*[57], where the claimant was not informed of the date of the committee meeting in time to address it and in *R (on the application of Vieira)* v. *London Borough of Camden*[58], which was a case relating to grant of retrospective planning permission for a conservatory and for a building by a local authority, which was struck down. The grounds included failure to make documents and reports available on the website for comment before the panel meetings as stated in the published procedure for members briefings and the statement and the requirement that the 'members briefing panel' would be consulted on whether the application should be referred to the committee as indicated in the planning protocol, the procedure for members briefing and its website. Importantly, in this case, the local authority's submission that even if it had acted unlawfully, relief should be refused on the basis of the claimant's low prospects of success in objecting to the planning permission was rejected, on the following reasons:

> "116. A quashing order should only be refused if it is inevitable that the outcome would have been the same had the correct procedures been followed see *R (Copeland)* v. *London Borough of Tower Hamlets*, (2011) J.P.L. 40 at para 36, 37 citing *Smith* v. *North Derbyshire Primary Care Trust*, (2006) EWCA Civ 1291, per May LJ at (10):
>
> > "…Probability is not enough. The defendants would have to show that the decision would inevitably have been the same and the court must not unconsciously stray from its proper province of reviewing the propriety of

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> the decision making process into the forbidden territory of evaluating the substantial merits of the decision…"
>
> 117. In the present case the Interested Party built the new conservatory enforcement action. The planning concerns are recognised in the Members' initial request for amendments to the scheme. There remains the question whether those amendments make the scheme acceptable, or whether there is an alternative solution.
>
> 118. In my judgment, this is not a case in which it would be proper to refuse relief. I order that the grant of planning permission should be quashed, and reconsidered according to law."

666. We have referred to the principle of procedural legitimate expectation only to reinforce our interpretation of Rules 4, 8, 9 and 10 on their applicability to modification of the Plan under Section 11-A of the Act as legitimate expectation comes into play when there is no statutory requirement. If there is a breach of statutory requirement then the breach itself can be made subject matter of the proceedings. Legitimate expectation comes into play when there is a promise or a practice to do more than that which is required by the statute. This is also the view expressed in 11th Edition of Administrative Law (H.W.R. Wade and C.H. Forsyth) at page 458 that doctrine of legitimate expectation thus extends the procedural protection that would otherwise be applicable; it enhances but does not replace the duty to act fairly.

667. The core issue in the present case is whether or not the respondents have performed their duty to consult the public, followed the prescribed procedure and the authority competent had acted to modify/amend, in terms of the Development Act and the Development Rules. We are not concerned with the merits of the proposal. The respondents in the first sentence of the written submissions in paragraph 1 have stated as under:

> "1. At the outset, it is submitted that the present broad segmented development of the Central Vista is part of a sovereign policy designed to meet the present and future needs of space, to alleviate the issues surrounding the particular area in terms of the ecology impact and to keep the architectural heart of Indian democracy at pace with the changing needs to time whilst preserving the glory of the past."

668. The latter portion of the sentence beginning from 'designed' till 'glory of the past' represents the stand of the respondents. However, the contention that the broad segmented development of Central Vista is a part of sovereign policy requires emendation and elucidation. The sovereignty rests with the People of India who have enacted and given to themselves the Constitution, which incorporates the principle of separation of powers between the Legislature, the Executive and the Judiciary. Each of them function within the four corners of the Constitution, including compliance with the statutes and statutory rules while enacting delegated legislation. Elected executive certainly has constitutional and people's mandate to choose, formulate and execute policies, albeit in accordance with law. We have already delineated the parameters on which delegated legislation can be challenged before the court which includes failure to follow the mandatory procedure as well as the delegatee exceeding its power as conferred by the legislature. Merits of the public policy is not *perse* a dispute being decided by the Court. The matter and dispute before us relates to the validity of delegated legislation on the ground that the procedure prescribed by law, namely the Development Act and Development Rules has not been followed.

669. At this stage, it would also be appropriate to refer to Section 45 of the Delhi Development Act which mandates that where any notice, order or document issued or made under the Act or any rule, regulation made thereunder requires anything to be done for which no time is fixed under the Act, the notice, order or document shall

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specify reasonable time for doing so. The petitioner has placed on record written communications raising objections to the public notice dated 3rd February. 2020 fixing the hearing for 6th/7th February, 2020, as it did not give reasonable time for preparing and appear in person for the hearing. It may be noted here that the respondents have also stated that the emails were also sent on 3rd and 4th February, 2020 to 1292 objectors on the e-mail addresses provided by them. Only forty-two (42) persons had appeared before the Board of Enquiry and Hearing on the two dates.

670. As per the writ petitioners, the public notice dated 3rd February, 2020 was published in the newspapers on 5th February, 2020. It is also stated that the emails with regard to public hearing on 6th and 7th February, 2020 were received in the evening on 4th February, 2020 and afternoon of 5th February, 2020 which hardly gave them any time to make it convenient to appear and present their views after due preparation. The contention of the writ petitioners is that this denied and prevented them from making full and proper representation at the time of oral hearing. Notice, therefore, gave no option to those who had submitted their objections/suggestions except to cancel and forego their prior arrangements and also make their travel arrangements, which in several cases was not possible. The Petitioners also state that in the course of the hearing, many a times when clarification or information was sought in order to make constructive and creative suggestions, the members of BoEH expressly told them that they would not respond at all and the petitioners were only supposed to make their submissions.

671. In the present case, there is violation of the Section 45 as public notice of hearing fixed on 6th and 7th of February 2020 was issued by way of public notice dated 3rd February, 2020 published on 5th February, 2020. SMS and email were issued at the last moment. Lack of reasonable time, therefore, prevented the persons who had filed objections and given suggestions to present and appear orally state their point of view.

672. We would now turn to the permission granted by the Central Vista Committee (the 'Committee) on 9th March 2020. The Petitioners have contended that the said permission was reduced to a mere formality as the Committee did not apply its mind to the proposal. The Respondents have submitted that Committee is not a statutory body and therefore the principles of administrative decision making are not applicable to it. The Petitioner's refutes this contention stating that though the Committee is not a statutory body, it has trappings of a statutory body. The Petitioner's, to buttress this stance, have relied, *inter-alia* on the Tender/Notice inviting bids for 'consultancy services for comprehensive architectural and engineering planning for the development/redevelopment of Parliament Building, Common Central Secretariat and Central Vista' at New Delhi, vide NIT No. 04/CPM/RPZ/NIT/2019. Clause 4 of the Tender condition provides that" The *consultant should adhere to the Central Vista committee Guidelines and Lutyens Bungalow Zones guidelines while carrying out the consultancy work for the Redevelopment of Central Vista*". The petitioners have also pointed that similar binding status was bestowed to the Committee in the Notice inviting bids for National War Museum. The Petitioners have relied on the Zonal Development Plan for Zone D, a piece of delegated legislation. The clause 6.4.3(vii) of this Zonal Development Plan provides that "*a detailed form of study should be taken up for this prestigious area* (President Estate/North and South Blocks/Parliament House, etc) *in consultation with DUAC and Central Vista Committee*." The petitioners press that these provisions in the Tender Notices and Development Plans demonstrate that the Committee performs public functions akin to those performed by statutory bodies, and hence principles of administrative decision making are applicable. Zonal Development Plans are statutory and binding. They are formulated by a quasi-legislative exercise.

673. As per the minutes of the meeting on 9th March, 2020, the following

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observations were made by the Committee:

> "The representatives of L&DO and HCP presented the proposal of change of land use to the Central Vista Committee. The list of members attending the meeting is at Annexure.
>
> Mr, Divya Khush, Member, CVC and President I.I.A. vide his message requested to read his views communicated by him to the committee. The same were read out by Member Secretary to all the members of the Committee in the meeting.
>
> The Committee was of the view that the proposal placed for discussion was for change of land use only. After detailed deliberation the Committee decided to accord approval in principle as the process of change of land use had been taken up by the competent authorities. Accordingly, the final approval of change of land use may be communicated to the Committee.
>
> However, one member representing the Indian Institute of Architects wanted detailed facts on the matter before he gave his consent."

674. Reading of the aforesaid minutes does not show fair and independent application of mind. The committee had decided to accord approval in principle "as the process for change of land use had been taken up by the competent authorities" and then records "accordingly, the final approval for change of land use may be communicated". Member representing Indian Institute of Architects had wanted detailed facts on the matter. His request was ignored. Conspicuously there is no discussion on the aspect of lack of information. Use of the word 'in principle' is indicative, if not reflects tentativeness, as if, it was not an expression of a firm opinion. Opinion and advise of the Committee is certainly of great value and importance. Their advice has been uniformly taken and followed for any redevelopment/changes in the Central Vista.

675. The writ petitioners have pointed out that on 24th March 2020 nation-wide lockdown was imposed due to COVID-19 pandemic imposing severe restrictions on movement. Nevertheless, a meeting of the Committee on 23rd April 2020 through video conferencing, with the agenda "Proposed New Parliament Building at Plot No. 118, New Delhi", was held, and 'No Objection' was granted. The minutes of the meeting published on 30th April 2020 provide no reason whatsoever nor do they mention any details of the material considered and the discussion held. Pertinently, the mandate of the Committee is to engage architects and town planners to advise the government on development of the Central Vista and the Secretarial Complex. However, four independent representatives, namely, (i) President of Indian Institute of Architects; (ii) representative of Indian Institute of Architects (Northern Chapter); (iii) President of Institute of Town Planners, India; and (iv) representative of Institute of Town Planners, India, were absent and did not participate. Even the Chief Architect of the NDMC was not present. Therefore, only the representatives of the Government, the Director Delhi Division, MoHUA and Joint Secretary (Admn.) of Ministry of Environment and Forests were present. Thus, the contention that the meeting was a premeditated effort to ensure approval without the presence and participation of representatives of professional bodies is apparent and hardly needs any argument. This was notwithstanding that the project in question is extremely significant and of great importance for the Central Vista Committee. The project is the most extensive re-development process ever undertaken in the Central Vista. Further, the approval granted to the proposed new Parliament building does not record the deliberations that took place or any reasons, even as the mandate of the Central Vista Committee is pivoted and required to study and advise. The writ petitioners along with the written submissions have filed copies of several minutes of the Committee relating to other projects like National War Museum and the Delhi High Court Underground Car Parking which demonstrate that detailed assessment is usually undertaken by the Committee,

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which is clearly lacking in the present case.

676. The Unified Building Bye-laws of Delhi, 2016, issued by the Authority under Section 57 of the Development Act, vide paragraph 2.3.3 refers to need for prior approval/no objections from external agencies including Heritage Conservation Committee and 7.26 states that provision for conservation of heritage sites, including heritage buildings, heritage precincts and featured areas shall be as per Annexure-II. In other words Annexure II is binding and mandatory.

677. Annexure-II to the Unified By-Laws of Delhi, effectuates the object and propose, by specifying clear and strict norms that would apply to heritage sites, including heritage buildings, heritage precincts and natural feature areas. Relevant portions of Annexure II read:—

> "1. **Conservation of Heritage Sites including Heritage Building, Heritage/Precincts and Natural Feature Areas** *(Please refer clause 2.18.2 and 7.26 of this document)*
>
> Conservation of Heritage sites shall include buildings, artifacts, structures, areas and precincts of historic, aesthetic, architectural, cultural or environmentally significant (heritage buildings and heritage precincts), natural feature areas of environmental significance or sites of scenic beauty.
>
> 1.1. ***Applicability:*** This regulation shall apply to heritage sites which shall include those buildings, artifacts, structures, streets, areas and precincts of historic, architectural, aesthetic, cultural or environmental value (hereinafter referred to as Listed Heritage Buildings/Listed Heritage Precincts) and those natural feature areas of environmental significance or of scenic beauty including but not restricted to, sacred groves, hills, hillocks, water bodies (and the areas adjoining the same), open areas, wooded areas, points, walks, rides, bridle paths (hereinafter referred to as 'listed natural feature areas') which shall be listed in notification(s) to be issued by Government/identified in MPD.
>
> 1.1.1 *Definitions:*
>
> (a) "Heritage building" means and includes any building of one or more premises or any part thereof and/or structure and/or artifact which requires conservation and/or preservation for historical and/or environmental and/or architectural and/or artisanary and/or aesthetic and/or cultural and/or environmental and/or ecological purpose and includes such portion of land adjoining such building or part thereof as may be required for fencing or covering or in any manner preserving the historical and/or architectural and/or aesthetic and/or cultural value of such building.
>
> (b) "Heritage precincts" means and includes any space that requires conservation and/or preservation for historical and/or architectural and/or aesthetic and/or cultural and/or environmental and/or ecological purpose. Such space may be enclosed by walls or other boundaries of a particular area or place or building or by an imaginary line drawn around it.
>
> Xx xx xx
>
> 1.2 ***Responsibility of the Owners of Heritage Buildings:*** It shall be the duty of the owners of heritage buildings and buildings in heritage precincts or in heritage streets to carry out regular repairs and maintenance of the buildings. The Government, the Municipal Corporation of Delhi or the Local Bodies and Authorities concerned shall not be responsible for such repair and maintenance except for the buildings owned by the Government, the Municipal Corporation of Delhi or the other local bodies.
>
> 1.3 ***Restrictions on Development/Re-development/Repairs etc.***
>
> (i) No development or redevelopment or engineering operation or

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additions/alterations, repairs, renovations including painting of the building, replacement of special features or plastering or demolition of any part thereof of the said listed buildings or listed precincts or listed natural feature areas shall be allowed except with the prior permission of Commissioner, MCD, Vice Chairman DDA/Chairman NDMC. Before granting such permission, the agency concerned shall consult the Heritage Conservation Committee to be appointed by the Government and shall act in accordance with the advice of the Heritage Conservation Committee.

(ii) Provided that, before granting any permission for demolition or major alterations/additions to listed buildings (or buildings within listed streets or precincts, or construction at any listed natural features, or alternation of boundaries of any listed natural feature areas, objections and suggestions from the public shall be invited and shall be considered by the Heritage Conservation Committee.

(iii) Provided that, only in exceptional cases, for reasons to be recorded in writing, the Commissioner, MCD/Vice Chairman DDA/Chairman NDMC may refer the matter back to the Heritage Conservation Committee for reconsideration.

However, the decision of the Heritage Conservation Committee after such reconsideration shall be final and binding.

1.4 ***Penalties:*** Violation of the regulations shall be punishable under the provisions regarding unauthorized development. In case of proved deliberate neglect of and/or damage to Heritage Buildings and Heritage precincts, or if the building is allowed to be damaged or destroyed due to neglect or any other reason, in addition to penal action provided under the concerned Act, no permission to construct any new building shall be granted on the site if a Heritage Building or Building in a Heritage Precinct is damaged or pulled down without appropriate permission from Commissioner, MCD/Vice Chairman DDA/Chairman NDMC.

It shall be open to the Heritage Conservation Committee to consider a request for rebuilding/reconstruction of a Heritage Building that was unauthorized demolished or damaged, provided that the total built-up area in all floors put together in such new construction is not in excess of the total built up area in all floors put together in the original Heritage Building in the same form and style in addition to other controls that may be specified.

1.5 ***Preparation of List of Heritage Sites including Heritage Buildings, Heritage Precincts and Listed Natural Features Areas:*** Preparation of List of Heritage Sites including Heritage Buildings, Heritage Precincts and Listed Natural Features Areas is to be prepared and supplemented by the Commissioner MCD/Vice -Chairman DDA/Chairman NDMC on the advice of the Heritage Conservation Committee. Before being finalized, objections and suggestions of the public are to be invited and considered. The said list to which the regulation applies shall not form part of this regulation for the purpose of Building Bye-laws. The list may be supplemented from time to time by Government on receipt of proposal from the agency concerned or by Government suo moto provided that before the list is supplemented, objections and suggestions from the public be invited and duly considered by the Commissioner, MCD/Vice-Chairman DDA/Chairman NDMC and/or Government and/or Heritage Conservation Committee.

When a building or group of building or natural feature areas are listed it would automatically mean (unless otherwise indicated) that the entire property including its entire compound/plot boundary along with all the subsidiary structures and artifacts, etc. within the compound/plot boundary, etc. shall form part of list.

1.6 ***Alteration/Modification/Relaxation in Development Norms:*** On the

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advice of the said Heritage Conservation Committee to be appointed by the Government and for reasons to be recorded in writing, the Commissioner, MCD/Vice -Chairman DDA/Chairman NDMC shall follow the procedure as per DDA Act, 1957 to alter, modify or relax the Development Control Norms prescribed in the MPD, or Building Bye-laws of Delhi if required, for the conservation or preservation or retention of historic or aesthetic or cultural or architectural or environmental quality of any heritage site.

1.7 ***Heritage Precincts/Natural Feature Areas:*** In case of streets, precincts, areas and, (where deemed necessary by the Heritage Conservation Committee) natural feature areas notified as per the provisions of this Building Bye-Laws No. 1.5 above, development permissions shall be granted in accordance with the special separate regulation prescribed for respective streets, precincts/natural feature areas which shall be framed by the Commissioner, MCD/Vice-Chairman DDA/Chairman NDMC on the advice of the Heritage Conservation Committee.

Before finalizing the special separate regulations for precincts, streets, natural features, areas, the draft of the same shall be published in the official gazette and in leading l newspapers for the purpose of inviting objections and suggestions from the public. All objection and suggestions received within a period of 30 days from the date of publication in the official gazette shall be considered by the Commissioner, MCD/Vice-Chairman DDA/Chairman NDMC/Heritage Conservation Committee.

After consideration of the above suggestions and objections, the agency concerned acting on the advice of the Heritage Conservation Committee shall modify (if necessary) the aforesaid draft separate regulations for streets, precincts, areas and natural features and forward the same to Government for notification.

1.10 ***Maintaining Skyline and Architectural Harmony:*** After guidelines are framed, building within heritage precincts or in the vicinity of heritage sites shall maintain the skyline in the precinct and follow the architectural style (without any high-rise or multistoried development) as may be existing in the surrounding area, so as not to diminish or destroy the value and beauty of or the view from the said heritage sites. The development within the precinct or in the vicinity of heritage sites shall be in accordance with the guidelines framed by the Commissioner, MCD/Vice-Chairman DDA/Chairman NDMC on the advice of the Heritage Conservation Committee or separate regulations/guidelines : if any, prescribed for respective zones by DDA/NDMC/MCD.

1.11 ***Restrictive Covenants:*** Restrictions existing as on date of this Notification imposed under covenants, terms and conditions on the leasehold plots either by Government or by Municipal Corporation of Delhi or by Delhi Development Authority or by New Delhi Municipal Council shall continue to be imposed in addition to Development Control Regulations. However, in case of any conflict with the heritage preservation interest/environmental conservation, this Heritage Regulation shall prevail.

1.12 : ***Grading of the Listed Buildings/Listed Precincts:*** Listed Heritage Buildings/Listed Heritage Precincts may be graded into three categories. The definition of these and basic guidelines for development, permissions are as follows: —

Listing does not prevent change of ownership or usage. However, change of use of such Listed Heritage Building/Listed Precincts is not permitted without the prior approval of the Heritage Conservation Committee. Use should be in harmony with the said listed heritage site.

Grade-I	**Grade-II**	**Grade-III**
(A) Definition	Heritage Grade-II (A&B)	Heritage Grade-III

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Heritage Grade-I comprises buildings and precincts of national or historic importance, embodying excellence in architectural style, design, technology and material usage and/or aesthetics; they may be associated with a great historic event, personality, movement or institution. They have been and are the prime landmarks of the region. All natural sites shall fall within Grade-I.

(B) Objective : Heritage Grade-I richly deserves careful preservation.

(C) **Scope for Changes:** No interventions be permitted either on exterior or interior of the heritage building or natural features unless it is necessary in the interest of strengthening and prolonging, the life of the buildings/or precincts or any part or features thereof. For this purpose, absolutely essential and minimum changes would be allowed and they must be in conformity with the original.

(D) **Procedure:** Development permission for the changes would be given on the advice of the Heritage Conservation Committee.

(E) **Vistas/Surrounding Development:**

All development in areas surrounding Heritage Grade -I shall be regulated and controlled, ensuring l that it does not mar the grandeur of, or view from Heritage Grade-I

comprises of buildings and precincts of regional or local importance possessing special architectural or aesthetic merit, or cultural or historical significance though of a lower scale in Heritage Grade-I. They are local landmarks, which contribute to the image and identify of the region. They may be the work of master craftsmen or may be models of proportion and ornamentation or designed to suit a particular climate.

Heritage Grade-II deserves intelligent conservation.

(Grade-II (A) Internal changes and adaptive re-use may by and large be allowed but subject to strict scrutiny. Care would be taken to ensure the conservation of all special aspects for which it is included in Heritage Grade -II Grade-II (B) In addition to the above, extension or additional building in the same plot or compound could in certain circumstances, be allowed provided that the extension/additional building is in harmony with (and does not detract from) the existing heritage building(s) or precincts especially in terms of height and façade.

Development permission for the changes would be given on the advice of the Heritage Conservation Committee.

All development in areas surrounding Heritage Grade-II shall be

comprises building and precincts of importance for townscape; that evoke architectural, aesthetic or sociological interest though not as much as in Heritage Grade-II. These contribute to determine the character of the locality and can be representative of lifestyle of la particular community or region and may also be distinguished by setting, or special character of the façade and uniformity of height, width and scale.

Heritage Grade-III deserves intelligent conservation (though on a lesser scale than Grade-II and special protection to unique features and attributes)

Heritage Grade-III deserves intelligent conservation (though on a lesser scale than Grade-II and special protection to unique features and attributes).

Internal changes and adaptive re-use may by and large be allowed. Changes an include extensions and additional buildings in the same plot or compound. However, any changes should be such that they are in harmony with and should be such that they do not detract from the existing heritage building/precinct.

Development permission for the changes would be given on the advice of the Heritage Conservation Committee.

All development in areas surrounding Heritage Grade-III shall be regulated and controlled,

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	regulated and controlled, ensuring l that it does not mar the grandeur of, or view from Heritage Grade-II	ensuring l that it does not mar the grandeur of, or view from Heritage Grade-III

Nothing mentioned above should be deemed to confer a right on the owner/occupier of the plot to demolish or reconstruct or make alterations top his heritage building/buildings in a heritage precinct or on a natural heritage site if in the opinion of the Heritage Conservation Committee, such demolition/reconstruction/alteration is undesirable.

The Heritage Conservation Committee shall have the power to direct, especially in areas designated by them, that the exterior design and height of buildings should have their approval to preserve the beauty of the area.

678. To maintain independence and objectivity, the composition of the Heritage conservation Committee vide paragraph 1.14 is broad based to comprise of outside experts like historian, natural historian, environmentalist etc. Paragraph 1.14 of the Unified Building Byelaws reads:—

"1.14 COMPOSITION OF HERITAGE CONSERVATION COMMITTEE

The Heritage Conservation Committee shall be appointed by the Government comprising of:

(i)	Special Secretary/Additional Secretary, (Ministry of Urban Development)	Chairman
(ii)	Additional Director General (Architecture), CPWD	Member
(iii)	Structural Engineer having experience of ten years in the field and membership of the Institution of Engineers, India Architect having 10 years experience (a) Urban Designer (b) Conservation Architect	Member
(iv)	Environmentalist having in-depth knowledge and Experience of 10 years of the subject.	Member
(v)	Historian having knowledge of the region & having 10 years experience in the field.	Member
(vi)	Natural historian having 10 years experience in the field.	Member
(vii)	Chief Planner, Town & Country Planning Organization	Member
(viii)	Chief Town Planner, MCD	Member
(ix)	Commissioner (Plg.), DDA	Member
(x)	Chief Architect, NDMC	Member
(xi)	Representative of DG, Archeological Survey of India	Member
(xii)	Secretary, Delhi Urban Art Commission	Member Secretary
(xiii)	The Committee shall have the power to co-opt up to three additional members who may have related experience.	
(xiv)	The tenure of the Chairman and Members of other than Government Department/Local Bodies shall be three years."	

679. By notification dated 1st October 2009, a list of 147 heritage sites, including heritage buildings, heritage precincts and listed natural feature areas prepared by the Chairperson, New Delhi Municipal Council (NDMC) on the advice of the Heritage Conservation Committee, was published. This publication was preceded by public notice inviting objections and suggestions from all persons likely to be effected thereby. The publication was in exercise of powers conferred by bye-laws 23.1 and 23.5 of the Delhi Building Bye-Laws, 1983 read with sub-section (17) of Section 2 of

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the New Delhi Municipal Council Act, 1994. For the present litigation, we would record that following buildings/precincts, along with their location, have been notified as Grade-I:

S. No.	Name of Building/Precincts	Location
3	India Gate	LBZ, Central Vista
4	India Gate Canopy	LBZ, Central Vista
7	North Block and South Block	LBZ, Central Vista
8	Parliament House and Campus	LBZ, Central Vista
9	Central Vista Precincts	LBZ, Central Vista at Rajpath
13	National Archives and Campus	Janpath

680. At this stage it would be also relevant to refer to the Lutyens' Bungalow Zone Guidelines, 1988, which prescribe as under:

> "……(b) Lutyens' Bungalow Zone : In order to maintain the present character of Lutyens' Delhi, which is still dominated by green areas bungalow, there should be a separate set of norms for this zone area. …. There were the following norms for construction in the Lutyens' Bungalow Zone.
>
> (i) The new construction of dwelling on a plot must have the same plinth area as the existing bungalow and must have a height not exceeding the height of the bungalow in place, or if the plot is vacant, the height of the bungalow which is the lowest of those on the adjoining plots.
>
> (ii) In the commercial areas, such as Khan Market, Yashwant Palace etc., and in institutional areas within the Lutyens' Bungalow Zone, the norms will be the same as those for these respective areas outside the zone.
>
> (iii) The existing regulations for the Central Vista will continue to be applicable.
>
> (iv) ……."

681. Annexure-II of the Unified Building Bye-Laws for Delhi and paragraph 10 of the Master Plan of Delhi relating to the conservation of built heritage have to be read together and harmoniously. Clause (5) of paragraph 10 of the Master Plan of Delhi, as noticed above, the local authority or land owing agency has been entrusted with the task to prepare special conservation plans in respect of specific heritage complex within the Lyutens' Bungalow Zone and other heritage zones as indicated in the Zonal Plan. This is a statutory mandate of the Master Plan. This task cannot be delegated to a third person or an architect, though it is possible to take opinions and advice for preparation of the special conservation plans. Unfortunately, neither the local body nor the land owing agency has formulated conservation plans/schemes for the specific heritage complex and appurtenant areas. The petitioners are right in their contention that when the statute requires each local authority or land-owning agency to formulate a special conservation plan for conservation and improvement of listed heritage complexes and appurtenant areas, the requirement is mandatory.

682. Paragraph 1 of Annexure-II states that conservation of heritage sites includes buildings, structures, areas and precincts of historic, aesthetic, architectural and significant buildings and precincts. Paragraph 1.1 states that listed heritage buildings and listed heritage precincts will not be restricted to hills, hillocks, water bodies or areas adjoining the same, but also open areas, wooded areas, points, walks, etc. Further, the terms, Heritage Buildings and Heritage Precincts have been given broad and encompassing definitions. Historical building as defined, mean and includes any building of one or more premises or even part thereof which requires conservation or preservation for historical, environmental, architectural, artisanry, aesthetic, cultural or ecological purpose. Such buildings would by fiction include such portion of land adjoining the building or part thereof as may be required for fencing, covering,

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preserving the historical, architectural, aesthetic or cultural value of the such building. Second part of Paragraph 1.5 states that the building or group of buildings listed would mean, unless otherwise indicated, the entire property including its entire compound/plot boundary along with all subsidiary structures and artifacts. Heritage precincts, by way of term of art definition, mean and includes any space that requires conservation or preservation of historical, architectural, aesthetic, environmental, ecological or cultural purposes. Such place may be enclosed by walls or other boundaries of a particular area or place or building or by an imaginary line drawn around it.

683. Paragraph 1.2 casts an obligation on the owner, including the government, municipal authorities, etc. to carry out regular repair and maintenance of the listed buildings. It also stipulates need for 'prior approval' for change of land use of the listed heritage building/precincts. Paragraph 1.3 is significant as it states that no development, re-development, engineering operations, additions/alterations, repairs or renovation, including painting of the building, replacement of special features or blasting or demolition of any part thereof, of the listed heritage buildings/listed precincts shall be carried out except with the permission of the authorities specified, which includes Vice Chairman, Authority and Chairman, NDMC. Further, before granting such permission, the agency shall consult the Heritage Conservation Committee and act in accordance with the advice of the Heritage Conservation Committee. In exceptional cases, for reasons to be recorded in writing, the authority, including Vice Chairman, Authority, and Chairman, NDMC may remit the matter to the Heritage Conservation Committee for its re-consideration. Decision of the Heritage Conservation Committee after such re-consideration is final and binding. The Heritage Conservation Committee before granting any permission for demolition, or major alterations/additions to the listed buildings or even buildings within the listed streets/precincts etc. is required to invite suggestions/objections from the public and consider them. Therefore, public participation is mandated and required to be undertaken by the Heritage Conservation Committee for demolition or major alteration/addition. Paragraph 1.6 states that on advice of the Heritage Conservation Committee and for reasons to be recorded in writing the Commissioner/Vice Chairman/Chairman of Municipal Committee/Authority/NDMC shall follow the procedure as per the Development Act to alter, modify, relax the development control norms in the Master Plan or building Bye Laws for conservation, preservation retention of historic, aesthetic, cultural or environmental quality of any heritage site. Question would therefore arise whether the proposed modifications would attract provisions of paragraph 1.6. We would leave the question open to be raised and decided by the Heritage Conservation Committee. First part of Bye-law 1.7 states that any development permission in respect of street/precinct areas as notified under bye-law 1.5, shall be in accordance with the separate regulation prescribed for the restrictive streets, precincts, natural feature areas by the authority concerned, including Chairman, NDMC, on the advice of the Heritage Conservation Committee. Second and third parts of Paragraph 1.7, which relate to special separate regulations for precincts, streets, natural feature areas, require that before finalising any draft the same shall be published in the Official Gazette and in one leading newspaper inviting objections and suggestions from the public. The public have right to file objections and give suggestions within thirty days of the publication in the Official Gazette which would be considered by the authorities, including Chairman, NDMC and the Heritage Conservation Committee. It is only after consideration of the suggestions and objections that the agency concerned, acting on the advice of the Heritage Conservation Committee, that the draft of the separate regulations for the street, precinct, natural feature area shall be forwarded to the government for notification. In Paragraph 1.10 emphasise on the need to maintain skyline and architectural harmony

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and need to follow the architectural style, without high-rise and multi-storied development. This mandate applies to building within the heritage precinct or in the vicinity of heritage sites. Development within the historical sites or in vicinity have to be in accordance with the guidelines framed by the local bodies on advice of the Heritage Conservation Committee. As per paragraph 1.11 existing restrictions under the lease deed, government including local bodies would in addition and continue to apply but in case of conflict with the heritage preservation interest, or environmental conservation, the heritage regulations would prevail. The 1988 guidelines regarding construction would therefore continue to apply to the Central Vista area, which falls within the LBZ. In addition the restrictions under Annexure II of the Unified Building Bye-Laws apply. Paragraph 1.12 states that the heritage buildings/listed heritage precincts would be divided into three categories, namely Grade I, Grade II and Grade III. The stipulations regarding Grade-I are the strictest and the most stringent. Paragraph (c) relating to Grade I states that no interventions will be permitted either on exterior or interior of the heritage building or natural features unless it is necessary for strengthening and prolonging the life of the building or precincts. Only when absolutely essential minimal changes would be allowed in conformity with the original. Further, all changes require development permission which can be granted only on the advice of the Heritage Conservation Committee. As per Clause (e), development in the area surrounding the heritage Grade-I is regulated and controlled ensuring that it does not mar the grandeur or view from heritage Grade-I.

684. The notice inviting bids for appointment of a consultant had stated:

> **"3. Objectives of Bid Documents**
>
> The objective of this bid documents is to re-plan the entire Central Vista area from the gates of Rashtrapati Bhavan up to India Gate, an area of approximately 4 square kilometres. A new Master Plan is to be drawn up for the entire Central Vista area that represents the values and aspirations of a New India - Good Governance, Efficiency, Transparency, Accountability and Equity and is rooted in the Indian Culture and social milieu. The Master Plan shall entail concept, plan, detailed design and strategies development/redevelopment works, refurbishment works, demolition of existing buildings as well as related infrastructure and site development works. These new iconic structures shall be a legacy for 150 to 200 years at the very least."

685. Given the nature and magnitude of the entire re-development project and having given due notice to the language, as well as object and purpose behind the re-development project, undoubtedly prior approvals and permissions from the Heritage Conservation Committee were/are required and necessary. Paragraph 1.12 specifically and clearly states that "change of use of such Listed Heritage Building/Listed Precincts is not permitted without prior approval of the Heritage Conservation Committee. Use should be in harmony with the said listed heritage site." Thus prior approval/no objection certificate from the Heritage Conservation Committee was mandatory and necessary before notifying the 'land use' changes of the six plots within the Central Vista, provided the plots/area were falling with the 'Listed Buildings'. Further, prior permission/no objection is also required in terms of paragraph 1.3 from the Heritage Conservation Committee before any development, redevelopment, engineering operations, renovations, demolition etc. Prior permission is also required from Heritage Conservation Committee before a local body issues building permit for any construction on any plot, which in addition have to abide by the 1988 guidelines.

686. It is a well-settled proposition that where power is given to do a certain thing in a certain way, then the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. When the statute prescribes a particular act must be done by following a particular procedure, the act must be done in that

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manner or not at all (See - *Nazeer Ahmed* v. *King Emperor*[59], *Parinder Singh* v. *Union of India*[60], *Public Interest Foundation* v. *Union of India*[61] and *Dhani Sugar and Chemicals Ltd.* v. *Union of India*[62]). There is no provision for deemed or in principle permission/approval/no objection certificate of the Heritage Conservation Committee. In fact no such plea of deemed approval/permission is raised by the respondents.

687. As noticed previously, the Technical Committee of the Authority in its meeting held on 5th December, 2019 while examining the proposal had, inter alia, stated that steps would be taken to seek approval of the Heritage Conservation Committee. However Heritage Conservation Committee was never moved to secure approval/permission. No approval/permission has been taken. The respondents in the written submissions have stated that the permission or approval from the Heritage Conservation Committee "would be sought as and when the stage reaches for the same as the same may not be pre-requisite for the purposes of change in land use". The use of the word 'may' itself reflects the doubt in the mind of the respondents, whereas the Technical Committee had not expressed any doubts and was firm that approval or clearance from the Heritage Conservation Committee is mandatory and required. We would again reproduce the minutes of the decision of the Technical Committee which reads as under:

> "After detailed deliberation, the proposal as contained in Para 4.0 of the agenda with the above modification in land use for Plot No. 1 was recommended by the Technical committee for further processing under Section 11A of DD Act, 1957. With the following conditions:
>
> The clearances from the PMO, Heritage Conservation Committee and Central Vista Committee shall be taken by L&DO.
>
> The heritage buildings shall be dealt as per the relevant heritage provisions."

688. For reasons stated above, on interpretation of Annexure II to the Unified Building Bye Laws it has to be held that prior approval/permission was necessary for land use change of the plots/area with the Listed Heritage Buildings and precincts. As observed above, Paragraph 1.3 states that redevelopment, engineering operations, or even additions/alterations etc. require prior permission of Heritage Conservation Committee. However for demolition, major repairs and alterations/additions to listed buildings or building precincts procedure of inviting objections and suggestions from the public shall be followed. Heritage Conservation Committee would consider the suggestions and objections. Decision of the Heritage Conservation Committee is final and binding.

689. Respondents have raised two other defences. First, the construction of the new Parliament being on a vacant plot adjacent to the existing Parliament building does not require approval/no objection from the Heritage Conservation Committee. This contention according to the petitioners is fallacious as it is contrary to the statutory Master Plan of Delhi and the Unified Building Bye-Laws. They rely on the definition assigned to the term 'heritage building', which 'includes such portion of land adjoining such building and part thereof as may be required for fencing or covering or in any manner preserving the historical and/or architectural and/or aesthetic and/or cultural value of such building'. We would observe and hold that the respondents should have moved and asked for clarification from the Heritage Conservation Committee. (The question whether plot no. 118 is a part of the Central Vista Precinct at Rajpath classified as Grade I for Annexure II is being examined separately). Further, if the interpretation as put forward by the respondents, including the NDMC, is to be accepted, then as a sequitur it follows that construction or development can take place in a vacant plot adjacent to or adjoining the Grade-I building. This interpretation appears unacceptable as it is contrary to the express stipulations in the Master Plan and the Unified Building Bye-Laws. It would also lead to unintended

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consequences and would be incompatible with the purpose and objective of these two legislations, a relevant principle when we interpret provisions in case of doubt or ambiguity. This is our tentative view, as it is for the Heritage Conservation Committee to opine on 'includes such portion of land adjoining such building and part thereof as may be required for fencing or covering or in any manner preserving the historical and/or architectural and/or aesthetic and/or cultural value of such building'.

690. The Parliament House, National Archives, North Block, South Block, as well as the Central Vista precincts have been specifically graded as Grade-I buildings and, therefore, under different clauses of Annexure II several restrictions and bars apply. Whether or not the bars and restrictions apply again would be questions to be examined and decided by the Heritage Conservation Committee. Neither this Court nor government including local bodies can answer these questions. Compliance with Annexure II is mandatory and necessary, which essentially means that the proponent must approach the Heritage Conservation Committee. Central Government could not have notified the modified the land use changes, without following the procedure and without prior approval/permission from the Heritage Conservation Committee. Further, the local body is expressly interdicted from issuing building permits in respect of the listed heritage buildings/precincts. The local body i.e. NDMC should have approached the Heritage Conservation Committee for clarification/confirmation and proceed on their advice.

691. In support of the second defence, the respondents have filed an additional affidavit of the Union of India along with short clarificatory affidavit of Mr. Vijay Kaushal and Ms. Ruby Kaushal. The affidavit filed by Mr. Vijay Kaushal, Deputy Chief Architect of the NDMC states that Central Vista precincts have been specifically included as a Grade-I building as per Unified Building Bye-Law, 1983, read with sub-section (17) of Section 2 of the New Delhi Municipal Council Act, 1994. Reference is made to the list of 141 heritage sites published, including heritage buildings, heritage precincts, and limited national feature areas, which list includes Parliament House and Campus, India Gate, India Gate Canopy, North and south Block, National Archives and Campus and Central Vista Precincts. It is stated that the list of heritage buildings in the NDMC area was finalised on the basis of an INTACH Report in consultation with the Heritage Conservation Committee. Reference is made to INTACH Report to assert that the Central Vista, LBZ Area, Rajpath have been demarcated by them as:

> "Physical Description - The Vista was designed to link the Viceroy's House (now the President's House) to the norther gateway of the Purana Qila. At the eastern end was erected the War Memorial Arch (India Gate), around which were built the Princes houses. On both sies on the road, there are wide lawns. The architectural character of the Central Vista is enhanced by the landscaping, the street furniture, the water bodies, etc. and it is important that any new addition/intervention is sensitive to and respects the character of the area."

692. Accordingly, it is submitted that the buildings with the President Estate, North Block and South Block, Parliament House and campus and National Archives and campus are Grade-I buildings. Other buildings like Nirman Bhawan, Udyog Bhawan, Rail Bhawan, Krishi Bhawan and Vayu Bhawan etc. are not expressly included in the heritage list. The petitioners would submit that the affidavit is ambiguous as it does not identify the area falling within the Central Vista precincts, which in addition to other heritage buildings, has been classified as Grade I. Moreover, the INTACH report has not been filed and no details have been furnished. Petitioners have referred to several INTACH reports, which reflect that the Central Vista Precincts would include plot no. 118.

693. Ms. Ruby Kaushal, Member Secretary of the Heritage Conservation Committee, has referred to clause 2.3.3(c) of the Unified Building Laws which states that all

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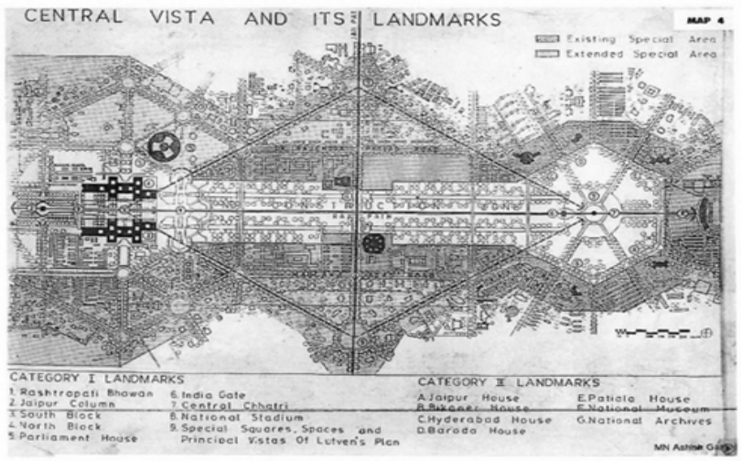
external agencies shall prepare colour-coded maps with information on specific areas where approval/NOC is required and these maps shall be placed on the website and also the websites of sanctioning authorities directly or through a link. Thereafter reference is made to the colour-coded map of Delhi (Annexure A-1) on the website of the Heritage Conservation Committee to state that the jurisdiction of the Committee is "hyperlinked to another detailed map which depicts the location of the gazetted notified Listed Heritage building, precincts, natural features of the area,… attached as Annexure A-2." Unfortunately, the colour-coding in the first map (Annexure A-1) is not clear. The map also records that the profile shown therein are indicative and that the size, profile or location of the monuments/precincts/heritage structures are available with ASI, MCD or NDMC. Map enclosed as Annexure A-2 is again not clear and legible as to decipher and figure out the area falling within the Central Vista precincts. This map locates/demarcates other historical buildings graded as Grade-I, Grade-II and Grade-III by the NDMC, MCD and ASI and again states that the size, profile or location of monuments/precincts/heritage structures are available with NDMC, MCD and ASI. The map refers to NDMC Notification F. No. 4/2/2009/UD/I-6565 dated 1st October 2009. As in case of the plan(Annexure A-1) it states that size, profile and location shown are indicative. This affidavit by Ms. Ruby Kaushal does not describe the boundaries or the imaginary line, to use the language of clause(b) to paragraph 1.1.1 of the Unified Building Bye Laws, to demarcate the area that falls within the Central Vista Precincts.

694. On the contrary the petitioners rely on at-least three maps that demarcate the Central Vista Precincts with the imaginary line. They are drawn below with details of the authority that has published/printed them.

a. Central Vista and its landmarks - Ganju, MN Ashish. Redevelopment Plan for the Lutyens Bungalow Zone for the Ministry of Urban Development, Government of India, GREHA, New Delhi, 1998.

Map 4 – Central Vista and its landmarks



b. Map by the Delhi Urban Arts Commission-source Map produced by GSDL with the 1988 boundary : MOUD Letter no. D.O. No. K 13011/17/86-DDIIA 8.2.88

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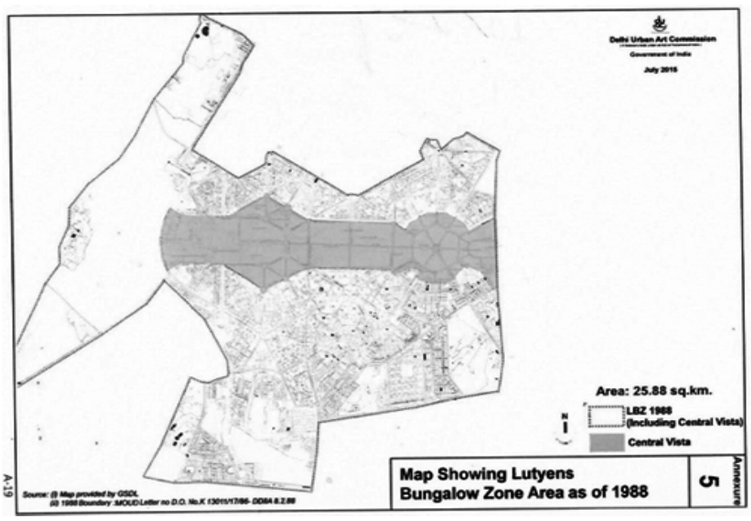
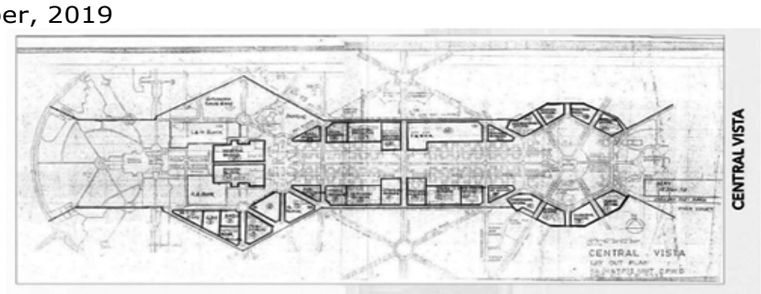


c. Lay out plan published in the Government of India, Ministry of Housing and Urban Affairs and CPWD handbook- 'Conservation and Audit of Heritage Buildings", September, 2019



695. These maps of the Central Vista Precincts by the project proponent itself namely CPWD and the Delhi Urban Arts Commission, which is a statutory body, clearly indicate the extent and boundaries of the Central Vista precincts/area, which does include the Parliament House and plot no. 118. In the aforesaid background, the contention of the respondents as to demarcation of the area of the precincts in the Central Vista precincts at Rajpath prima facie appears to be erroneous and wrong. Parliament House and plot no. 118 are apparently a part of the Central Area Precincts. Definitions of 'heritage building' and 'heritage precincts' in clauses (a) and (b) of paragraph 1.1.1. also support this view and interpretation. However, we need not finally pronounce on this aspect as the Heritage Conservation Committee has the jurisdiction and authority to examine and decide this aspect after ascertaining facts and details. As per paragraph 1.5, the list of Heritage Sites is to be prepared by the Chairman NDMC on the advice of the Heritage Conservation Committee. In terms of Annexure II, the Heritage Conservation Committee should examine and decide any dispute relating to boundaries of the Heritage Precincts.

696. The Central Vista Precincts, i.e. at the Rajpath, per se does not have any building. This does not mean that the precincts of other heritage buildings, namely, the Parliament, North and South Blocks, National Archives are not to be treated as areas adjoining the listed buildings in terms of clause (a) to paragraph 1.1.1. A contrary interpretation would virtually negate the meaning of precincts to the building.

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The idea behind declaring the area as historical precincts is to give protection even if no constructed structure exists. It is an additional protection, when several buildings have already been included in the heritage list. In the present case, as per the petitioners, it is to clarify and clear any doubt that the green areas/parks in the Central Vista Precinct within the demarcated line/boundaries are entitled to protection as Grade I under the Unified Building Bye Laws. In this regard reference can made to paragraphs 1.2, 1.5 and 1.7 of the Annexure-II of Unified Building Bye-Laws for Delhi, 2016, quoted above, and which appear to be apposite. Needless to say that these issues have to be examined by the Heritage Conservation Committee before they record their opinion.

697. Central Public Works Department, as the project proponent, had filed an application for environment clearance on 12th February 2020. Thereafter, revised application was filed on 12th March 2020. Both applications were for expansion and renovation of the existing Parliament building at Parliament Street, New Delhi. The second/revised application had *inter alia* projected the project cost at Rs. 922 crores.

698. As per original and revised Form Nos. 1 and 1A, the project is a Building and Construction project covered by item 8(a) of the Schedule of the 2006 Environmental Impact Notification. Suffice for our consideration is to record that item 8(b) or Townships and Area Development projects are put to a greater level of scrutiny. The categorization is based on the spatial extent of potential impacts on human health and natural and man-made resources. Four stages scrutiny process as envisaged by the 2006 Notification are (i) screening, (ii) scooping, (iii) public consultation and (iv) appraisal. Category B1 require an Environment Assessment Report and consequently the stage (ii) procedure of scooping is mandated. Stage (iii) public consultation is not required for the Building and Construction projects/Area Development projects.

699. The distinction between 8(a)-Building and Construction projects and 8(b)-Townships and Area Development projects lies in the expanse of the built-up area of the proposed project. Projects with the built up area falling between 20,000 sq.m. to 1,50,000 sq. m. would be categorised as 8(a)-Building and Construction projects. Projects with built up area above 1,50,000 sq. m. are categorised as 8(b) -Townships and Area Development projects. The term 'built up area' has been defined to mean "the built up or covered area on all the floors put together including its basement and all other service area, which are proposed in the building or construction projects."

700. Central Public Works Department as the project proponent in the original Form No. 1 had declared:

"1.1.1 Basic Information

S. No.	Item	Details
3	Proposed capacity/area/length/tonnage to be handled/command area/lease area/no. of wells to be drilled	**Existing Plot : Plot 116** • Plot area : 10.75 acres (43,505 m^2) • Built-up area : 44,940 m^2 **Proposed Plot : Plot 118** • Plot area : 10.5 acres (42,031 m^2) • Built-up area - current - 5200 m^2 • Area proposed to be demolished : 5200 m^2 • Proposed construction area: 65,000 m^2 • Hence, the proposed Built-up Area will be - 65,000 m^2 **Total Proposed Project Area, for both the Plots after Expansion and**

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		Renovation • Area : 21.25 Acres (85,536 m²) • Built-up Area : 1,09,940 m² *Source:* • For Plot Area : Data based on Land Development Office, Government of India • For Built-up Area : Project Proponent
16	Details of alternative sites examined, if any. Location of these sites should be shown on the Toposheet	This is the most appropriate and suitable site.
17	Interlinked Projects	No
18	Whether separate application of interlinked project has been submitted?	No
22	Whether there is any Government order/policy, relevant/relating to the site	• Land use of 116 is 'Parliament'. • Current land use of Plot No. 118 is recreational and land use change to 'Parliament' is in process.
		•

1.1.2 Activity

S. No.	Item	Details
1.2	Clearance of existing land, vegetation and buildings?	**Plot 116** There are 250 trees present at plot No. 116 **Plot 118** Ther are 333 trees at Plot 118. Out of these, 100 trees to be retained and 233 trees to be transplanted. In addition, other vegetation, growing in Plot 118 will also require to be cleared to develop the new Parliament Building. 290 trees are proposed to be planted on Plot 118.
1.9	Underground works including mining or tunnelling?	Excavation work for basement

701. In column relating to factors which should be considered such as consequential development and would lead to environmental effect or potential for accumulative impact with other existing or planned activities in the locality, it was stated as under:

S. No.	Information/Checklist Confirmation	Yes/No?	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
9.1	Lead to development of supporting facilities, ancillary development or development stimulated by the project which could have impact on the environment e.g. : supporting	No	

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	infrastructure (roads, power supply, waste or wastewater treatment, etc.) housing development extractive industries supply industries, (other)		
9.2	Lead to after-use of the site, which could have an impact on the environment	No	This is the most appropriate and suitable site.
9.3	Set a precedent for later developments	No	
9.4	Have cumulative effects due to proximity to other existing or planned projects with similar effects	No	

702. On the aspect of parking needs, it was stated that parking requirement shall be taken care of on an adjoining plot due to security reasons.

703. Along with the revised application, the project proponent had also submitted a report prepared by a private consultant with a heading 'New Parliament Building - Traffic Circulation and Management Plan', paragraph 4.1 of which reads as under:

"4.1 GENERAL

Construction vehicle circulation and management plan addresses effective use of site for collection and disposing of material through different vehicles. It makes entry/exit points for vehicles, required barricading, traffic diversion and site layout. A good management plan minimizes impact of vehicle movement at site and on public roads. Redevelopment of Central Vista consists of temporary relocation, demolition & construction of new central secretariat buildings, new Parliament House & other associated buildings in Central Vista area. The redevelopment of Central Vista will be carried out in three phases, with different buildings being simultaneously operationally shifted and constructed in each phase. Details of construction phasing is described below:

1. Relocation of IGNCA, Parliament House & complete construction of new Parliament House & 3 central secretariat buildings.
2. Relocation of V.P. House, existing central secretariat building & complete construction of 7 central secretariat buildings.
3. Relocation of North, South block & complete construction of remaining buildings.

Based on current traffic volume, regulations & restriction on existing roads; delivery & collection of material shall be permitted during 10 : 00 PM to 6 : 00 AM. Changes in the route & timing due to special events & security reasons shall be informed by Delhi Traffic Police to associated contractors, vendors & supply agencies for planning delivery & collection schedule."

704. Original application was taken up in the 49th meeting of the Expert Appraisal Committee (EAC) held on 25-26th February 2020. The meeting records that a large number of representations had been received by the Ministry as well as Chairman/Members expressing concerns mainly on the following points:

"

- The Indian Parliament is structurally a part of the composite notified heritage precinct, the Central Vista. The application completely disregards the historical, cultural and social importance of the existing Parliament by treating its "expansion and renovation" any other regular construction project.
- The application treats the expansion of the Parliament as a stand-alone project when it is only one part of the proposed redevelopment of the Central Vista heritage precinct.
- The treatment of the Parliament expansion as a separate project violates the

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MoEFCC's OM dated (No. J-11013/41/2006-IA.II (I)) for 'consideration of integrated and inter related projects for grant of environmental clearance'. The current application is in complete disregard of the requirements of this OM.

- The application contains false and misleading information stating that the project will have no "cumulative effects due to proximity to other existing or planned projects with similar effects", that there will be no significant impacts on ecology and public space, and on areas protected under conventions or legislations for their ecological, landscape, cultural or other values.
- The application is full of subjective responses to questions of scale and duration of various impacts that are likely to be caused by the proposed construction. These can only be treated as opinions because there are no studies or detailed assessments to support the application.
- The application for environment clearance must be set aside due to pending litigation on the land use change for the project. The land use change notification for Central Vista, which includes plot 118 is under litigation before the High Court of Delhi i.e. W.P.C. 1575/2020 and W.P.(C) 1568/2020."

705. Noticing that there was a mistake in calculation as to the total built up area proposed to be constructed, the project proponent was asked to revise the information of the built-up area. The project proponent was to file a revised application. Further, the project proponent was directed by the EAC to file para-wise reply to the representations received, traffic management plan and scope of 'renovation of the existing Parliament building'. EAC also felt appropriate to record that the proposal was in respect of construction of a larger parliament building for the nation and that the project would have positive contribution to social infrastructure and overall development of the region. Adverse environmental impact could be mitigated by taking preventive measures during operation.

706. Thereupon, the project proponent had filed revised application and had furnished point-wise reply to the representations received. Revised proposal was taken up for consideration in the 50th meeting of the EAC held on 22nd April 2020. The minutes of the meeting would reflect that it reproduces in detail the objections and point wise reply furnished by the project proponent and information regarding change of land use of Plot No. 118 that was subject matter of court litigation. Referring to the representations received objecting to the environment clearance specific objections noted above were recorded. It was also stated that the environment clearance should take into consideration impact of the physical environment footprint of the building covering *inter alia* water, air, soil, noise and other biotic and abiotic factors, including social and architectural heritage.

707. The point-wise reply submitted by the project proponent states that integrated and interrelated projects are those without which the necessary functional outcome of the proposed project cannot be achieved. Parliament building essentially carries out the functions which are disparate from the executive functions, carried out in other office buildings, and therefore, expansion of Parliament cannot be considered as an integrated and interrelated project as the end users of the Parliament building and the other buildings proposed in the Central Vista are distinct. Pointwise reply by the Central Public Works Department, reads:

"a. Parliament and Central Vista EC segregation:

i. Integrated and inter-related projects are those projects without which the necessary functional outcome of the proposed project cannot be achieved. For example, such projects would include a captive power plant attached to a coal mine, or a jetty attached to a Liquid Natural Gas (LNG) terminal.

ii. The proposed Parliament Building essentially carries out Legislative functions, which is separate from Executive Functions to be carried out in other office

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buildings and therefore, cannot be considered as an integrated and inter-related project vis-à-vis the other proposed central vista buildings for the simple reason that it can definitely operate independently of the other structures.

iii. The Parliament is headed by the Honorable Vice-President of India for the Rajya Sabha and the Honorable Speaker of the Lok Sabha, not the executive. It has its own secretariat. The end users are therefore very different.

iv. The redevelopment of the other Central Vita buildings is a distinct activity as opposed to the expansion and renovation of the parliament.

xx xx

e. Rationale for integrating the existing and Proposed Parliament Building ECs.

i. The existing Parliament Building and the proposed Parliament expansion are definitely inter-related, both in terms of function-since certain functions of the Parliament will be conducted in in the Existing Building and simultaneously certain functions will be conducted in the Proposed Building-*but also in terms of physical utilities*. In fact, Plots 116 and 118 are inter-related even today (and since about four decades) because the existing Parliament Building houses its utilities at the same plot (118) where the Parliament expansion is proposed. Moving forward, it has been proposed to have a common utility block for both, the existing and the Proposed Parliament Buildings. Therefore, it also follows the proposed Parliament Building is indeed an expansion of the existing Parliament Building/Structure.

ii. The existing Parliament Building needs to be temporarily vacated to allow for its renewal and renovation. This can only be done if the new Parliament Building is constructed on an urgent basis.

f. Site Alternatives:

i. As already mentioned

- The buildings are not stand-alone. They are inter-related. Facilities will be shared. Officials will need to move from one building to another, quite frequently.
- Several utilities will be common or housed at one place.
- This is an expansion and not a Greenfield project. Environmental impacts of comparable fresh project will always be higher than that of retrofit, renovation and expansion as is being proposed.
- Parliament needs to be close to the other seats of governance.

It follows that the alternative selected is indeed the best for a building like the Parliament of India.

g. Cumulative Impacts vis-à-vis Central Vista Development along with Proposed Parliament Expansion:

i. We re-state with emphasis that the proposed project is an expansion of an existing building on the neighboring plot. Majority of the impacts of the combined structure are already occurring at the site. The expansion of the new Parliament Building will lead to environmental impacts, that are, if at all, minor and incremental. Please see Annexure 1 highlighting the reason for this conclusion.

ii. There will be no significant impacts on ecology since trees that require to be transplanted will be sent to holding nurseries for the time being. Thereafter, these will be moved to Plot 118 as part of the external site development. Trees that cannot be accommodated within Plot 118 will be transplanted within the Central Vista area. The above details have been represented with the MoEF&CC. Requisite permissions for transplanting of trees will be secured

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from the Competent Agencies.

iii. There will be no significant impacts on public spaces whatsoever due to the proposed Parliament expansion. This is so because Plot 118, which is adjacent to Plot 116 on which the existing Parliament stands, currently houses parking, ancillary services and a reception to the Parliament House since about four decades. The reception was built in 1976 and utilities such as the AC chiller plant were built in 1981-82 whilst the sub-station was built in 1974, since it was not possible to accommodate these facilities within Plot 116. As the entire area is a high security zone, it could never be utilized as a District Park for recreational use."

708. Thereupon, the EAC had proceeded to record its conclusion and findings, which read:

> "**50.3.7.5.** Based on the information and clarifications provided by the proponent vis-à-vis mitigation measures for likely environmental impacts proposed by the proponent, the EAC appraised environmental aspects of the project and recommended for grant of Environmental Clearance with following specific conditions along with other Standard EC Conditions as specified by the Ministry vide Om dated 4th January, 2019 for the said project/activity (specified at **Annexure-8** of the minutes), while considering for accord of environmental clearance."

709. Recording the above, the EAC proceeded to impose as many as fifteen conditions including those relating to other clearances which would be required, like clearance from Delhi Pollution Control Committee under the Air and Water Pollution Act, provision for adequate fire safety measures, etc.

710. What is of concern is lack of discussion, reasons or even the conclusion or finding on the aspect of slicing or inclusion. On the matter of "appraisal" in *Bengaluru Development Authority* v. *Sudhakar Hegde*[63], this court has elucidated:

> "Appraisal by the SEAC is structured and defined by the 2006 Notification. At this stage, the SEAC is required to conduct "a detailed scrutiny" of the application and other documents including the EIA report submitted by the applicant for the grant of an EC. Upon the completion of the appraisal process, the SEAC makes "categorical recommendations" to the SEIAA either for : (i) the grant of a prior EC on stipulated terms and conditions; or (ii) the rejection of the application. Significantly, the recommendations made by the SEAC for the grant of EC, are normally accepted by the SEIAA and must be based on "reasons".

711. Proceedings before the EAC are not adversarial in nature. EAC acts both as a fair investigator and an independent objective adjudicator when deciding whether or not to grant environmental clearance. There must be application of mind which is reflected when reasons justifying the conclusion are recorded. Mere reproduction of the contesting stands is not sufficient. On the contrary it would reflect mechanical grant without application of mind. Further, it is not for the court/appellate forum to assume what weighed, whether the conclusion relies on material which is relevant, irrelevant or partly relevant, or whether the decision is partly based on surmises and conjectures and partly on evidence. (See, the Constitutional Bench decision of this Court in *Dheeraj Lal and Girdhari Lal* v. *Commissioner of Income Tax*,[64]). Some reasons at least in brief to understand what had weighed and persuaded the authority is mandated and required. One issue certainly raised that required an answer was the question of slicing or inclusion. We are unable to fathom and ascertain reasons or the findings recorded on this aspect.

712. In *S.N. Mukharji* v. *Union of India*[65], observations in *Siemens Engineering & Manufacturing Co. of India Ltd.* v. *Union of India*[66] were quoted to hold that administrative authorities and tribunals exercising quasi-judicial function can justify their existence and carry credibility with the people by inspiring confidence in the

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adjudicatory process. Unless reasons are disclosed, it is not possible to know whether the authority had applied its mind or not. Also giving of reasons minimises chances of arbitrariness. It is an essential requirement of rule of law that some reasons at least in brief must be disclosed in a judicial or quasi-judicial order even if it is an order of affirmation. Similar observations have been made in *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank* v. *Jagdish Chand Varshney*.[67] *Commissioner of Income Tax* v. *Walchand and Co. Pvt. Ltd.*,[68] observes that certain quasi-judicial tribunals must approach and decide the case in a judicial spirit and for that purpose it must indicate the disputed questions before it with evidence pro and con and record its reasons in support of the decision. The practice of recording a decision without reason in support cannot but be severely deprecated. When giving and recording of reasons by a quasi-judicial authority is mandated in law, it serves several purposes. First, exercise of discretion by a quasi-judicial process is best vindicated by clarity in its exercise.[69] Secondly, it promotes thought by the authority and compels it to consider and decide relevant points and eschew irrelevancies ensuring careful consideration.[70] Thirdly, the appellate authority or courts exercising power of judicial review are unable to exercise their appellate or judicial review power unless they are advised and made aware of the consideration underlying the order under review.[71] Fourthly, requirement for recording reasons is one of the fundamentals of good administration and governance. Lastly, recording of reasons, specially by administrative authorities performing quasi-judicial functions, ensures lack of bias and prejudice. This is specially so when government and the citizens are pitted against each other, as then there could be allegations that the executive officer or the quasi-judicial authority look at things from the stand point of the policy maker and expediency, rather than the rights of people. Thus, failure to record reasons can amount to denial of justice, as the reasons are a live link between the mind of the decision maker to the controversy in question and decision or conclusion arrived at. Therefore, requirement of a speaking order is judicially recognised as an imperative. In *State of Punjab* v. *Bhag Singh*[72], it was observed:

> 6. Even in respect of administrative orders, Lord Denning, M.R. in *Breen* v. *Amalgamated Engg. Union* [(1971) 1 All ER 1148 : [1971] 2 Q.B. 175 : [1971] 2 WLR 742 (CA)] observed:"The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd.* v. *Crabtree* [1974 ICR 120 (NIRC)] it was observed:"Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

713. Faced with the aforesaid position, it was faintly argued before us that the relevant clause of the EIA Notification of 2006 does not require giving of reasons when environment clearance is granted. Further, observations of this Court to the contrary in recent decision in *Hanuman Laxman Aroskar* v. *Union of India*[73] are *per incuriam*. The relevant clause of the EIA notification reads as under:

> "(i) Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like

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the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same."

714. The National Green Tribunal in *Gau Raxa Hitraxak Manch* v. *Union of India*[74] has rightly observed that the use of the *comma* at the end of the first part of the sentence, prefixing the words 'terms and conditions' and also suffixing the words 'terms and conditions' with the words 'together with reasons for the same' need to be read in conjunction. In this case it was held, and we respectfully agree, that the apprising body, which includes EAC as well as the Ministry, has to make categorical recommendations to the regulatory authority either for grant of clearance or rejection, together with reasons for the same. Further, the orders passed by the EAC are appealable before the National Green Tribunal. Appellate forum would not be able to decipher and adjudicate unless reasons are set out and stated in the order under challenge. The whole purpose of outsourcing the task to EAC, comprised of experts and specialists, is to have a proper evaluation on the basis of some objective criteria. EAC is a body that has to apply its collective mind and not to record conclusions. It must justify and give basis for its conclusions. *Hanuman Laxman Aroskar*, observes:

"**160.** EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making. The 2006 Notification postulates that normally, MoEFCC would accept the recommendation of EAC. This makes the role of EAC even more significant. NGT is an adjudicatory body which is vested with appellate jurisdiction over the grant of an EC. NGT dealt with the submissions which were urged before it in essentially one paragraph. It failed to comprehend the true nature of its role and power under Section 16(h) and Section 20 of the NGT Act, 2010. In failing to carry out a merits review, NGT has not discharged an adjudicatory function which properly belongs to it."

715. The respondent had argued that this Court can examine the question whether or not there is slicing and inclusions. We are to ascertain the legal correctness of the impugned order and not undertake an in-depth and fresh merit exercise. We are not experts. Statutory provisions should be respected. Some the writ petitioners state that the built area of the parliament library and the annexe have been deliberately excluded. If the constructed area of the library and annexe are added to the built-up area, the total built-up area would come be 1,99,435 sq. mtrs., and hence the application has to be processed in terms of item 8(b) and not item 8(a), even if the principle of slicing/division of the Central Vista is rejected. We would not like to answer or go into these aspects in the absence of any consideration by the EAC. However, on remand these aspects should be considered.

716. The respondents have, in their pleadings and in the course of hearings, submitted the reasons why Central Vista requires redevelopment. Keeping in view the scope and ambit of judicial review, we have deliberately not considered merits of the grounds given by the respondents for modification of the Master Plan with regard to redevelopment of the Central Vista. However we would record the same and would take notice of the counter by the petitioners. The respondents have stated that

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hutments or temporary barracks or stables, built during World War II, occupy an area of over 90 acres of land including open area adjacent to the North Block, A&B Block adjacent to South Block, plots at Thyagraj Marg, Jamnagar House and Jodhpur House. Further, buildings like Shastri Bhawan, Nirman Bhawan, Udyog Bhawan, Rail Bhawan, Krishi Bhawan and Vayu Bhawan etc. were constructed post-Independence. The hutments and these buildings have outlived their structural life of around fifty areas and are not earthquake-safe, suffer from poor service integration, inefficient use of land, inadequate facilities and lack of coherent architectural identity. These hutments and buildings cannot function as modern offices, and require retrofitting and refurbishing which would cost about Rs. 50 crores a year. Further, usage and architecture of these buildings and others is incoherent; for instance, the Vice President's residence, Vigyan Bhawan and National Museum are located adjoining each other. As per non-availability certificate issued by the Directorate of Estates there is shortage of about 3.8 lakh meters of office space for which rentals up to Rs. 1000 crores would be required. Central Vista Development and Re-development Plan would ensure that formal central secretariat with all ministries are located at a single location for efficiency and synergy of function. In all about 51 Ministries are to be located in 10 buildings to be constructed in the Central Vista with office spaces having modern technological features and amenities. There would be an underground shuttle approximately 3 km in length that would connect and integrate all buildings. The existing Parliament House and Annexe are not being demolished; a new Parliament building is being constructed which, along with the existing buildings will form the Parliament Complex. It is stated that the Parliament House was commissioned in 1927 and over the years parliamentary activities and number of people working or visiting there have increased manifold. Parliament building was designed to house the Imperial Legislative Council and is not planned for a national legislature. Two floors were added to the structure in 1956 due to demand of more space. Library building and Annexe were added later on. The building is not designed according to the present fire safety norms and there are other safety issues. Electrical air-conditioning and plumbing systems are inadequate, inefficient and costly to operate and maintain. Audio video system in the Parliament is old and hall acoustics are not effective. Lastly, it is stated that the last delimitation for number of seats in Lok Sabha was carried out on the basis of 1971 census. Since then 545 seats have not undergone a change. This number of seats is likely to increase substantially after 2026. Both Lok Sabha and Rajya Sabha are packed to capacity and have no space for additional seats. Seating arrangements are cramped and cumbersome and there are no desks beyond second row. This makes the movement extremely constrained. Central Hall has seating capacity of only 440 persons. Further all heritage buildings are being preserved and many of the them would be used as museums.

717. The petitioners, on the other hand, have submitted:

(a) Existing Parliament House and Central Vista are continuing and living heritage which must be preserved and protected for future generations. Re-development of nearly 80 acres of land, demolition of National Museum and construction of new Parliament will permanently affect the iconic character, skyline, layout, and the architectural harmony of the Central Vista. It would cause irreplaceable and non-revocable harm and damage Garde 1 heritage buildings and precincts.

(b) Re-development if permitted would violate Articles 49 and 51(c) of the Directive Principles of State Policy. Further, Doctrine of Public Trust applies to historically significant buildings/precincts and properties of special consequence (*Lok Prahari* v. *State of U.P.*[75]).

(c) Re-development, if required, should be undertaken as per well-established norms applicable to places of historical interest. Reference is made to Vienna

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Memorandum on World Heritage and Contemporary Architecture - Managing the Historic Urban Landscape (2005), ICOMOS's Delhi Declaration on Heritage and Democracy (2017) and others. The exercise being undertaken fails to follow best practices of heritage conservation.

(d) No expert or specialised study and assessments has been undertaken and in absence, allegations of structural integrity, fire safety and seismic concerns etc. are mere reservations and misgivings. There is no empirical data in support of the assertions made by the respondents that the Parliament House etc. has outlived its life. No such doubt is raised in respect of other building constructed at the same time like the North and South Blocks and the President's House. On the contrary, Annexure F to the written submissions filed by the Respondent records the state of preservation of the Parliament House as 'fair'. Heritage assessment study should be undertaken and made public. Existing Parliament building can be upgraded.

(e) In alternative, expansion or additional construction rather than construction of a new Parliament can be explored. Office spaces, can be created near the official residence of the bureaucracy.

(f) Cost-benefit analysis has not been undertaken though significant capital expenditure in excess of Rs. 20,000 crores apparently would be incurred. The capital cost would be higher as logistics, temporary housing cost and the cost of removal or transplantation of mature trees etc. have not been included. Assertion that expenditure of Rs. 1,000 crores per annum on account of rent etc., is unsupported by any document and is assumptive.

(g) Over a period of time, there has been reduction of green area in the Central Vista, which is open and accessible to general public. The public area would get further reduced with the redevelopment plan.

(h) Zone 'C' where New India Gardens are proposed, is at a different location and not within Zone 'D', in which the Central Vista and LBZ are located. Reduction in green/recreational area in Central Vista, a prime and iconic place, cannot be compensated by a garden at different location.

(i) By the Constitution (84th Amendment Act), 2002 has extended the freeze on undertaking fresh delimitation as a part of national population strategy. Delimitation for the same reason may or may not take place. In any case it would be after the next census post 2026, that is in 2031.

718. We have referred to the contentions of the petitioners and respondents in some detail but would not comment on merits. These are complex and esoteric issues which have to be at first stage considered and decided by the specialised authorities like the Heritage Conservation Committee. If we consider and examine the merits of the pleas, we would be directly encroaching their jurisdiction and exceeding the power of judicial review. It is the reasoning and discussion in the orders by the statutory/quasi-judicial that are subjected to judicial scrutiny and review. Further, matters pertaining to heritage, architectural, functionality etc. are for the experts and specialists in the field like Architects, town planers, historians, urbanists, engineers etc. to examine and guide. Suffice it would be to observe that the stands on merits reflect different perceptions and beliefs. The respondents without doubt do verily believe that redevelopment of Central Vista and new Parliament building is an imperative necessity. Central Vista requires a makeover. The hutments and some of the non-heritage buildings like Shashtri Bhawan, Nirman Bhawan, Udyog Bhawan etc. which it is stated occupy more than 90 acres of land require re-development. Similarly, if new parliament building is required and being a must, it should be constructed. Several former and the present Speaker have expressed the need for construction of a new Parliament. Some of the petitioners do not oppose partial and

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regulated redevelopment for functionality, while maintaining and preserving the heritage, ethos and visual look. Central Vista and Parliament House is an heritage and belongs to the Nation and the people. Their primary grievance is lack of information and details. They submit that experts and specialists can provide acceptable solutions to conserve and make historical buildings functional, as it has happened elsewhere. The issues raised by the petitioners along with the stand of the respondents have to be taken into consideration by the statutory authorities in terms of and as per the statutory mandate. Ultimately, the issue has to be decided as per law after ascertain details by professional experts. Our interference does not reflect on merits of the stands, but is on account of procedural illegalities and failure to abide the statutory provisions and mandate.

719. In view of the aforesaid discussion, while setting aside and quashing the final notification of modification/change of the land use dated 28th March 2020 in respect of the 6 plots in the Central Vista, we would direct as under:

A) The Central Government/Authority would put on public domain on the web, intelligible and adequate information along with drawings, layout plans, with explanatory memorandum etc. within a period of 7 days.

B) Public Advertisement on the website of the Authority and the Central Government along with appropriate publication in the print media would be made within 7 days.

C) Anyone desirous of filing suggestions/objections may do so within 4 weeks from the date of publication. Objections/suggestions can be sent by email or to the postal address which would be indicated/mentioned in the public notice.

D) The public notice would also notify the date, time and place when public hearing, which would be given by the Heritage Conservation Committee to the persons desirous of appearing before the said Committee. No adjournment or request for postponement would be entertained. However, the Heritage Conservation Committee may if required fix additional date for hearing.

E) Objections/suggestions received by the Authority along with the records of BoEH and other records would be sent to the Heritage Conservation Committee. These objections etc. would also be taken into consideration while deciding the question of approval/permission.

F) Heritage Conservation Committee would decide all contentions in accordance with the Unified Building Bye Laws and the Master Plan of Delhi.

G) Heritage Conservation Committee would be at liberty to also undertaken the public participation exercise if it feels appropriate and necessary in terms of paragraph 1.3 or other paragraphs of the Unified Building Bye Laws for consultation, hearing etc. It would also examine the dispute regarding the boundaries of the Central Vista Precincts at Rajpath.

H) The report of the Heritage Conservation Committee would be then along with the records sent to the Central Government, which would then pass an order in accordance with law and in terms of Section 11A of the Development Act and applicable Development Rules, read with the Unified Building Bye-laws.

I) Heritage Conservation Committee would also simultaneously examine the issue of grant of prior permission/approval in respect of building/permit of new parliament on Plot No. 118. However, its final decision or outcome will be communicated to the local body viz., NDMC, after and only if, the modifications in the master plan were notified.

J) Heritage Conservation Committee would pass a speaking order setting out reasons for the conclusions.

720. We set aside the order of the EAC dated 22nd April, 2020 and the environment

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clearance by the Ministry of Environment and Forest dated 17th June, 2020, and would pass an order of remit to the EAC with a request that they may decide the question on environment clearance within a period of 30 days from the date copy of this order received, without awaiting the decision on the question of change/modification of land use. Speaking and reasoned order would be passed.

721. Parties, if aggrieved by any order/approval/non-approval would be entitled to challenge the same in accordance with law.

722. In the facts of the case there would be no order as to costs.

———

† (Arising out of S.L.P. (Civil) No. ……./2020)

[1] For short, "the Project"

[2] For short, "plot no. 2" or "plot no. 118"

[3] For short, "DDA" or "the Authority", as the case may be

[4] For short, "the High Court"

[5] For short "NGT".

[6] For short, "EC"

[7] For short, "the L&DO"

[8] For short, "MoHUA"

[9] For short, "the 1957 Act"

[10] For short, "ZDP" or "zonal plan"

[11] For short, "Master Plan" (Prepared by Delhi Development Authority and approved by the Central Government under Section 11A(2) of Delhi Development Act 1957 and **notified on 7th February 2007** (The Gazette of India, Extraordinary, Part II-Section 3 Subsection (ii) No. 125 (Magha 18, 1928) vide S.O. 141- (E)).

[12] (2018) 15 SCC 407 (paras 12, 13 and 15)

[13] (1991) 4 SCC 54 (paras 23 and 24)

[14] (2012) 2 SCC 232 (para 47)

[15] (2019) 14 SCC 411 (para 6)

[16] (2018) 18 SCC 257

[17] (1987) 2 SCC 720 (paras 4, 6, 7 and 14)

[18] (1990) 3 SCC 223 (paras 36 to 47)

[19] (2002) 2 SCC 7 (paras 36 to 44)

[20] (2004) 10 SCC 796 (paras 2 to 5)

[21] (2011) 11 SCC 34 (para 39)

[22] (1980) 2 SCC 295 (para 3, 5, 7 and 8)

[23] (1989) 3 SCC 396 (para 2, 3, 5, 7, 15, 27 and 28)

[24] (2012) 3 SCC 442 (paras 2, 8, 9, 66, 67, 76 and 77)

[25] (2007) 8 SCC 705 (paras 20, 42 and 87 to 90)

[26] For short, "BoEH"

[27] (2019) 12 SCC 720 (para 13 and 15 to 18)

[28] (2011) 2 SCC 258 (paras 16, 63, 77-80 and 83)

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[29] (1989) 2 SCC 505 (para 64)

[30] (2002) 7 SCC 368 (paras 7 and 8)

[31] (1969) 3 SCC 868 (paras 7 and 12)

[32] (2019) 15 SCC 401 (para 112.8)

[33] 2009 SCC OnLine Del 3836 (paras 31 and 32)

[34] (supra at 14, paras 48 and 49)

[35] (2015) 10 SCC 400 (paras 7, 38, 39, 103, 108 and 109)

[36] (2006) 3 SCC 208 (paras 31, 33 and 34)

[37] (supra at 12, paras 12, 14 to 16, 24 and 26)

[38] (supra at 13, paras 13 and 23 to 29)

[39] (1995) 2 SCC 577 (paras 7, 8 and 10)

[40] For short, "CVC"

[41] (2006) 11 SCC 356 (paras 72 and 73)

[42] (2004) 2 SCC 65 (paras 24 and 25)

[43] (1998) 7 SCC 66

[44] (2006) 6 SCC 430 (para 28)

[45] 2020 SCC OnLine SC 329 (para 58)

[46] (1991) 2 SCC 716 (paras 20 and 21)

[47] For short, "EAC"

[48] For short, "the MoEF"

[49] (supra at 32)

[50] For short, "EIA"

[51] For short, "2006 notification" or "EIA Notification", as the case may be.

[Although this notification has been described as "2006 notification" it has been reprinted in August, 2015 (pages 3-55 in Compilation of Documents filed by respondents), incorporating all the amendments thereto until 6.7.2015, and the extracted portions of the notification in this judgment are from the reprinted version].

[52] (2014) 1 SCC 769

[53] Appeal No. 50 of 2012, order dated 10-11-2014 (NGT)

[54] (supra at 32)

[55] (1996) 5 SCC 647

[56] (2001) 2 SCC 62

[57] (supra at 32)

[58] (2011) 7 SCC 338

[59] (supra at 32)

[60] (2020) 2 SCC 66 (para 19)

[61] 2020 SCC OnLine SC 328 (paras 99 and 100)

[62] Appeal No. 66 of 2014, order dated 3-9-2015 (NGT)

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[63] 2013 SCC OnLine NGT 101 (para 38)

[64] (2006) 3 SCC 549 (paras 66 to 69, 72 to 76, 78 and 82)

[65] (2017) 9 SCC 499 (paras 208, 209 and 210)

[66] 2011 SCC OnLine NGT 10 (para 19)

[67] (supra at 16, para 17)

[68] (supra at 32)

[69] For short, "IIA"

[70] For short, "DUAC"

[71] AIR 1967 SC 1170

[72] for short, "HCC"

[73] For short, "the DUAC Act"

[74] (2019) 1 SCC 1

[75] (2020) 10 SCC 274

[76] (supra at 75)

[77] (supra at 32)

[78] (2016) 7 SCC 703

[79] (2017) 10 SCC 1

[80] 2006 (12) BCLR 1399

[81] (supra at 80)

[82] Civil Appeal No. 200 of 2014 decided on 30.6.2017 (Court of Appeal, Kenya)

[83] (supra at 82)

[84] (supra at 79)

[85] (1975) 4 SCC 428

[86] (1988) 4 SCC 592

[87] (1997) 1 SCC 388

[88] [146 US 387 (1892) : 36 L.Ed. 1018]

[89] (2007) 2 SCC 1 (paras 48, 109, 139-141 and 151)

[90] (2018) 8 SCC 501 (paras 53 to 57)

[91] (2018) 6 SCC 1 (paras 2, 26, 27 and 38)

[92] (1997) 10 SCC 441 (paras 4, 6, 13, 18 and 19)

[93] (2005) 3 SCC 16 (paras 21 and 32)

[94] (2013) 8 SCC 418 (paras 15, 71, 94, 95 and 102)

[95] (2012) 3 SCC 619

[96] (2019) 3 SCC 224 (para 99)

[97] (2016) 9 SCC 20 (para 38)

[98] 2019 SCC OnLine SC 1520 (para 17)

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[99] (1974) 1 SCC 549 (para 12)

[100] (2017) 9 SCC 1 (para 85)

[101] (2012) 10 SCC 1 (paras 149 and 184)

[102] (2014) 9 SCC 1 (para 82)

[103] (2009) 15 SCC 570

[104] AIR 1962 SC 305

[105] (1972) 2 SCC 788

[106] (1999) 6 SCC 150

[107] (1992) 3 SCC 637

[108] (1995) 2 SCC 161

[109] (1969) 3 SCC 56 (para 7)

[110] (2013) 6 SCC 476 (paras 50, 51, 66 and 70)

[111] 2003 (2) BCLR 128 (CC) (South African Constitutional Court)

[112] 2007 (1) BCLR 47 (CC) (South African Constitutional Court)

[113] 2019 (2) BCLR 273 (CC) (South African Constitutional Court)

[114] Civil Appeal No. 96 of 2014 decided on 27.9.2019 (Court of Appeal, Kenya)

[115] (2012) 2 SCC 562 (para 7)

[116] (2006) 13 SCC 382 (para 16)

[117] (1997) 1 SCC 53 (paras 3 and 4)

[118] (2009) 6 SCC 171 (paras 28 and 37 to 39)

[119] (2014) 9 SCC 516

[120] (1977) 3 SCC 457 (paras 9 and 10)

[121] (2013) 5 SCC 182 (para 29)

[122] (2011) 5 SCC 29 (paras 62 to 66)

[123] (1986) 3 SCC 247 (para 19)

[124] (2007) 14 SCC 517

[125] (1979) 3 SCC 489

[126] For short, "GPC"

[127] (supra at 74)

[128] (1978) 4 SCC 494

[129] (2016) 1 SCC 463

[130] 1951 SCC 16 : AIR 1951 SC 128

[131] (supra at 58)

[132] (2000) 10 SCC 664 (paras 226 to 235)

[133] (2010) 6 SCC 303 (para 34, 42 to 48 and 52)

[134] (2011) 7 SCC 639 (paras 36 and 37)

[135] (2007) 4 SCC 737 (para 16)

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[136] (1994) 1 SCC 301 (para 14)

[137] (2013) 6 SCC 620 (paras 200, 201, 207 to 212)

[138] (1964) 4 SCR 575 (para 12)

[139] (1996) 9 SCC 709 (para 68)

[140] (2003) 4 SCC 289 (para 12)

[141] (2012) 5 SCC 275 (paras 20 to 22 and 25)

[142] (2001) 5 SCC 486 (paras 11 and 16)

[143] (2010) 8 SCC 372 (paras 13, 20 to 22 and 38)

[144] (2011) 9 SCC 1 (para 59)

[145] 2009 SCC OnLine Del 487 (paras 7 to 9)

[146] (supra at 17, paras 27, 31 and 35)

[147] (2005) 6 SCC 321 (paras 6 to 9 and 18)

[148] (2008) 9 SCC 31 (paras 22 to 24, 35, 36, 40, 42, 44 and 45)

[149] (2006) 8 SCC 647 (paras 17, 19 and 22)

[150] (2005) 3 SCC 409 (para 24)

[151] (2005) 5 SCC 337 (paras 19, 20 and 22)

[152] (1997) 10 SCC 386 (para 1)

[153] (2006) 11 SCC 1 (paras 14, 20, 24 to 27, 44, 46, 47 and 49)

[154] (1977) 2 SCC 256 (para 13)

[155] (2003) 7 SCC 492 (paras 29, 43 and 44)

[156] (1991) 2 SCC 382 (paras 35 to 37)

[157] 1951 SCC 958 : AIR 1951 SC 481

[158] AIR 1967 SC 295 (para 10, 27, 60 and 64)

[159] (1969) 1 SCC 325 (paras 7 to 9, 11 and 13)

[160] 1989 Supp (2) SCC 201 (paras 8, 9 and 13)

[161] (2002) 3 SCC 496 (para 10)

[162] AIR 1961 SC 1519

[163] (1991) 3 SCC 38 : AIR 1991 SC 1216 (paras 6 to 10)

[164] (supra at 46, paras 22 and 23)

[165] (1975) 2 SCC 818 (para 3)

[166] 1995 Supp (1) SCC 434 (para 11)

[167] 2019 SCC OnLine SC 1144 (paras 8 to 16, 19, 22 to 37, 43 and 44)

[168] (1981) 4 SCC 675 (para 8)

[169] (1994) 2 SCC 691 (para 54)

[170] (1996) 2 SCC 405 (para 7)

[171] (2002) 2 SCC 333 (paras 77 to 88)

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[172] (supra at 134, para 36)

[173] (supra at 101, paras 146 to 150)

[174] (1991) 3 SCC 91 (paras 22 to 26)

[175] (supra at 118, paras 40 to 46, 61, 62, 67 and 68)

[176] 1975 Supp SCC 1 (paras 176 and 661)

[177] (1977) 4 SCC 608 (para 238)

[178] (2006) 7 SCC 1 (para 107)

[179] (2008) 6 SCC 1 (para 116)

[180] (2016) 5 SCC 1 (para 381)

[181] (1984) 3 All ER 935

[182] (1947) 2 All ER 680

[183] (2003) 4 SCC 579

[184] (2001) 3 All ER 433

[185] [2001] 1 WLR 840

[186] (2005) 3 All ER 435

[187] (1997) 1 SCC 738 (paras 9, 10 and 11)

[188] (2006) 10 SCC 1 (paras 56, 77 and 89 to 92)

[189] (2010) 14 SCC 253 (paras 22, 23 and 26)

[190] (2009) 7 SCC 561 (paras 113 to 115 and 165 to 170)

[191] (2000) 8 SCC 606 (para 19 to 22)

[192] (supra at 124, paras 21, 21.1., 21.6 and 22)

[193] (2013) 4 SCC 575 (paras 31 and 32)

[194] (2018) 5 SCC 462 (paras 14, 15 and 27)

[195] (supra at 58, paras 105 to 111)

[196] (2004) 9 SCC 362 (paras 19 and 20)

[197] (supra at 52, paras 13 to 16)

[198] 2013 SCC OnLine NGT 40 (paras 17 to 21 and 39)

[199] 198 US 45 (1905)

[200] 285 US 262 (1932)

[201] 300 US 379 (1937)

[202] 304 US 144 (1938)

[203] 335 US 538 (1949)

[204] 372 US 726 (1963)

[205] AIR 1963 SC 1295

[206] AIR 1967 SC 1836

[207] 338 US 25 (1949)

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[208] (1970) 1 SCC 248

[209] (1978) 1 SCC 248 : AIR 1978 SC 597

[210] (1980) 2 SCC 684

[211] (1996) 3 SCC 709

[212] (2014) 9 SCC 737

[213] (supra at 100)

[214] (supra at 79)

[215] (2019) 4 SCC 17

[216] (1973) 4 SCC 225 (paras 634, 1436, 1437 and 1442)

[217] (1992) 2 SCC 343

[218] (2004) 5 SCC 26 (para 30)

[219] (supra at 30)

[220] (1991) 1 SCC 401 (paras 11 to 14)

[221] (2015) 4 SCC 544 (paras 42 and 44)

[222] (1999) 3 SCC 422 (paras 31 and 32)

[223] AIR 1964 SC 358 (paras 7 and 8)

[224] (2017) 11 SCC 601 (paras 85, 88 and 89)

[225] AIR 1967 SC 1074 (para 7)

[226] 1977 SCC OnLine AP 271 (paras 23, 24, 28 and 31)

[227] 2016 SCC OnLine Mad 8463 (paras 141, 142, 144 and 152)

[228] [1972] 1 WLR 1245 (Chancery Division)

[229] Constituent Assembly Debates Vol. I (9.12.1946 - 23.12.1946)

[230] Constituent Assembly Debates Vol. VIII (16.5.1949 - 16.6.1949)

[231] Constituent Assembly Debates Vol. VIII (16.5.1949 - 16.6.1949)

[232] Constituent Assembly Debates Vol. XI (14.11.1949 - 26.11.1949)

[233] Constituent Assembly Debates Vol. IX (30.7.1949 - 18.9.1949)

[234] worldjusticeproject.org

[235] T.R.S. Allan, Constitutional Justice, Oxford University Press (Edn. 2001) pg. 1

[236] Duke Law Journal, Vol. 1977, No. 2, Eighth Annual Administrative Law Issue (May, 1977), pp. 453-488

[237] 426 US 341 (1976)

[238] 416 US 134 (1974)

[239] 408 US 564 (1972)

[240] (supra at 239)

[241] Duke Law Journal, Vol. 1977, No. 2, Eighth Annual Administrative Law Issue (May, 1977), pg. 454

[242] Constituent Assembly Debates Vol. IX (30.7.1949 - 18.9.1949)

[243] Constituent Assembly Debates Vol. VII (4.11.1948 - 8.1.1949)

[244] Constituent Assembly Debates Vol. VII (4.11.1948 - 8.1.1949)

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[245] (supra at 79)

[246] (supra at 209)

[247] (1983) 2 SCC 277

[248] (supra at 128)

[249] (supra at 128)

[250] (2016) 2 SCC 445

[251] (supra at 79)

[252] [1982] 1 WLR 1155

[253] The Nature of the Judicial Process, Benjamin Cardozo, New Haven : Yale University Press, 13th Edn. 1946 pg. 141

[254] (supra at 188)

[255] (supra at 181)

[256] (1994) 6 SCC 651

[257] (supra at 181)

[258] (supra at 188)

[259] (supra at 184)

[260] 354 US 457 (1957)

[261] (supra at 168)

[262] (supra at 169)

[263] Black's Law Dictionary, 11th Edition (Page 726)

[264] [see : *Joseph Antony* (supra) - para 14 and *State of M.P.* v. *Narmada Bachao Andolan* (supra) - paras 36 and 37]

[265] published in 1972 at Bombay, pp. 24-25

[266] (supra at 158)

[267] (supra at 159)

[268] (supra at 101)

[269] (supra at 132)

[270] (supra at 133)

[271] (supra at 134)

[272] (supra at 139)

[273] (supra at 132)

[274] (supra at 135)

[275] E Barendt, An Introduction to Constitutional Law, (Clarendon Press, Oxford 1998), pg. 6

[276] The Quest for Constitutionalism in UK Public Law Discourse, Jo Eric Khushal Murkens, Oxford Journal of Legal Studies, Vol. 29, pg. 446

[277] (supra at 130)

[278] For short, "the 1861 Act"

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[279] Parliamentary Democracy in India (Ist Edn., 1987), pg. 5

[280] For short, "the 1892 Act"

[281] Parliamentary Democracy in India (Ist Edn., 1987), pg. 21

[282] W.H. Morris Jones, Parliament in India (Philadelphia : University of California, 1957), pg. 83

[283] For short, "the 1909 Act"

[284] For short, "the 1919 Act"

[285] For short, "the 1935 Act"

[286] Parliamentary Democracy in India, V. Bhaskara Rao, B. Venkateswarlu, 1987, pg. 16

[287] Constituent Assembly Debates Vol. IV (14.7.1947 - 31.7.1947)

[288] Constituent Assembly Debates Vol. XI (14.11.1949 - 26.11.1949)

[289] (2010) 12 SCC 1

[290] (2010) 7 SCC 202

[291] (1978) 1 SCC 405

[292] Such as : (1) The Panchayats (Extension to the Scheduled Areas) Act, 1996; (2) Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; (3) Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; (4) Airports Economic Regulatory Authority of India Act, 2008; (5) Environmental Impact Assessment Notification, 2006; (6) The Insolvency and Bankruptcy Code, 2016; (7) General Clauses Act, 1897; and (8) Forest Rights Act, 2006.

[293] 2006 (4) BCLR 462 (South African Constitutional Court)

[294] Constitutionalism and Democracy - Constitutions, Constitutionalism, and Democracy, Walter F. Murphy, Oxford University Press, pg. 4

[295] Constitutionalism and Democracy, Transitions in the Contemporary World, Oxford University Press, 1993

[296] (supra at 292)

[297] The Works of Thomas Jefferson, Federal Edition Vol. 11 (Correspondence and Papers 1808-1816), pp. 298

[298] (2019) 2 SCC 505

[299] (supra at 80)

[300] (supra at 82)

[301] (supra at 80)

[302] (supra at 82)

[303] (supra at 80)

[304] (supra at 167)

[305] 1981 Supp SCC 87 : AIR 1982 SC 149

[306] (1993) 4 SCC 119

[307] (2020) 5 SCC 481

[308] For short, "the 2005 Act"

[309] (2013) 15 SCC 732

[310] (2019) 3 Scale 447

[311] 1994 Supp (1) SCC 191 : AIR 1993 SC 1267

[312] Layout Plan means a Plan indicating configuration and sizes of all Use Premises. Each Use Zone may have one

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or more than one Layout Plan depending upon the extensiveness of the area under the specific Use Zones and vice-versa.

[313] For short, "1959 Rules"

[314] For short, "1966 Rules"

[315] (supra at 95)

[316] For short, "the 1966 Act"

[317] (supra at 95)

[318] (2011) 12 SCC 154

[319] (supra at 162)

[320] New Delhi Zone

[321] Civil Line Zone

[322] (2015) 15 SCC 1

[323] AIR 1967 SC 997

[324] (supra at 17)

[325] 2020 SCC OnLine Del 458 (paras 30 and 33)

[326] (supra at 220)

[327] (supra at 220)

[328] (supra at 148)

[329] (supra at 147)

[330] (1996) 3 SCC 364

[331] (supra at 150)

[332] (2007) 13 SCC 352

[333] (supra at 153)

[334] (supra at 154)

[335] (supra at 17)

[336] (supra at 22)

[337] (supra at 23)

[338] (supra at 24)

[339] (supra at 20)

[340] (supra at 17)

[341] (1976) 2 SCC 953

[342] (2006) 10 SCC 645

[343] (supra at 22)

[344] (supra at 23)

[345] (supra at 20)

[346] (supra at 24)

[347] (supra at 24)

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[348] (supra at 163)

[349] (supra at 163)

[350] (1989) 2 All ER 609

[351] Administrative Law, 5th Edn., Thomson Sweet and Maxwell, pg. 440

[352] [1998] COD 134 (QBD)

[353] (supra at 46, paras 22 and 23)

[354] (supra at 165)

[355] (supra at 166)

[356] (1999) 4 SCC 727

[357] (1993) 3 SCC 499

[358] (2006) 8 SCC 381

[359] For short, "2016 Byelaws"

[360] "Heritage building" means and includes any building of one or more premises or any part thereof and/or structure and/or artifact which requires conservation and/or preservation for historical and/or environmental and/or architectural and/or artisanary and/or aesthetic and/or cultural and/or environmental and/or ecological purpose **and includes such portion of land adjoining such building or part thereof as may be required for fencing or covering or in any manner preserving the historical and/or architectural and/or aesthetic and/or cultural value of such building**.

[361] For short, "EIA Report"

[362] 1980 Supp SCC 559

[363] (2003) 7 SCC 1

[364] (2008) 9 SCC 552

[365] (supra at 363)

[366] Dictionary of Environment & Ecology, Bloomsbury, P.H. Collin, 5th Edn., page 116

[367] Dictionary of Architecture and Construction, McGraw-Hill, Cyril M. Harris, 4th edn, page 150

[368] For short, "EMP"

[369] (supra at 32)

[370] (supra at 32)

[371] (supra at 32)

[372] For short, "2010 Act"

[373] (supra at 32)

[374] International Law and Sustainable Development - Principles and Practice, Edn. 2004, pg. 354

[375] International Law and Sustainable Development - Principles and Practice, Edn. 2004, pg. 354

[376] D.C. Circuit Judicial Conference, Environmental Protection : Law and Policy, 2nd Edn., pg. 122

[377] 426 US 941 (1977) : 541 F.2d 1

[378] [See : *G. Sundarrajan* (supra) - paras 209 and 212; *University of Mysore* (supra) - para 12; *Basavaiah (Dr.)* (supra) - paras 21 and 38; and *K.T. Plantation* (supra)]

[379] For short, "QCBS"

[380] For short, "1963 Act"

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[381] (2012) 8 SCC 216

[382] (supra at 380)

[383] (supra at 190)

[384] (2002) 2 SCC 333

[385] (supra at 132)

[386] For short, "Manual"

[387] Prospect : Public Trust Doctrine, Landscape Architecture Magazine, May/June, 1986, Vol. 76, pg. 132

[388] Charting the Boundaries of Hawaii's Extensive Public Trust Doctrine Post-Waiahole Ditch, Ana Ching, Page 2

[389] (supra at 88)

[390] Prospect : Public Trust Doctrine, Landscape Architecture Magazine, May/June, 1986, Vol. 76, pg. 132

[391] (supra at 87)

[392] (supra at 87)

[393] (supra at 132)

[394] (supra at 256)

[395] (2018) 7 SCC 1

[396] As restated in *Dr. Ashwani Kumar* (supra at 167) - paras 8 to 19, 22 to 37, 43 and 44.

[1] *Associated Provincial Picture Houses* v. *Wednesbury Corporation* (1947) 2 All ER 680 (CA)

[2] *All India Recruitment Board* v. *K. Shyam Kumar*, (2010) 6 SCC 614

[3] The Nature of Reasonableness Review (by Paul Craig)

[4] (2020) 3 SCC 637

[5] (2016) 7 SCC 353

[6] Proportionality : Constitutional Rights and its Limitations, Cambridge University Press (2012)

[7] 1986 1 SCR 103

[8] (2019) 1 SCC 1

[9] (1974) 4 SCC 98

[10] 1951 SCC 568 : AIR 1951 SC 332

[11] (1985) 1 SCC 641

[12] (1632) 2 All ER 787

[13] 1898, Divisional Court

[14] (2006) 4 SCC 327

[15] (2006) 12 SCC 583

[16] (1987) 2 SCC 720

[17] (2004) 10 SCC 796

[18] (1988) 4 SCC 59

[19] See - *Rayalaseema Paper Mills Limited* v. *Government of A.P.*, (2003) 1 SCC 341

[20] (2016) 7 SCC 703

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[21] (1975) 4 SCC 428

[22] (1995) 2 SCC 161

[23] (1988) 4 SCC 592

[24] (2004) 2 SCC 476

[25] (2011) 8 SCC 497

[26] AIR 1965 SC 895

[27] (1976) 2 SCC 953

[28] AIR 1982 Bom 284

[29] (1979) 1 SCC 137

[30] (2014) UKSC 56

[31] (1985) 84 LGR 168

[32] (2012) EWHC 287

[33] [2001] Q.B. 213 : [2000] 2 WLR 622

[34] (2009) 4 SCC 299 (see paragraph 39)

[35] (2009) 4 SCC 590 (see paragraph 42)

[36] (2019) 15 SCC 401

[37] (2019) 12 SCC 720

[38] (2012) 2 SCC 232

[39] (2015) 10 SCC 400

[40] (1990) 2 SCC 334

[41] (1991) 1 SCC 401

[42] AIR 1957 SC 912

[43] AIR 1917 PC 142

[44] AIR 1961 SC 751 (at page 765)

[45] Mandatory & Directory Provisions, Principles of Statutory Interpretation, Justice G.P. Singh, 14th Edition, page 430.

[46] De Smith's Judicial Review, 8th Edition, page 274

[47] [1986] 1 WLR 1 (at pg.6)

[48] 2006 (12) BCLR 1399

[49] See paragraphs 10 and 23 of this judgment.

[50] With reference to Olson 7th implication, distribution collision … reduce the rate of growth. 'The Rise and Decline of Nations' and subsequent studies.

[51] AIR 1967 SC 997

[52] AIR 1957 SC 676

[53] (1991) 2 SCC 604

[54] Appeal No. 3860 of 2020 decided on 1st December 2020

[55] (2008) EWCA Civ 755

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[56] 2009 EWC Civ 1029

[57] 2010 EWHC Civ 1256

[58] 2012 EWHC 287

[59] AIR 1936 PC 253

[60] (2016) 9 SCC 20

[61] (2019) 3 SCC 224

[62] (2019) 5 SCC 480

[63] (2019) 15 SCC 401

[64] AIR 1955 SC 271

[65] (1990) 4 SCC 594 : AIR 1990 SC 1984

[66] (1976) 2 SCC 981

[67] (2009) 4 SCC 240

[68] AIR 1967 SC 1435

[69] Phillips Dodge Corporation

[70] John P. Dunlop

[71] Securities and Exchange Commission

[72] (2004) 1 SCC 547

[73] (2019) 15 SCC 401

[74] 2013 SCC OnLine NGT 85

[75] (2018) 6 SCC 1

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2023 SCC OnLine NGT 4874

In the National Green Tribunal[†]

(BEFORE B. AMIT STHALEKAR, MEMBER (JUDICIAL) AND DR. ARUN KUMAR VERMA, EXPERT MEMBER)

Prafulla Samantray … Appellant(s);

Versus

Union of India, Ministry of Environment, Forests & Climate Change, Through its Secretary, Indira Paryavaran Bhawan, Jorbagh Road, Aligunj and Others … Respondent(s).

Appeal No. 02/2021/EZ (I.A. No. 23/2021/EZ)

Decided on September 4, 2023, [Reserved On:— September 21st, 2023]

Advocates who appeared in this case :

Counsel for Appellant(s):

Mr. Kaustav Dhar, Advocate

Counsel For Respondent(s): Mr. Soumitra Mukherjee, Advocate a/w

Ms. Anamika Pandey, Advocate for R-1,

Mr. Shakti Prasad Panda, AGA for R-2,

Ms. Papiya Banerjee Bihani, Advocate for R-3,

Mr. Swarajit Dey, Advocate a/w Ms. Riddhi Jain, Advocate for R-4,

The Judgment of the Court was delivered by

B. AMIT STHALEKAR, MEMBER (JUDICIAL):— Heard the learned Counsel for the parties and perused the documents on record.

2. The Appellant in the present Appeal is seeking quashing of the Environmental Clearance dated 02.02.2021 granted by the Ministry of Environment, Forests and Climate Change to M/s Neyveli Lignite Corporation India Limited (NLCIL) for its 3×800 MW Thermal Power Plant in the area of Talaibira which is part of the IB Valley in Jharsuguda District of Odisha.

3. The contention of the Appellant is that the Environmental Impact Assessment ('EIA' for short) was made but various factors have not been taken into consideration and the Appellant has highlighted the inadequacies given in the Report of the Sub-Committee constituted by the Expert Appraisal Committee ('EAC' for short) which, according to the Appellant, was not considered by the EAC while granting the Environmental Clearance.

4. The Appellant has further alleged that the Thermal Plant is being set-up in a 'Critically Polluted Area' and impact thereof on ambient air quality, water bodies, land health, etc., have not been well studied in the EIA report.

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5. Briefly stated the facts of the present case as mentioned in para 5 of the Memo of Appeal, read as under:—

"*A. On 05.09.2017 an Online Application for grant of ToR was submitted by the Project Proponent and the matter was taken up on 25th September 201 7 for grant of ToR in the 10th meeting of the Re-Constituted Expert Appraisal Committee (EAC). Considering the environmental sensitivity and location of the project, the committee deferred the project for making a site visit by a Sub-Committee consisting of 4 members which shall visit the project site.*

B. On 04th November, 2017 the Sub-Committee visited the site and submitted its Report in the 13th meeting of the Re-constituted Expert Appraisal Committee (EAC) held on 28th November, 201 7. The EAC recommended the grant of ToR subject to submission of revised layout along with following additional conditions:—

(i) All the recommendations made in the site visit of the Sub-Committee shall be followed

(ii) The proposed power plant area shall be reduced and the Raw Water Reservoir area be shifted near to the existing water bodies. Re-alignment of proposed power plant is to be done and the revised map is to be submitted.

(iii) Ficus species to be raised in and around temples.

C. Public hearing for the project was conducted on 13.11.2019 at Jharsuguda and on 10.01.2020 at Sambhalpur, Odisha, after which the final EIA Report was submitted in January, 2020.

D. On 10th April, 2020 the 39th meeting of the Re-Constituted Expert Appraisal Committee (EAC) was held for considering the project for grant of Environmental Clearance. as the EIA Report was found lacking in several aspects the Project Proponent was directed to revise the EIA Report according to the observations of the EAC.

E. On 1st May, 2020 ADS was sought and reply was submitted by the Project Proponent on 19th June, 2020.

F. On 19th June, 2020, Revised EIA Report was submitted by the Project Proponent.

G. On 28.07.2020 in the 1st meeting of the Re-Constituted Expert Appraisal Committee (EAC) held for considering the project for grant of Environmental Clearance it was noted by the EAC that several recommendations made by the Sub-Committee had not been addressed and the proposal was deferred for seeking further clarifications.

H. On 9th August, 2020, ADS was sought by EAC and reply was submitted by the Project Proponent on 4th November, 2020.

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I. On 17th November, 2020, in the 4th meeting of the Re-Constituted Expert Appraisal Committee (EAC) held for considering the project for grant of Environmental Clearance the project was recommended for grant of Environmental Clearance.

J. On 02nd February, 2021, Environmental Clearance was granted to the Project Proponent for establishing the 3×800 MW NLC Talabira Thermal Power Plant."

6. During the course of the hearing, following issues/points have been raised and argued by the learned Counsel for the Appellant:—

(I) Lack of Cumulative Impact Assessment;

(II) Social Impact Study has not been done;

(III) False Air Quality Baseline considered for Air Modeling;

(IV) Health Study has not been done; and

(V) Public Hearing has not been carried out,

7. The State Pollution Control, Odisha, Respondent No. 3, has filed affidavit dated 27.08.2021, stating therein that as per the provisions of the EI A Notification, 2006, the role of the State Pollution Control Board is to facilitate the conduct of public hearing and forward the proceedings of the Public Hearing to the concerned regulatory authority for consideration of grant of Environmental Clearance. It is stated that public hearing for Jharsuguda District was held on 13.11.2019 and the proceedings of the public hearing were forwarded to the MoEF&CC, Government of India, vide State Board's letter dated 05.12.2019. Public Hearing for Sambalpur District was held on 10.01.2020 and the proceedings thereof were also forwarded to the MoEF&CC, Government of India, vide State Board's letter dated 01.02.2020.

8. The Respondent No. 2, Additional Secretary, Forest, Environment & Climate Change Department, Government of Odisha, has filed affidavit dated 23.12.2021, stating therein that the Project in question does not come under the purview of the State Government and the State Government has no role to play in the matter.

9. Counter-affidavit dated 13.05.2022 has been filed by the Respondent No. 1, Ministry of Environment, Forests and Climate Change.

10. Counter-affidavit dated 17.05.2022 has been filed by the Respondent No. 4, M/s NLC India Limited.

11. Additional affidavit dated 05.12.2022 has been filed by the Appellant.

12. Final EIA Report, January 2020, has filed by the Appellant.

13. Additional affidavit dated 11.07.2023 has been filed by the Appellant.

14. Affidavit in reply dated 27.07.2023 has been filed by the Respondent No. 4, M/s NLC India Limited.

15. The case of the Respondent No. 4, Project Proponent, is that the Project in question is being implemented to supply power to the States in

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India being States of Odisha, Tamil Nadu, Kerala and Pondicherry. It is stated that the Respondent No. 4 has been granted Environmental Clearance on 02.02.2021 for operating 3×800 MW Thermal Power Plant. The Project site is at Kumbhari and Tareikela Villages in District-Jharsuguda and Thelkoloi Village in District-Sambalpur, Odisha.

16. In the affidavit of the Project Proponent it is stated that the Central Pollution Control Board has carried out the physical study of the industrial clusters in the country with reference to the Comprehensive Environmental Pollution Index ('CEPI' for short) which includes weightages on the nature of pollutants, ambient pollutant concentrations, receptors (number of people affected) and additional high risk element and on the basis of the study jointly carried out by the Central Pollution Control Board and the State Pollution Control Boards, industrial clusters were notified as 'Polluted Industrial Areas' (PIAs). These PIAs were then ranked as 'Critically Polluted Area' (CPA), 'Severely Polluted Area' (SPA) and 'Other Polluted Area' (OPA), depending upon the CEPI scores of each of these industrial areas. As per the CEPI score:—

(I) 'Critically Polluted Areas' (CPAs) are those areas crossing CEPI score 70;

(II) 'Severely Polluted Areas' (SPAs) were given the index between 60 to 70; and

(III) 'Other Polluted Areas' (OPAs) were given >60. It is stated that as per the study, the Central Pollution Control Board identified 100 polluted industrial clusters which includes:—*(i) 38 CPAs, (ii) 31 SPAs, and (iii) 31 OPAs.*

17. The case of the Respondent No. 4 is that as per the CEPI index, Jharsuguda is 37.20 and, therefore, the Jharsuguda falls in the 'Other Polluted Areas' (OPAs). It is also stated that since the Sambalpur is not included in list of 100 industrial clusters, therefore, Sambalpur is not a notified 'Polluted Industrial Area' PI A.

18. The contention of the Appellant is that Environment Impact Assessment ('EIA' for short) has failed to address the issues relating to compliance of ToR i.e., Terms of Reference. The specific contention of the learned Counsel for the Appellant is that the recommendations of the Sub-Committee dated 04.11.2017 had not been complied with by the EIA. The recommendations of the Sub-Committee and the contention of the Appellant thereto read as under:—

S. No.	***Sub-Committee recommendation***	***Contentions of the Appellant***
1	*In the vicinity of the proposed power plant, cluster of power plants, Integrated steel plants, Alumina Plants, Open cast Coal*	*No data has been used in modeling for air emission from all the point sources.*

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	Mines etc existing, cumulative pollution level to be assessed by considering all the point sources including the proposed TPS.	
2	*Due to construction of boundary wall after leaving 500 m width from the HFL, the villagers shall not have direct access to their agricultural land. Therefore an approach along the boundary wall of power plant should be constructed so that villages can have easy access to their agricultural fields.*	*No plan has been submitted to show said access road for villagers. Moreover, in the NLC reply dated 4th November it is mentioned that they will acquire additional land for developing green belt between 250 meter line and the river bank to compensate shortage in*
3	*As per Hon'ble Supreme Court, no construction within 500m width from the HFL shall be proposed. The area requiring for construction of over bridges should be included in the proposed project. and accordingly necessary permission to be taken from the competent authorities.*	*Issues with regard to maintaining a no construction zone within 500 meter width of river HFL is not complied.*
4	*The course of Nala exists in the proposed Ash pond areas should not be diverted and necessary protection measures such as proper lining at both banks, etc. to be provided. Ash pond area requires to be realigned so that the village shall remain outside of the boundary of the propose ash pond area and fresh lay out map, in this regard, to be submitted.*	*i) At few places the distance between proposed ash dyke and river Bedan is less than 500 m. revised area plan superimposed on google earth is still showing habitation on northern and southern part of the proposed ash dyke. Moreover, the edge of ash dyke at few places are less than 500 m which shown in red line Annexure-A8. Moreover, superimposed revised layout plan on Google earth is still showing that about 70% area of the proposed ash pond will get inundated in 50 and 100 years of return flood scenario which is annexed as Annexure -A9.*

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		ii) The argument submitted by the NLC about 100% fly ash utilization is not sustainable as they have not undertaken any demand supply gap analysis report to claim that 100% of the generated fly ash will be utilized within 100 km of the proposed project site. *iii) No plan has been submitted for the disposal of fly ash in the mine void of captive Talabira mine.*
5	*Green Belt between the village and the proposed ash pond will be developed. Fresh water available in the existing water bodies in the proposed project should be reused for construction work to minimize requirement of fresh water. No ground water shall be drawn for construction work.*	*No plan has been submitted in the revised lay out map regarding development of green belt between village and the proposed ash pond.*
6	*The course of Nala exists in the proposed ash pond areas should not be diverted any necessary protection measures such as proper lining at both banks, etc. to be provided.*	*NIH report identified two options for the nallah, and it did not express a preference for either option. Option one was to leave the nallah undisturbed and to build separate fly ash and bottom ash impoundments to the north and south of the nallah, respective* ***NLC is destroying a functioning nallah in order to gain a relatively tiny amount of additional ash disposal capacity, contrary to the ToR and sub-committee recommendation.***
		NLC's motive for ignoring the sub-committee and the ToR recommendations is stated in their response above; they

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		want to maximize ash basin storage capacity at the expense of destroying a functioning

19. We may, therefore, examine each of the issues raised by the Sub-Committee as well as the contention of the Appellant and also examine the question relating to compliance/non-compliance of the recommendations of the Sub-Committee.

20. Item No. 1 of the Sub-Committee recommendation that '*in the vicinity of the proposed power plant, cluster of power plants, Integrated steel plants, Alumina plants, Open cast Coal Mines etc. existing, cumulative pollution level to be assessed by considering all the point sources including the proposed TPS*', the contention of the Appellant is that no data has been given in the modeling for air emission from all the point sources.

21. We find that the recommendation of the Sub-Committee in Item No. 1 has been specifically dealt with in Chapter 4 of the EIA Report. The cumulative pollution level assessed considering the industries in the vicinity and the results are given in section 4.4 of the EIA Report. The EIA Report has been prepared by the ABC Techno Labs India Private Limited, an ISO certified company, accredited by NABL, NABET and MoEF, and the study period is January-March, 2018. The said Final EIA Report has been filed with the counter-affidavit of the Respondent No. 4 dated 17.05.2022.

22. With regard to the Cumulative Impact Study of Pollution, Section 4.4 of the Final EIA Report deals with "**Air Quality Im pacts**":—

A. In the Report it is noted that apart from various sources of air emission during construction phase including site clearing, demolition activities, vehicle movement, material storages and handling and operation of construction equipment result in temporary degradation of air quality. However, it is noted that Particulate Matter (PM10 & PM 2.5) rise in ambient air will be coarse and will settle within a short distance close to the construction site. Hence, dust and other emissions are unlikely to spread sufficiently to affect the surrounding villages of the project site.

B. It is also noted in the Report that emission from various construction machinery fuelled by diesel and from mobile source will be in the form of CO, NOx and SO2. It is also noted that impact on air quality will not be significant as the pollutant emission activities (point and area sources) will be limited within the project boundary and the activities will be short term.

C. Mitigation Measures have been suggested in Section 4.4.1 of the Report.

23. Section 4.4.2 of the Final EI A Report deals with "**Noise Quality Impacts**":—

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A. The Report notes that the general noise levels during construction phase such as due to working of heavy earth moving equipment and machinery installation may sometimes go upto 90 dB(A) at the work sites in the day time. However, it is noted that noise level will attenuate fast with increase in distance from noise source. Impacts due to noise during construction activities will be minimal since the settlements are of scattered nature.

B. Mitigation Measures have been suggested in Section 4.4.3 of the Report.

24. Section 4.4.4 of the Final EI A Report deals with "**Water Quality Impacts**":—

A. The Report notes that during construction phase of the proposed Project water will be used for construction of civil structures, dust suppression and drinking purpose. The construction water requirement of the Project will be met from Bedhan River through Barge mounted temporary pumping system. It is also noted that the likely impacts on water quality during the construction phase may mainly arise from inappropriate disposal of construction waste and wastewater generated from the construction sites. It is also noted that the domestic water requirement during construction phase will be limited to drinking water and for sanitation and all the domestic wastewater generated from the site will be sent to septic tanks followed by soak pits so that it shall not contaminate the ground water in the nearby areas.

B. The Report also notes that during the monsoon season there are chances of wash out of mud and debris in the run-offs. This may result in suspended solids and turbidity in run offs water during the monsoon period but this impact shall be lasting only for the duration of the construction period. Efforts be made to reduce the suspended solids content of storm water run-offs by routing the storm water drains through settling tanks/catch pits.

C. The Report further notes that liquid effluents generated shall be collected and treated/recycled and an independent plant effluent drainage system would be constructed to ensure that plant effluents do not mix with storm water drainage. The Report also notes that it is anticipated that there will be no significant impact on the surface water or ground water hydrology and water use of the area. Rain water harvesting will be carried out.

D. Mitigation Measures have been suggested in Section 4.4.4.1 of the Report.

25. Section 4.4.5 of the Final EI A Report deals with "**Land Use and Land Environment Impacts**":—

A. The Report notes that the proposed Project will be housed at two Villages - Taraikela and Kumbhari. To optimize cutting and filling

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quantities, the finished floor level of plant area has been kept at RL (+) 203m. The formation level of western side green belt area is kept at 202.5m and eastern side green belt area at 202.0m.

B. Mitigation Measures have been suggested in Sections 4.4.6 and 4.4.6.1 of the Report.

26. Section 4.4.7 of the Final EI A Report deals with "**Solid Waste Generation (Hazardous and Non-Hazardous) and Disposal Impacts**:—"

A. The Report notes that during construction phase, solid waste such as - excavated soil, debris, stone, bricks, sand, metal waste, polythene sheets, etc. will be generated which may contaminate soil at plant site temporarily and will be restricted to a small area. The Report also mentions that procedures for maintenance of equipment will ensure that this risk is minimized and clean up response is rapid, if any spill occurs. Hence, waste generated will be disposed of by selling to appropriate vendors as per Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008, and amendments thereto.

B. The Report also notes that the Municipal Solid Waste generated by the construction work force will be minimal as most of them will belong to local areas and no construction camps are proposed within the Project site. The waste so generated will be collected, segregated and will be sent to the solid waste disposal site/land-fill allocated by the local administrative authorities.

C. Mitigation Measures have been suggested in Section 4.4.8 of the Report.

27. Section 4.4.9 of the Final EI A Report deals with "**Socio-Economic Environment Impacts**":—

The Report notes that construction will involve generation of a lot of employment, both direct and indirect, which will affect the economy of the study area.

28. Section 4.4.10 of the Final EIA Report deals with "**Hydrology and Drainage**":—

The Report notes that natural drainage system will be preserved and not altered due to the proposed Project. Storm water will be collected through storm water drains and will be stored in water bodies, planned to be distributed equally in the plant premises so that maximum rainwater will be recharged back to aquifer. The Project development will not alter any water body or pond, therefore, no impact is anticipated on the hydrology of the study area.

29. Section 4.4.11 of the Final EIA Report deals with "**Terrestrial Ecology Impacts**:—"

A. The Report notes that the activities of proposed Project will be confined to the Project site within the boundary of existing plant premises. The site is grassland with no tree cover and does not come under any

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forestry and agricultural activities. There are few shrubs along with seasonal grasses which plant species are more vigorously disturbed in the buffer zone and, therefore, the present activities will not cause any significant loss of any important flora.

B. Mitigation Measures have been suggested in Section 4.4.12 of the Report.

30. Section 4.5 of the Final EIA Report deals with "**Potential Impacts during Operation Phase**":—

The Report notes that the potential impacts during the operation phase have been identified within the project site as well as the study area of 10 km radial around the proposed project such as:—

- *Air Environment*
- *Water Environment*
- *Land Environment*
- *Noise Environment*
- *Socio-economic Environment*

31. Section 4.5.1 of the Final EI A Report deals with "**Air Environment Impacts**":—

A. The Report mentions that the pre-project (baseline) ambient air quality status in the study area during winter season of 2018 indicates that all the criteria pollutants are well within the prescribed NAAQS for industrial, residential, rural and other areas. The sources of emission during operation phase have been identified as from:—

- *TP Plant Stacks*
- *Emergency Power Supply System-DG sets*
- *Coal Handling and Stockpiles.*

B. The Report further mentions that fugitive dust will be generated from handling and feeding of raw materials which is sought to be controlled by water sprinkling as well as use of bag filter. It is also mentioned that adequate stack height will be provided for better dispersion of flue gas as per the guidelines of the CPCB/CECB and in addition, adequate green belt will be developed by the Project Proponent for further control of air pollution due to fugitive emissions at the site.

32. Section 4.5.3 of the Final EI A Report deals with "**Meteorological Data**":—

A. The Report notes that the Meteorological data collected from 1st January to 31st March 2018 has been given in Chapter-3 which indicates that the predominant wind direction is blowing from North-East to South-West. Wind speed, wind direction and temperature have been processed to extract the 8-hourly mean meteorological data for application in AERMOD.

B. Summary of Predicted Ground Level Concentrations has been dealt

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with through tables showing 24-hours-PM (Scenario-1), 24-hours-SO2 (Scenaroi-1), 24-hours-NO2 (Scenario-1), 24-hours-PM (Scenario-2), 24-hours-SO2 (Scenario-2) and 24-hours-NO2 (Scenario-2) in Section 4.5.6 of the Report.

C. Table No. 4 to 10 shows resultant concentrations after implementation of proposed project along with the existing industries in the vicinity (cumulative impact) which read as under:—

Sl. No.	Pollutant	Maximum Baseline Concentration, $\mu g/m^3$	Predicted Incremental Increase GLC $\mu g/m^3$	Resultant Maximum Concentration $\mu g/m^3$	NAAQs Limits $\mu g/m^3$
1.	Particulate Matter	79.60	1.8613	81.4613	100
2.	Sulphur Dioxide	11.70	8.4058	20.1058	80
3.	Nitrogen Dioxide	24.90	8.1125	33.0125	80

33. Section 4.6 of the Final EI A Report deals with "**Discussion**":—

A. The Report notes that the ambient air quality values were reported to be 11.70, 24.90 and 79.60 $\mu g/m^3$ for SO2, NOx and PM respectively. The cumulative maximum worst case incremental GLCs of the study area were recorded to be 8.40 $\mu g/m^3$ for SO2, 8.11 $\mu g/m^3$ for NOx and 1.86 $\mu g/m^3$ for PM. The predicted maximum worst case background concentrations are expected to be 20.10 $\mu g/m^3$ for SO2, 33.1 $\mu g/m^3$ for NOx and 81.46 $\mu g/m^3$ for PM within 10 km radius of the study area.

B. Mitigation Measures have been suggested in Section 4.6.1 of the Report.

34. Section 4.7 of the Final EIA Report deals with "**Water Environment Impacts**":—

A. The Report notes that the consumptive water requirement for 2400 MW capacity project is estimated as 72 cusecs. The water is proposed to be drawn from Hirakund reservoir at a point near the intake location of M/s Bhushan Steel and Power Ltd., at a distance of about 20 km.

B. Mitigation Measures have been suggested in Section 4.7.1 of the Report.

35. Section 4.8 of the Final EIA Report deals with "**Noise Environment**":—

The Report mentions that stationary sources due to operation of heavy duty machinery at the project site like Compressors, Pumps, Turbines, Boilers etc. Mobile sources corresponding to mainly vehicular traffic for staff mobilization, material transport and fuel transport to project site etc.

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materials loading and unloading at conveyors will also generate some noise.

36. Section 4.10 of the Final EIA Report deals with "**Ecology**":—

Under the heads 'Loss of Species', 'Gaseous Pollution', 'Dust Generation', 'Noise Pollution', 'Congregation of Labour', 'Effluent Discharge', mitigation measures have been given in the Report.

37. Section 4.14 of the Final EIA Report deals with "**Greenbelt Development Programme**":—

The Report notes that the plant area is 602 acres and Reservoir Area is 88 acres. As per CEA norms, one third of plant area needs to be earmarked for green belt which works out to 230 acres of NTTPP, whereas 252 acres of green belt is envisaged. The Report further mentions that the ideal size of green belt shall be between 10 and 50 meter wide and run the length of roads, major structures and open spaces. Species of plants to be planted have been given in Table 4-11 of the Report.

38. Section 4.18 of the Final EIA Report deals with "**Waste Generation**":—

The Report mentions that the waste generated at the project site falls in categories of hazardous and non-hazardous wastes which are to be managed as per the prevailing regulatory norms.

39. Section 4.19 of the Final EI A Report deals with "**Non-Hazardous Waste**":—

A. The Report notes that the solid/semi solid waste envisaged from the proposed Project are spent oils, lubricants and chemicals etc. from the process units and clarifier sludge from raw water treatment plant, oily sludge from wastewater treatment plant as well as biological sludge from sewage treatment plant; coal dust will be generated generally at the conveyor transfer points, coal unloading area and coal stockpile area.

B. The Report further notes that dust suppression/dust extraction facilities will be provided including enclosed galleries.

40. Section 4.20 of the Final EI A Report deals with "**Hazardous Waste**":—

The Report notes that the hazardous waste generated from the Proposed Project will be waste oil and grease drained out of gear boxes and other equipment and the same will be disposed of as per the Hazardous Waste Management Rules to the licensed vendors.

41. Section 4.21 of the Final EI A Report deals with "**Socio-Economic Impacts**":—

A. The Report mentions that the proposed Project will support strategic needs of the communities and villages in the area. The economic point of view is that the Project will generate employment and help people to earn money as well as ability to pay for consumption; the proposed Project will lead to infrastructure development in the area such as -

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road, schools, health facilities, drinking water facilities, market facilities, processing facilities etc.

B. The Report further mentions that in-migration will boost demand for several goods, services, communities and it will create a pressure to improve productivity of natural and human resources in the area.

This also address the Issue Nos. I & II raised by the learned Counsel for the Appellant.

42. Learned Counsel for the Appellant submitted that the AAQ7 Monitoring Station, Jharsuguda, is situated only 1.3 kilometers from the Cox Colony. _

43. The learned Counsel further referred to Annexure-14 (page 177) to the Memo of Appeal and submitted that the National Air Monitoring Programme of 2018 for Jharsuguda shows average concentration of PM10 as being higher than the national standard. Learned Counsel specifically submitted that for Cox Colony PM10 level shows 106 which is higher than the prescribed standard of 100 and submitted that Cox Colony is located only 1.3 kilometers north of the AAQ7 Monitoring Station.

44. The allegation of the Appellant has been refuted by Mr. Swarajit Dey, learned Counsel for the Respondent No. 4, who has referred to Table No. 3-10 (page no. 621 of the paper book) of the EIA Report for Ambient Air Quality Monitoring Locations and submitted that the distance of Cox colony is 1.3 kilometers further to the North of the Monitoring Station AAQ7, which itself is 9.90 kilometers from AAQ1, Project Site, thus, the total distance of Cox Colony from the Project site AAQ1 is 1.3 + 9.90 i.e., 11.2 kilometers which is outside the study area of 10 kilometers. Learned Counsel further referred to the CEPI scores for industrial areas/cluster monitored during 2018 wherein Jharsuguda (Orissa) is shown at Sl. No. 98 and the CEPI score is shown as 37.20. The scores have already been referred to hereinabove and the score of 37.20, therefore, falls under the heading 'Other Polluted Area' and, therefore, we are of the view that in any case the Project Site does not fall within the 'Critically Polluted Area' or 'Severely Polluted Area'.

This also deals with Issue No. III raised by the Appellant during arguments.

45. As regards the Item No. 2 of the Sub-Committee recommendation, namely, that the Project Proponent should construct a boundary of minimum width of 20 meters having alleviation of at least 202 meters Above Mean Sea Level, the same has been dealt with under the heading '6 Conclusions' (page no. 908 of the paper book) in para 9 that construction of embankments on both left and right bank is also analysed for various return period floods. It is suggested that embankment is to be constructed on both banks as construction of embankments only in right bank (main plant area) will not be able to protect the ash pond area. However, instead of creating embankment along the left bank of river, selective protection to only ash dyke can be made.

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46. We find that in Condition No. (viii) of the Environmental Clearance dated 02.02.2021 it is provided that embankment Bund on the banks of the Bhedan river is to be strengthened which is + 1m above the High Flood Level (HFL) limits, so as to prevent flooding. The bund formation shall be developed with a base width of 20 m. In addition, the bund shall also be provided on the other bank of the river to safeguard the ash disposal area. The height of the river bund shall be minimum RL 202 meters. The Project is still at a nascent stage of construction and, therefore, it is premature at this stage to assume that there is violation of Environmental Clearance conditions.

47. Learned Counsel for the Appellant has drawn the attention of the Court to Annexure-A17 (page 216 of the paper book), which is a letter of the Ministry of Environment, Forests and Climate Change dated 19.11.2018 and submitted that directions were given by the MoEF&CC that the Expert Appraisal Committee shall deal with the standard conditions at the time of appraisal of proposal for grant of Environmental Clearance and also with regard to Human Health Environment four directions were given which reads as under:—

1. *Bi-annual Health check-up of all the workers is to be conducted. The study shall take into account of chronic exposure to noise which may lead to adverse effects like-increase in heart rate and blood pressure, hypertension and peripheral vasoconstriction and thus increased peripheral vascular resistance. Similarly, the study shall also assess the health impacts due to air pollution agents.*
2. *Baseline health status within study area shall be assessed and report be prepared. Mitigation measures should be taken to address the endemic diseases.*
3. *Impact of operation of power plant on agricultural crops, large water bodies (as applicable) once in two years by engaging an institute of repute. The study shall also include impact due to heavy metals associated with emission from power plant.*
4. *Sewage Treatment plant shall be provided for domestic wastewater.*

48. We find that these issues have been dealt with in Section 7.9 under the heading "Occupational Safety Management and Surveillance Program" of the Final EI A Report and referring to the provisions of the Factories Act, 1948, the Report notes that the State Government is vested with powers to appoint a competent person to conduct inquiry into the causes of any accident or notifiable diseases. The following measures need to be implemented in the work places to enhance occupational health:—

- *Identify and involve workers in assessing workplace risks*,
- *Assess and consider employees' needs when planning and organizing work*,
- *Provide vehicle, information and training to employees, as well as*

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mechanisms for employee feedback such as a suggestion scheme, Occupational health surveillance and Occupational health audit, to develop a system of

- *creating up to date data base on mortality, and morbidity due to Occupational diseases and use it for performance monitoring of the same and*
- *extending support to the state government for effective enforcement of the health provisions stipulated under section 41F of the Factory Act be equipping them with work environment monitoring technologies.*

49. The Report also mentions that a dedicated occupational health center shall be developed consisting of the following facilities:—

a) A full time doctor may be appointed to monitor the day-to-day occupational health aspects and also to provide medical advice to the workers, employees and residents and residents of the colony,

b) Minimum facilities such as oxygen cylinder for emergency medical use, two bed clean room for first aid applications, first aid kits as per the Factories act,

c) ECG and X-ray facilities, Peak Expiratory flow Meter to check the lung function,

d) As part of the surveillance program, the following minimum medical expansion may be undertaken during the pre-employment phase:—

1. General physical examination and blood pressure,

2. X-Ray of chest & ECG,

3. Sputum examination,

4. Detailed routine blood and urine examination,

5. Audiometry, and

6. Spirometry

e) As part of the routine and annual medical examinations on the persons working in the high noise generating areas, stress areas and dust exposure areas, a comprehensive surveillance program may be adopted.

f) Medical records-A record-keeping system for holding results of medical examinations and reports of systems will be needed as part of the health surveillance scheme. These are confidential records relating to individuals.

g) *As part of the health surveillance programme, workers should be informed of the confidential results of such assessment and if any implications of the findings, such as the likely effects of their continuing to work with vibration.*

Thus, Issue No. IV raised by the learned Counsel for the Appellant has been adequately dealt with in the EIA Report.

50. With regard to Issue No. V raised by the Learned Counsel for the

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Appellant that Public Hearing has not been carried out, we may note that Public Hearing was held on 13.11.2019 at 10:00 AM in Village-Tareikela, infront of Gariadihi up school near Hirma Village of Jharsuguda District, Odisha, and on 10.01.2020 at Khumbhari and Tareikela in the District of Jharsuguda and Thelkoli Village in the District of Sambalpur (for Sambalpur District).

51. A perusal of the minutes of the 1st meeting of the Re-Constituted Expert Appraisal Committee (EAC) on Environmental Impact Assessment (EIA) of Thermal Power Projects held on 28.07.2020 (Annexure-R2, page 334 of the paper book), filed along with the counter-affidavit of the Ministry of Environment, Forests and Climate Change dated 13.05.2022, issue relating to Public Hearing has been dealt with in Section 1.3.3 sub-para (iv) and it is mentioned that the SIA study enumerated a total 512 families from the list given for survey, of which 291 will be displaced as their residential area is going to be acquired, and 221 families will be affected as their land is going to be acquired for setting-up of the proposed industry in five villages. The expected displaced people were residing in Villages - Tareikela, Kumbhari and Gariadihi Kisan Pada (a hamlet of Hirma Village) and the expected affected people were from Village-Tumbekela, Tareikela, Kumbhari and Hirma.

Name of Village	No. of families	No. of displaced families	Percentage	No. of affected families	Percentage
Hirma	124	39	31.5%	85	68.5%
Kumbhari	163	123	75.5%	40	24.5%
Tereikela	136	129	94.9%	7	5.1%
Tumbekela	89	0	0%	89	100%
Total	512	291	62%	221	38%

52. In Section 1.3.3 sub-para (v) it is also mentioned that most of the people in the Project area wanted to vacate their homes provided they would get suitable monetary compensation for their land, houses and immovable assets. According to them, the cost of land is highest in the area so they should be compensated accordingly.

53. In the sub-para (v) it is further mentioned that owners of land near the Bheden river in Kumbhari and Tareikela Villages wanted to part with their land as they will face problem in cultivation. The proposed Project maps show exclusion of those patches of land and they requested that the company should acquire that patch of land for tree plantation or any other purpose.

54. In this view of the matter, we are of the view that since most the residents of the villages who were to be affected by the proposed Project coming-up were willing to give-up their lands provided they would be adequately compensated for the same, in our opinion, not holding a fresh

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Public Hearing after submission of the revised EIA Report would not be fatal to the grant of the Environmental Clearance to the Project.

55. Next referring to Item No. 3 of the Sub-Committee recommendation, namely, that due to construction of boundary wall after leaving 500 meter width from High Flood Line, the villagers shall not have direct access from their agricultural land and, therefore, approach road should be constructed, Mr. Swarajit Dey, learned Counsel for the Project Proponent, has drawn our attention to the Main Plant Area Map filed at page no. 1334 of the paper book, and from the map he has shown that the purple line immediately after the green belt is the road which has been provided for the villagers and in addition, bridges have been constructed over River Bhedan to provide access to the villagers to their agricultural fields. The purple line in the map is marked as 'Peripheral Road' for villages and, therefore, we have no reason to doubt that access road would not be provided for the villagers.

56. Learned Counsel for the Appellant next submitted that no construction within 500 meter width from the High Flood Line shall be proposed as per the directions of the Hon'ble Supreme Court. A perusal of the Map (at page no. 1334 of the paper book), shows that there are no constructions between the area marked in 'white' following the Bhedan river and the road marked in 'purple'. Even otherwise, the township or the Plant itself has not yet been constructed and, therefore, the directions of the Sub-Committee and implementation thereof are all in the future and it would be highly and unfairly presumptive at this stage to believe that the same will not be followed by the Project Proponent.

57. Learned Counsel for the Appellant next submitted Item No. 5 of the Sub-Committee recommendation that construction of Raw Water Reservoir may be shifted towards the existing water pond and space provided for construction of 4^{th} unit of 800 MW may not be kept at the existing proposal as lot of agricultural land is getting affected.

58. Mr. Swarajit Day, learned Counsel for the Project Proponent, in response submitted that the Raw Water Reservoir has been shifted towards the north and the area has been reduced from 126 acres to 88 acres. The Map (at page no. 1334 of the paper book), clearly shows the Raw Water Reservoir area is at a considerable distance from Bhedan river and this area has now been reduced to 88 acres and the area is to the north of the river Bhedan.

59. The next submission of the learned Counsel for the Appellant is with regard to the Item No. 6 of the Sub-Committee recommendation that before any construction is taken up in either of these areas, the transmission lines be shifted.

60. Mr. Swarajit Dey, learned Counsel for the Project Proponent, submitted in this regard that Odisha Power Transmission Corporation Limited (OPTCL) has already been approached to carry out the diversion of

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transmission lines and survey for the same by the OPTCL is under progress and the money for the same has already been deposited with the OPTCL.

61. Learned Counsel for the Appellant has next referred to Item No. 7 of the Sub-Committee recommendation and submitted that the Committee has recommended that Ash Pond Area be re-aligned so that the village shall remain outside the boundary of the proposed ash pond.

62. Mr. Swarajit Dey, Counsel for the Project Proponent has referred to the Map (at page no. 1334 of the paper book) and submitted that the Ash Pond Area has been re-aligned in such a manner that the village remains outside the boundary. This is evident from the Map itself. He further submitted that the nalla requires diversion if original alignment is to be maintained, the dyke has to divide and the ash disposal area gets reduced and as per the drainage study this routing is not recommended. Learned Counsel informs that the second alternative for re-routing along the boundary southwards has been suggested by the NIH, Roorkee, and in any case the ash dyke is not crossing the nalla. The nalla has been shown in the Map in two blue lines just above the 'Emergency Ash Dyke (175 acres)' and the area to the north of the nalla has been crossed out with slanting lines which area is shown to have been omitted and, therefore, it is evident from the Map that the Ash Dyke is not dividing the nalla.

63. Learned Counsel for the Appellant next submitted with regard to the recommendation 8 of the Sub-Committee that green belt be developed between village and proposed ash pond.

64. We find from the Map at page no. 1334 of the paper book that green belt area has been demarcated in green and marked as 'Green Belt' and no ground water has been envisaged. For construction purposes, it is mentioned that fresh water available in the existing water bodies in the proposed Project will be re-used for construction work to the extent possible to avoid or minimize requirement of fresh water.

65. Condition (xii) of the Environmental Condition provides that in terms of MoEF&CC Office Memorandum dated 31.10.2019, Green Belt shall be developed in an area of 40% of the total Project Area instead of 33% as the Project is located near IB Valley Critically Polluted Area and that the additional area is to be acquired for meeting the target of 40% Green Belt of the total Project Area.

66. As we have already noted hereinabove the Project is still at a nascent stage and, therefore, assumption of violation of Environmental Clearance conditions at this stage is wholly premature.

67. Appellant has mentioned that issue of carrying capacity was raised during the public hearing of District Jharsuguda, because 802 emitting major industries were quoted to be located in the area according to Greenpeace and Wetland International South Asia Report. It is alleged that Project Proponent did not respond to the query as to any survey to assess the carrying capacity of the area was undertaken before making proposal for

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establishment of such large industry. Appellant emphasised that matter is of extreme concern since a number of highly polluting and emission related industries, thermal power plants and coal mines are existing within 10 km zone of Talabira-1-TPP. It was further quoted that in Original Application No. 1038/2018, this Hon'ble Tribunal in its order of 10.07.2019 has observed that:—

> *"28….. no industrial activities or expansion be allowed with regards to read and orange category units till the said areas are brought within the prescribed parameters or till carrying capacity of area is assessed and new units or expansion is found viable having regards to the carrying capacity of the and environmental norms….."*

68. The learned counsel for the Project Proponent argued during hearing that all the studies have been conducted in the EIA according to the ToR given by the MOEF & CC. The observation of the Hon'ble Tribunal was with respect to CPA and SPA, whereas the proposed Plant falls within the OPA. Environmental carrying capacity with respect to industries includes multiple factors such as atmospheric environment, land environment, social economy and water environment, and reflects the threshold of supporting capacity for the industries in a region with specific natural resources and ecological environment. Studies with respect to air, water, land, flora, fauna etc. have been made in the EIA which *inter alia* with other results conveys the carrying capacity too. The Project Proponent in his affidavit has annexed the order of the Tribunal dated 10.07.19 in OA 1038/2018 which contains the CEPI Scores for Industrial Areas/Clusters monitored during 2018 and it gives CEPI score of 37.2 for Jharsuguda at serial number 98. The Tribunal has already decided OA 1038 of 2018 by its order dated 22.08.23 and it has been observed that:—

> *"144. Central Statutory Regulators i.e., CPCB in the process of its discharge of statutory obligation of taking steps for identification of the most polluted areas so that immediate steps be taken for remediation thereat. It appears to have realised that human activities, that are part of the evolution of urbanization and industrial development, have led to major pollution related issues. These include categorical impact of residential, industrial and other developmental projects such as power plants, mining etc., that affect the environment and human living conditions. Lack of planning and a basic understanding of the ecology affects its balance leading to pollution of water, air, soil and other natural resources.*
>
> *145. To address the above, CPCB came forward with a lucid cum quantifiable method called CEPI score. The exercise of determination of CEPI score was undertaken and CEPI method was formulated in order to measure, understand and take action on polluters. CEPI bridges perceptive gap between experts, public and Government departments by simplifying complexity of environmental issues. It aims at categorising*

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critically polluted industrial areas based on scientific criteria so as to ascertain various dimensions of pollution. This is a combined framework used to evaluate the impact caused by industrial clusters on the nearby environment as a numerical value. This was made applicable firstly in respect to areas where there is industrial cluster i.e., the area identified for development of industries by providing requisite infrastructure which are called sometimes Economic Zone, Industrial Estate etc.

146. CEPI score, therefore, is nothing but a methodology of quantifying and numerically marking the environmental status of a particular area. In this case, the areas were industrial clusters in the country."

It clearly means that assessment of CEPI score is to know the environmental status of the concerned regions for establishment/operation of industries as well as remedial action plan that can be made if required. Hon'ble Tribunal has also clarified that there was no blanket ban on the establishment of new industries or expansion if it complies environmental norms and additional environmental stress is properly mitigated.

"221……. With regard to confusion created in respect of Red and Orange category, Tribunal clarified in para 10 that if any Red and Orange category unit are viable by not causing pollution, there is no absolute bar in permitting setting of such industries. MoEF&CC can devise an appropriate mechanism to ensure that new legitimate activity or expansion can take place after due precautions are taken in the areas in question by red and orange category units."

Thus, we do not find any strength in this argument that carrying capacity of the area has not been assessed.

69. No further points were argued by the learned Counsel for the Appellant.

70. For reasons aforesaid, we do not find any merit in the present Appeal and the same is accordingly dismissed.

71. I.As. if any, stand disposed of accordingly.

72. There shall be no order as to costs.

———

† Kolkata Bench

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Dear Sir/Ma'am,

Please find attached the judgments that would be additionally relied upon on behalf of Respondent No. 2, M/s Vedanta Ltd.

Thanks and Regards,

Reply all