Kalpana Pal Vs State of West Bengal and Others

Writ Petition No. 3915 (W) of 2010

Court: Calcutta High Court

Date of Decision: Aug. 13, 2010

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 7 Rule 11, Order 9 Rule 9, 9#Constitution of India, 1950 â€" Article 12, 13, 14, 15, 17#Criminal Procedure Code, 1973 (CrPC) â€" Section 107, 116, 125, 144, 144(2)#General Clauses Act, 1897 â€" Section 2(42)#Hindu Adoptions and Maintenance Act, 1956 â€" Section 20#Income Tax Act, 1961 â€" Section 26, 33A#Industrial Disputes Act, 1947 â€" Section 10A#Penal Code, 1860 (IPC) â€" Section 114, 323, 325, 341, 427#Police Act, 1861 â€" Section 20, 23, 25#Police Regulations of Bengal, 1943 â€" Regulation 205, 4#Protection of Human Rights Act, 1993 â€" Section 12, 13, 17, 18, 19#Protection of Women From Domestic Violence Act, 2005 â€" Section 3#Public Premises (Eviction of Unauthorised Occupants) Act, 1971 â€" Section 3#Trade Unions Act, 1926 â€" Section 18

Citation: (2011) 3 CHN 460

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Judgement

Dipankar Datta, J.
One of the fond and cherished moments in a married couple''s life, even though facing adverse circumstances, arrives

when they are blessed with a child. Having attained the status of parents, the thought of proper up-bringing of the child becomes one of prime

concern. With gradual passage of time, most of them with their love, affection and caring attitude strive to ensure good health, care and education

of their child to enable him encounter any challenge that life is likely to pose and to keep him free from the evils of society. The parents sincerely

wish their child to be successful in all his pursuits for a bright future. Not much is expected by the parents in return for what they have done for the

child. The concept of quid pro quo is alien so far as self-respecting and responsible parents are concerned. It is not unusual for parents to yearn

that their child holds a position of respectability in society. It may not materialize at all; nonetheless, if the child grows up to be successful in life (in

the sense that he stands on his own feet and earns enough to maintain his parents) and, at the same time, is a person who is sensitive and alive to

his moral obligations and duties, more often than not he looks after his parents well, lovingly and caringly, out of a sense of responsibility and

gratitude towards his parents for they having ungrudgingly showered all that were at their disposal which acted as catalyst for his eventual success.

Fortunate are those parents, who during their lifetime having gradually crossed over from the time they became parents to old age, are showered

the same love, care and affection by their child which years ago they had while he needed most in his childhood and even thereafter.

2. However, a disturbing trend of late is discernible. Children of hapless parents, now grown up and in a position to maintain them have been failing

to look after them in their times of need. Even the bare necessities of life are not being provided, not to speak of maintenance. The parents, who

are at the receiving end, are often the subjects of abuse, insult and violence at the instance of their own children. Allegations of the parents being

coerced to transfer property in the name of their grown up married son, mostly hen-pecked, failing which they are mentally and physically tortured

is now routine. Refusal to succumb leads to acrimonious relationship and differences which snowball into property disputes. To my mind, it is greed

that is the root of such disputes. By passage of time, with the increasing torture, they are devastated and ravaged. Finding it difficult to endure the

torture and violence, they approach the police for assistance. Not in every case the police, acting within the parameters of law, are able to extend

assistance. They are not supposed to interfere in disputes, civil in nature. Resolution of domestic disputes also does not fall within the arena of their

duty. In such cases, the police are reluctant to interfere. Alleging police inaction, the Court of Writ is being flooded with petitions presented by

those unfortunate parents, who are mostly in the December years of their life. Before the almighty ushers them into eternity, they urge the Court of

Writ to come to their rescue by directing the police to take appropriate measures against the erring son and daughter-in-law and to protect their

right to life and property, guaranteed by Articles 21 and 300A of the Constitution.

3. This batch of petitions, some heard analogously and some separately, are at the instance of such unfortunate parents. The common feature in

these petitions is the allegation that they have been receiving a battering from their sons and daughters-in-law and their approach to the police not

having yielded the desired result, the Court of Writ is urged to enforce their right to life and property. As a judge of this Court having determination

to deal with residuary matters (which includes matters relating to police inaction), I have to decide the fate of these unfortunate parents.

4. In the absence of any authority directly on the question of maintainability of a writ petition which alleges police inaction on a complaint made by

the parents against their sons/daughters-in-law for the latter unleashing violence thereby affecting the peace, dignity, person and property rights of

the former and in regard to the extent of powers exercisable by the Court of Writ in respect of complaints of the nature at hand, I had requested

Mr. L.K. Gupta and Mr. P.S. Sengupta, learned senior counsel of this Court to assist me as amicus curiae.

5. Sparing time out of their busy schedule, both Mr. Gupta and Mr. Sengupta have addressed the Court at length. I record my sincere appreciation

for the services rendered by them on my request.

6. Before discussing the facts relevant for deciding the petitions involving somewhat common questions of law and fact, I consider it proper to

notice the submissions advanced by learned amicus curiae.

7. Mr. Gupta at the inception reminded me of the well settled position in law that the jurisdiction under Article 226 of the Constitution is very wide

and the same is not and cannot be restricted by law; however, various judicial pronouncements have set the limits of exercise of such power or

jurisdiction, the limits being the self-imposed restrictions conceptualized through judicial wisdom.

8. In the context of the nature of the cases in hand, according to him, the restrictions to be kept in mind in deciding the question of maintainability

are -

(i) whether such dispute is or is not a purely private one without having any impact on the socio-economic aspects recognized by law;

(ii) whether the State has any legal duty to intervene and to ameliorate the grievances of the petitioners;

(iii) whether there exists any equally efficacious alternative remedy in civil or criminal courts and even if an alternative forum of redress is available,

should a Writ Court entertain a writ petition; and

(iv) whether the Constitution provides for any special rights for this category of citizens or imposes any special duties upon the State for protection

of their life and property.

9. He went on to elaborate the above aspects by submitting that:

a) A dispute per se with regard to property between or among individuals is a purely private one and normally the remedy is to file a suit for

declaration and injunction. A civil court is authorized to pass orders and decrees to adequately protect the right of a person, both with regard to his

title and possession. Thus, generally a Writ Court does not interfere in property disputes of citizens except where illegal interference or deprivation

is alleged against an authority, being a "State" within the meaning of Article 12 of the Constitution. However, the investigation does not end there.

There may be situations where a private property dispute may lead to crimes or apprehension of commission of offence punishable by any law for

the time being in force. The role of the State in such a situation can and should arise. Here, the aggrieved person may take steps as provided in the

Code of Criminal Procedure (hereafter the Cr.P.C.) for the protection of his life and property and for punishment of the wrong-doer. Judicial

precedents have clearly outlined the diverse nature of proceedings that may be initiated through filing of First Information Report (hereafter

FIR)/complaints and taking consequential steps. That apart, where the aggrieved person is interested in protecting his life or property and does not

want to take the rigour of initiating criminal proceedings for the punishment of the offender, he may, as aforesaid, move civil courts. This general

principle may not and should not, however, be construed as shutting the doors of the Writ Court in all situations to all persons regardless of the

nature of the complaint and regardless of the enquiry into the fact as to whether the aggrieved person is recognized by law to belong to a special

category for whom any special right or protection is recognized by law or any special duty is conferred on the State by ""Law"". The ""Law"" referred

to above embraces within itself the Constitution, the Parliamentary and the State legislative enactments, and international conventions not

inconsistent with such legislative documents.

b) The petitioners belong to a class who are old, sick, disabled and complain of being victims of undeserved want. They seek to make out a case

of being ousted from the property of which they are owners or co-owners or have right of residence; of being subjected to physical and mental

torture. This obviously affects their life - life within the meaning of Article 21 of the Constitution with all its components like livelihood, basic human

rights, happiness, fulfillment, dignity, shelter etc. as distinguished from animal existence and drudgery. The contents of the word ""life"" for the above

referred categories of persons even includes right to treatment, care, attention and company. The State in these situations has a duty to extend its

hands through its law enforcing agencies to make the dream of the founding fathers of the Constitution a reality, to promote the ideals embedded in

Articles 14 and 21 and bring back smile on the faces of this class which desperately needs such help. We are a "Welfare State" and for such

citizens to entertain such expectation is what we "The People of India" have resolved to secure. Thus the case is one where the Court is being

approached with a prayer to exercise its jurisdiction to issue a mandate upon the State to protect the fundamental right of the petitioner guaranteed

under Article 21 read in the context of the Directive Principles of State Policy set by Article 41. One should also read in this context the Preamble

to the Constitution which speaks, inter alia, of social and economic justice.

c) Should a Writ Court shut its doors to such litigants with such plea on the ground that they can file civil suits for relief or initiate criminal

proceedings? A civil suit definitely lies as Section 9 of the CPC (hereafter the CPC) is broad enough to permit the filing of such suits. However,

possibly being sensitive to the prevailing socio-economic situation in the country, the Apex Court has held that the existence of alternative remedy

by way of filing of a suit is not a ground for a Writ Court not to entertain a petition. Provisions in the Cr.P.C. can also deal with all situations

involving commission of offences and even prevention thereof. But such provisions require, as a first step, the filing of FIR/complaint followed up

by investigation, report, enquiry, trial, etc. To expect an old person, who may also be sick or disabled, to move out for such purposes or for any of

them and to ask him to await the ultimate conclusion of such proceedings would itself be contrary to recognized human rights. In any event, what

he gains in the long run, assuming he survives to see such result, is the punishment awarded to the offender of his rights. How does his life, with all

the rights lawfully expected to be associated with it, get protected thereby? Are not such alternative remedies thoroughly inadequate and

inefficacious to him? Is he not entitled to avail of an easier procedure? Is not right to such easier procedure more consistent with Articles 21 and

41? Does availability of such a forum ensure quicker fulfillment of his lawful rights and dignity which are components of "life"? If the answer to

these questions is in the affirmative, then for these deprived lot the very right to make a writ petition may be considered as an aid to the enjoyment

of life within the meaning of Article 21.

10. He contended that the international conventions on human rights and great jurists have accorded highest priority to the right to life. The relevant

extracts from the Tagore Law Lectures of Hon"ble V.R. Krishna Iyer, J. published by Eastern Law House in the book entitled ""The Dialectics and

Dynamics of Human Rights in India"" were referred to in the context.

11. It was also contended that based on the International Conventions on Human Rights, the Parliament enacted the Protection of Human Rights

Act 1993. In Section 2(d) of the 1993 Act, the definition of ""human rights"" means the rights relating to life, liberty, equality and dignity of the

individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India. Both the National Human

Rights Commission and the State Human Rights Commissions are vested with the functions of making enquiry into complaints of violation of human

rights or abetment thereof and, on completion of enquiry, to take steps, inter alia, to approach the Supreme Court or the High Court for directions,

orders or writs (Sections 3, 12, 13, 18, 21 and 29). Trial of offences by the Human Rights Courts is also provided in Section 30 of the Act.

12. To protect women, he contended, there exists the Protection of Women from Domestic Violence Act, 2005 (hereafter the DV Act). Domestic

violence as defined in Section 3 of the DV Act includes harassment to coerce a woman or a person related to her to meet any unlawful demand for

property. Domestic violence also includes physical abuse, verbal and emotional abuse and economic abuse. Every woman in a domestic

relationship has the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same (Section 17). A

hierarchy of fora has been prescribed and the Act contains provisions for passing of protection orders and residence orders (Sections 18 and 19).

13. The Hindu Adoption and Maintenance Act, 1956 was the next statute referred to by him. Section 20 thereof casts a duty upon a Hindu to

maintain, inter alia, his or her aged or infirm parents.

14. The Mohammedan Law, it was further contended, also contains similar provision (Mulla''s Principles of Mohamedan Law - Section 371 was

referred to in the context).

15. Another relevant legislation of recent origin which, according to him, would have a bearing on the issue at hand is the Maintenance and Welfare

of Parents and Senior Citizens Act, 2007 (hereafter the 2007 Act).

16. In Mr. Gupta''s opinion, these legislations definitely recognize the old and infirm as a distinct class who need special protection. The principles

conceptualized in these legislations and in the International Conventions on Human Rights are all contained in the jurisprudence woven in our

Constitution in abbreviated excellence.

17. He continued by submitting that it is not only within the jurisdiction of the Writ Court to protect and advance such jurisprudence, but it has a

constitutional duty to do so. However, he was quick to sound a word of caution. The general law like the Cr.P.C. or the special laws referred to

above prescribe procedures for meeting the nature of the grievance in question. It is only where the facts of any case are such that the remedy

provided by such laws is found to be inadequate or inefficacious to the judicial mind that a writ petition may be entertained and decided. During the

60 years of existence of India as a Republic, the Constitutional Courts of our country have gained sufficient experience and expertise to separate

the grain from the chaff and decide on whether there exists an equally efficacious alternative remedy or any particular writ petition or a class of writ

petitions should be entertained in the extraordinary jurisdiction to uplift the constitutional jurisprudence. The jurisdiction of a Writ Court is

enormous but it will not act as a ""bull in the china shop"" (U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and

Others, . Wherever the Court may feel it necessary, it may before passing any effective orders for disposal of such a writ petition call for reports

from the law enforcing agency to ascertain the veracity of the factual allegations contained in the writ petition in order that the party against whom

the allegations are made may not find an easy escape route on the specious plea of disputed questions of fact. The police have definite statutory

obligations u/s 23 of the Police Act, 1861 (hereafter the Police Act), inter alia, to prevent commission of offence and public nuisance. Where a

person or authority is vested with a duty by specific statutory provisions, for compelling such person or authority to perform such duty is certainly

within the power and jurisdiction of a Writ Court. The exercise of such power will be consistent with the constitutional provisions which a person

on his elevation as a Judge is bound by the oath of office administered to him. Where there is a duty to act, refusal is the least the law can tolerate.

18. He concluded by submitting that the ordinary legal remedies that are provided by the various recent legislations, if not efficacious, the Writ

Court may on a case to case basis interfere for granting relief to this distinct class of old aged and infirm parents. They cannot be thrown out on the

basis of Supreme Court decisions which deal with different set of facts.

19. Mr. Sengupta, at the outset, conceded that the Court is faced with a serious human problem. In his introductory address, he contended that the

realities of life would have to be examined to give shape to law, for, law would cease to serve its purpose if justice cannot be administered. He

referred to Lord Atkins famous remark that ''law is good but justice is better'' to emphasize that law ought to be so interpreted to promote justice

and not to defeat it. According to him, the ultimate goal of the Constitution is to secure justice to the people and the entire system is oriented by the

word ''justice''. All the powers must be exercised in consonance with the preamble and definitely a Court of Writ would be justified in interfering if

the situation, which might vary from case to case, so warrants. The extraordinary writ powers, he contended, have to be exercised only in

extraordinary cases and the special facts of the case therefore must be considered. The preambular promise must always be borne in mind and,

therefore, the Court of Writ ought to strive to dispense justice to the parties not oblivious of the self-imposed restrictions but by striking a balance

in such a manner that justice does not become a casualty.

20. Mr. Sengupta, however, very fairly invited my attention to two Constitution Bench decisions of the Apex Court in P.D. Shamdasani Vs.

Central Bank of India Ltd., , and Shrimati Vidya Verma, through next Friend R.V.S. Mani Vs. Dr. Shiv Narain Verma, wherein law has been laid

down to the effect that Article 21 would be attracted only in case of violation of a right guaranteed thereunder by the State but not in case of

violation thereof by an individual.

21. The Supreme Court in P.D. Shamdasani (supra) was dealing with the nature of right conferred by Article 31, a declaration in negative form

similar to Article 21 which also in negative form declares the fundamental right to life and liberty without any express reference to the word ''State''.

Mr. Sengupta by referring to P.D. Shamdasani (supra) sought to draw an analogy and contended that the ratio of the decision would also be

applicable to Article 21 and, therefore, the said Article would not provide protection against private actions. It was his further contention that the

decision in Vidya Verma (supra) upon consideration of Article 21 and the decision in P.D. Shamdasani (supra) declares the law to be so.

22. The declaration of law in the above referred decisions, according to him, is to the effect that if the State infringes a right guaranteed by Article

21 contrary to procedure established by law, the person whose right is infringed could seek enforcement of the right but the right cannot be

enforced against a private individual. It is only in circumstances where the right is or likely to be infringed by a private individual and the State is

approached to intervene to remedy the wrong that is likely to ensue or has ensued that the State must act; if, however, the State does not

intervene, it would aid deprivation of the right of the victim and the writ jurisdiction may be invoked in such case alleging failure of the public

authority to discharge a duty which it owes to the victim of such infringement.

23. However, he was quick to submit that law in the changing society must cope with challenges faced by the people and that change in social

circumstances requires a different look.

24. Various decisions on the scope of Mandamus were referred to by him. The decision in Dwarka Nath Vs. Income Tax Officer, Special Circle

D-ward, Kanpur and Another, was the first one. It was observed therein that Article 226 is couched in comprehensive phraseology and it ex facie

confers a wide power on the High Courts to reach injustice wherever it is Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union

and Others, , Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, and Chandra Bhan Dubey (supra) were

the other decisions cited by him wherein the scope and ambit of writ powers were explained. At the same time, he submitted that a somewhat

discordant note was sounded by the Supreme Court in its decision in G. Basi Reddy Vs. International Crops Research Instt. and Another, .

25. Based on these decisions, he submitted that the Writ Court may not be unjustified even in interfering with disputes between parents and

children if on consideration of the facts it is satisfied that interference is warranted for securing justice.

26. On the issue of alternative remedy being available to the litigants, it was submitted that disinclination of a Court of Writ to entertain a petition if

an alternative remedy exists is one of the self-imposed restrictions; it is not a rule of law but a rule of convenience. If alternative remedy exists but

immediate intervention is necessary, the Court of Writ ought not to decline to interfere for in case of non-interference the remedy against the

mischief might be of no avail. Whether the alternative remedy is equally efficacious or not would largely depend on the facts of each case for a

minor difference in facts is crucial for entertaining a writ petition. It would be opposed to constitutional philosophy if relief is refused only on the

ground of existence of an alternative remedy which may not be equally efficacious. The decisions in Capt. Dushyant Somal Vs. Smt. Sushma

Somal and Another, J.M. Baxi and Co. Vs. Commissioner of Customs and Another, , and BCPP Mazdoor Sangh v. NTPC (2007) 14 SCC 234,

were referred to emphasize the approach of the Court to hold petitions under Article 226 maintainable despite availability of alternative remedy.

27. He contended that the pros and cons of the matter in the context of the fact situation of the case should be carefully weighed and appropriate

decision taken and in this connection referred to the decision in Life Insurance Corporation of India v. Asha Goel (2001) 2 SCC 160. Referring to

the decision in Union of India (UOI) and Others Vs. R. Reddappa and Another, it was contended that if there is a glaring injustice, no rule or

technicality can stand in the way of rendering justice.

28. Referring to the decision in Aleque Padamsee and Others Vs. Union of India (UOI) and Others, , it was contended that the complaint did not

relate to anyone''s right to life and that the declaration of law has to be read in the light of the facts of the case before the Court. The said decision,

according to him, does not declare a law to be followed in all cases without having regard to the peculiar facts involving complaints of perceiving

threat to life and invasion of liberty. Pointing out to paragraph 8 of the decision and in particular to direction No. 3, it was further contended that

the Court had in fact entertained the petition.

29. He concluded by stressing on the point that since Article 21 of the Constitution guarantees right to life and personal liberty of a person which

can only be affected by procedure established by law, it therefore follows that the law made by the State would provide machinery to protect

one''s life or liberty if any one seeks to curtail the right of another guaranteed by Article 21; in a given case if the Court is satisfied that the police

has by its inaction or negligence has failed to secure law and order in the society, and the Court''s interference is warranted as per the need of the

situation, the Court ought to rise to the occasion for administering justice between the parties according to principles of justice, equity and good

conscience and redress the expectation of people. The law courts exist for the society and, therefore, technicalities ought not to stand in the way of

the justice delivery system.

30. Mr. Kashi Nath De, learned Counsel for the petitioner in W.P. No. 3915 (W) of 2010 contended that a writ petition would be maintainable

wherein the allegation pertains to failure of the police officers to discharge their statutory duty. He referred to the provisions of the Police Act as

well as the Cr.P.C. where the powers of the police have been delineated.

31. On the point of maintainability of the writ petition, he heavily relied on the Special Bench decision of this Court in Jay Engineering Works Ltd.

and Ors. v. State of West Bengal and Ors. AIR 1968 Cal 470, well-known as the "gherao" case, where the Court had directed the police officers

to rescue the officers of the petitioner company from the "gherao" of agitating workmen. The law on the subject of police inaction, he contended,

has been elaborately discussed and he urged the Court to be guided by the same.

32. The decision in Dadu Dayalu Mahasabha, Jaipur (Trust) Vs. Mahant Ram Niwas and Another, , was cited by him for the proposition that a

judgment should not be read as a statute.

33. He also relied on the decisions in Moran M. Baselios Marthoma Mathews II and Others Vs. State of Kerala and Others, Howrah Mills Co.

Ltd. and Another Vs. Md. Shamin and Others, , and L. Chandra Kumar Vs. Union of India and others, , in support of his submissions that the writ

petition filed by his client is maintainable.

34. Appearing in support of the petitioners in W.P. No. 10423 (W) of 2010, Mr. Kishore Dutta, learned Counsel referred to Articles 8, 12, 22

and 25 of the Universal Declaration of Human Rights, 1948. The said Articles read as follows:

8.Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by

Constitution or by law.

12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and

reputation. Everyone has the right to the protection of the law against such interference or attacks.

22. Everyone, as a member of society, has the right to social security and is entitled to realization through national effort and international co-

operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his

dignity and the free development of his personality.

25.1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing,

housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood,

old age or other lack of livelihood in circumstances beyond its control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same

social protection.

35. He contended that the Universal Declaration of Human Rights includes the right to life, liberty and security of a person and there is no reason

as to why the same, apart from the Fundamental Rights in Part III of the Constitution of India, should not be given effect.

36. Next he referred to the International Covenant on Civil and Political Rights, 1966, to which India is a signatory, and in particular to Article 17

of the said covenant. It reads:

Article 17

1. No one shall be subject to arbitrary or unlawful interference with his privacy, family, human or correspondence, nor to lawful attacks on his

honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

37. The decision in People''s Union of Civil Liberties (PUCL) Vs. Union of India (UOI) and Another, , was cited where the Supreme Court held

that the said covenant is not contrary to any part of our municipal law, and Article 21 of the Constitution has, therefore, been interpreted in

conformity with the international law.

38. For the proposition that in the event of doubt the national laws have to be interpreted and harmonized in accordance with the State''s

international obligations, reference was made by him to the decision in Kubic Darusz Vs. Union of India (UOI) and Others,

39. Next, he referred to the decision in The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, , for the proposition that

international covenants must be respected and the rights effectively implemented.

40. He referred to the Constitution Bench decision in Kartar Singh v. State of Punjab, (1994) 3 SCC 569 and relied on paragraphs 447 & 448 to

contend that right to life is a basic human right.

41. It was argued that the cry of the old, disabled and unfortunate parents for social justice against their children ought not to be throttled by relying

on decisions rendered at a point of time when the situation was completely different and it could never have been conceived that Indian parents

would be subjected to continued neglect and torture at the hands of their children, which is a regular feature in developed foreign nations.

42. Replying to a query of Court as to whether the decisions in P.D. Shamdasani (supra) and Vidya Verma (supra), cited by Mr. Sengupta, still

hold the field or not, he very fairly submitted that not to speak of being overruled, the said decisions were noticed and the law declared in respect

of Article 21 vis-Ã¯Â¿Â½-vis infringement thereof by a private individual was approved by another Constitution Bench in Additional District Magistrate,

Jabalpur Vs. Shivakant Shukla, .

43. Notwithstanding the said decisions, he contended that the problem at hand has to be viewed from the standpoint of the deprived or the

tortured, - is he entitled to right to life and of liberty or not? If torture or deprivation by the children attracts penal laws, they are punishable in

accordance with law but in such eventuality the victim''s interest must also be safeguarded. Law, according to him, has to be interpreted visualizing

the change in societal situations and, therefore, the decisions reported in Sohanlal Vs. The Union of India (UOI), Chandra Bhan Dubey (supra) and

Shri Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, , would squarely apply in respect of complaint of breach of fundamental right by a

private individual. Social changes can, therefore, be looked into by the Court for granting/moulding relief without being bound by precedents which

declared the law having regard to the fact situation prevailing then.

44. To give effect to the pledge in the preamble of securing social justice against the interminable wrong-doing by the children, the old infirm

parents could, according to him, legitimately claim a right and ask the State to ensure that such right is not breached.

45. The decision in People''s Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, , was next referred where the

Supreme Court entertained an Article 32 petition for ensuring compliance of social welfare legislations like the labour laws by private contractors.

Relying thereon, it was contended by him that a Court of Writ is not powerless to direct the State to ensure that the old and disabled parents are

provided with every amenity by their children to enable them live a peaceful and dignified life.

46. Two decisions of the Bombay High Court were relied on by Mr. Dutta to highlight the duties of police. The same are Transmissions P. Ltd.

and Another Vs. C.V. Bapat and Others, and Mithailal and others Vs. State of Maharashtra, .

47. Referring to the submissions of Mr. Gupta, it was however contended by him that Article 41 may not take care of the present situation. Article

41, he contended, recognizes quid pro quo. According to him, the provision would take care of those who serve the State during their younger

days; as and when a person grows old with age, the State steps in and takes welfare measures to take care of him so that a dignified life may be

led without being dependent on his children.

48. Lastly, he referred to paragraph 33 of the decision in D.S. Nakara and Others Vs. Union of India (UOI), , where the concept of socialism was

explained in some detail.

49. He concluded by submitting that keeping in mind the rights guaranteed under the national laws vis-Ã¯Â¿Â½-vis the international laws and deprivation

of the right to life and of liberty by even a private individual being violative of the guarantee envisaged in Article 21 of the Constitution, the Court of

Writ in a fit and proper case may interfere and pass such orders necessary to sub-serve ends of justice.

50. I have heard learned advocates representing the respective parties as well as Mr. Gupta and Mr. Sengupta, learned amicus curiae.

51. Before I proceed to deal with the writ petitions individually, it would be necessary to notice the law declared by the Apex Court and by the

High Courts in the decisions that have been referred to for appreciating the expanse of writ jurisdiction in cases of the present nature as well as to

find out whether the issues involved are covered by any precedent directly on the point or not.

52. In P.D. Shamdasani (supra), the Supreme Court was considering a petition under Article 32 of the Constitution for the enforcement of the

petitioner''s fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution alleged to have been violated by the Central Bank of India, a

company incorporated under the Indian Companies Act, 1882. The bank had sold five shares held by the petitioner in the share capital of the bank

to a third party in purported exercise of its right of lien for recovery of a debt due to it from the petitioner and the transfer was registered in the

bank''s books in 1937. The validity of the said sale and transfer were challenged by the petitioner by instituting series of proceedings in the High

Court at Bombay. The last of such proceedings was a suit filed against the bank in 1951, the plaint whereof was rejected on 2.3.1951 under

Order 7 Rule 11(d), C.P.C. as barred by limitation. The petitioner had prayed for quashing of all the adverse orders made in the previous

proceedings and for a direction for hearing of the suit as undefended.

53. It was noted that the petitioner did not prefer any appeal against the order rejecting the petitioner''s plaint on an extraordinary ground

mentioned in paragraph 2 of the decision. The Supreme Court while rejecting the contentions of the petitioner held as follows:

3. We are of opinion that the petitioner has misconceived his remedy and the petition must fail on a preliminary ground. Neither Article 19(1)(f) nor

Article 31(1) on its true construction was intended to prevent wrongful individual acts or to provide protection against merely private conduct.

Article 19 deals with the ""right to freedom"" and by Clause (1) assures to the citizen certain fundamental freedoms including the freedom ""to acquire,

hold and dispose of property"" subject to the power of the State to impose restrictions on the exercise of such rights to the extent and on the

grounds mentioned in Clauses (2) to (6). The language and structure of Article 19 and its setting in Part III of the Constitution clearly show that the

article was intended to protect those freedoms against State action other than in the legitimate exercise of its power to regulate private rights in the

public interest. Violation of rights of property by individuals is not within the purview of the article.

5. ... We consider it unnecessary for the purpose of the present petition to go into that question. Even assuming that Clause (1) has to be read and

construed apart from Clause (2), it is clear that it is a declaration of the fundamental right of private property in the same negative form in which

Article 21 declares the fundamental right to life and liberty. There is no express reference to the State in Article 21. But could it be suggested on

that account that that article was intended to afford protection to life and personal liberty against violation by private individuals? The words

except by procedure established by law"" plainly exclude such a suggestion. Similarly, the words ""save by authority of law"" in Clause (1) of Article

31 show that it is a prohibition of unauthorised governmental action against private property, as there can be no question of one private individual

being authorised by law to deprive another of his property.

54. In Smt. Vidya Verma (supra), the Supreme Court was considering a petition under Article 32 of the Constitution for a writ of habeas corpus.

The preliminary question which fell for consideration was whether in a case where detention complained of is by a private person and not by a

State or under the authority or orders of a State, a fundamental right is at all involved or not.

55. Relying on the decisions of the Supreme Court in A.K. Gopalan Vs. The State of Madras, and P.D. Shamdasani (supra), the Supreme Court

dismissed the petition. It was held that for the same reasons for which Article 31(1) did not apply to invasions of a right by a private individual and

consequently no writ under Article 32 would lie, the petition which was founded on Article 21 would not lie under Article 32.

56. The aforesaid two decisions along with a host of other decisions were considered by the Supreme Court in ADM, Jabalpur (supra). The facts

giving rise to the said decision are well-known to all students of law and I need not burden my decision by discussing the facts. Hon"ble A.N. Ray,

CJ. (as His Lordship then was) noticing the law laid down in P.D. Shamdasani (supra) and Vidya Verma (supra) ruled as follows:

88. The respondents contended that permanent law cannot be repealed by temporary law. The argument is irrelevant and misplaced. The

Presidential Order under Article 359(1) is not a law. The order does not repeal any law either. The suggestion that Article 21 was intended to

afford protection to life and personal liberty against violation by private individual was rejected in Shamdasani case because there cannot be any

question of one private individual being authorised by law to deprive another of his property or taking away the life and liberty of any person by

procedure established by law. The entire concept in Article 21 is against executive action. In Vidya Verma case this Court said that there is no

question of infringement of fundamental right under Article 21 where the detention complained of is by a private person and not by a State under

the authority or orders of a State.

57. Hon"ble M.H. Beg, J. (as His Lordship then was) in his judgment, recorded that ""it is admitted that part III of the Constitution is only meant to

protect citizen against illegal actions of organs of the State and not against wrongs done by individual.

58. Hon"ble P.N. Bhagwati, J. (as His Lordship then was) held as under:

Article 21 gives protection against deprivation of personal liberty but what is the nature and extent of this protection? In the first place, it may be

noted that this protection is only against State action and not against private individual.... Secondly, it is clear from the language of Article 21 that

the protection it secures is a limited one.... The only safeguard enacted by Article 21, therefore, is that a person cannot be deprived of his personal

liberty except according to procedure prescribed by "State made" law. If a law is made by the State prescribing the procedure for depriving a

person of his personal liberty and deprivation is effected strictly in accordance with such procedure, the terms of Article 21 would be satisfied and

there would be no infringement of right guaranteed under that Article.

59. The aforesaid Constitution Bench decisions declare the law that Article 21 is prohibition against unauthorized executive action and law referred

to in such Article would mean State made law.

60. Now let me take a look at the decisions discussing the powers conferred on High Court relating to issuance of writs.

61. The Supreme Court in Dwarka Nath (supra) was faced with a preliminary objection raised by the respondents to the effect that the order of

the Commissioner u/s 33A of the Income Tax Act was an administrative act and, therefore, no writ of certiorari to the High Court to quash that

order under Article 226 of the Constitution would lie.

62. While holding that the case falls directly within the confines of the certiorari jurisdiction, K. Subba Row, J. (as His Lordship then was)

observed as follows:

4. We shall first take the preliminary objection, for if we maintain it, no other question will arise for consideration. Article 226 of the Constitution

reads:

"..."

This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is

found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority

against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is

widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England,

but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables

the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the

power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the

unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government to a vast

country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the

High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article

through defined channels. This interpretation has been accepted by this Court in (T.C. Basappa Vs. T. Nagappa and Another, and P.J. Irani Vs.

The State of Madras, .

63. Though in the aforesaid decision it was held that a writ of certiorari can be issued only to quash a judicial or a quasi judicial act and not an

administrative act, it is now settled law that pure administrative acts abridging rights of parties are also amenable to the writ jurisdiction of the High

Courts and in an appropriate case the Court may issue appropriate writ to set things right.

64. The Supreme Court in Rohtas Industries (supra) was considering an order of the High Court that quashed part of an award of the Arbitrators

u/s 10A of the Industrial Disputes Act, 1947. The questions that were urged were noted in paragraph 8 of the decision and the discussion on the

expansive and extraordinary powers of the High Courts under Article 226 were noted in paragraph 9. I consider it relevant to reproduce below

both paragraphs 8 and 9:

8. The main points urged

The short but important issue, which has projected some serious questions of law, is as to whether the impugned part of the award has been rightly

voided by the High Court. We may as well formulate them but highlight the only major submission that merits close examination, dealing with the

rest with terse sufficiency. In logical order, counsel for the appellant urged that: (1)(a) an award u/s 10A of the Act savours of a private arbitration

and is not amenable to correction under Article 226 of the Constitution. (b) Even if there be jurisdiction, a discretionary desistence from its

exercise is wise, proper and in consonance with the canons of restraint this Court has set down. (2) The award of compensation by the arbitrators

suffers from no vice which can be regarded as a recognised ground for the High Court"s interference. (3) The view of law taken by the High Court

on (i) the supposed flaw in the award based on "mixed motives" for the offending strike; (ii) the exclusion of remedies other than u/s 26 of the Act;

and (iii) the implied immunity from all legal proceedings against strikers allegedly arising from Section 18 of the Trade Unions Act, 1926 is wrong.

A few other incidental arguments have cropped up but the core contentions are what we have itemised above.

(9) (1a) & (b)

The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can

affect any person - even a private individual - and be available for any (other) purpose - even one for which another remedy may exist. The

amendment to Article 226 in 1963 inserting Article 226(1-A) reiterates the targets of the writ power as inclusive of any person by the expressive

reference to "the residence of such person". But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china

shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those

wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate.

The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ

power has, by and large, been the people"s sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We

hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash.

(underlining in original)

65. In Gujarat Steel Tubes Ltd. (supra), the Court was considering a decision of the High Court which had reversed an award of the Arbitrator

upholding the action of the management and dismissing certain workmen and substantially directing reinstatement in service. Krishna Iyer, J. (as His

Lordship then was) on the sweep of Article 226 observed as follows:

72. Once we assume that the jurisdiction of the arbitrator to enquire into the alleged misconduct was exercised, was there any ground under Article

226 of the Constitution to demolish that holding? Every wrong order cannot be righted merely because it is wrong. It can be quashed only if it is

vitiated by the fundamental flaws of gross miscarriage of Justice, absence of legal evidence, perverse misreading of facts, serious errors of law on

the face of the order, jurisdictional failure and the like.

73. While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is

a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of alternative remedy hold back the

court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring

injustice demands even affirmative action. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the

subject belongs to the court''s province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without

being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if

Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High

Court''s judgment. And an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is

real, though fine.

66. Chandra Bhan Dubey (supra) is a decision rendered by the Supreme Court while it was considering a judgment of the High Court holding that

the appellant is an instrumentality of the State and as such amenable to the writ jurisdiction of the High Court. Paragraph 26 contains certain

reflections on the scope and ambit of Article 226. The same is reproduced hereunder:

26. In view of the fact that control of the State Government on the appellant is all-pervasive and the employees had statutory protection and

therefore the appellant being an authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under

Article 226 of the Constitution, it may not be necessary to examine any further the question if Article 226 makes a divide between public law and

private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the

article, it is not necessary for us to rely on the decision of the English courts as rightly cautioned by the earlier Benches of this Court. It does appear

to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such

difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature,

scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English

system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority

including, in appropriate cases, any Government. Under Clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act,

1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the

Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India. ''Person'' u/s 2(42) of the General Clauses Act

shall include any company or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountainhead

of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an

interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him,

be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals,

whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law

validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court

has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but

those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is

available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal

channel of civil and criminal litigation. The High Court does not act like a proverbial ''bull in a china shop'' in the exercise of its jurisdiction under

Article 226.

67. It is, however, noted that in Ramchandra Govind Dongre v. Indian Hume Pipe Co. Ltd., (2001) 10 SCC 461, the view expressed in Chandra

Bhan Dubey (supra) quoted above has not been accepted and the issue has been referred to a larger bench.

68. In R. Redappa (supra), the Supreme Court was considering the issue of dismissal of railway employees without holding any enquiry.

According to the disciplinary authority it was not reasonably practicable to hold such enquiry. The Central Administrative Tribunal interfered and

set aside the order of dismissal. While disposing of the appeals by directing reinstatement and payment of compensation, the Court observed that

although the jurisdiction exercised by the High Court under Article 226 ""is not as wide as it is in appeal or revision but once the Court is satisfied of

injustice or arbitrariness then the restriction, self-imposed or statutory, stands removed and no rule or technicality on exercise of power can stand

in way of rendering justice"".

69. In Asha Goel (supra), the Supreme Court was hearing an appeal against the judgment of the Bombay High Court allowing a writ appeal on the

ground that the appellant should have had an opportunity of leading evidence relevant to their contention that the insurance policy was obtained by

misrepresentation and, therefore, avoidable at the instance of the Corporation and remitting the writ petition to the Writ Court for fresh decision.

The High Court had overruled the objection of the Corporation against maintainability of the writ petition on the ground that the case involves

enforcement of contractual right, for adjudication of which a proceeding under Article 226 is not the proper remedy. The Supreme Court in

paragraph 11 held as follows:

11. The position that emerges from the discussions in the decided cases is that ordinarily the High Court should not entertain a writ petition filed

under Article 226 of the Constitution for mere enforcement of a claim under a contract of insurance. Where an insurer has repudiated the claim, in

case such a writ petition is filed, the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the

nature of the inquiry necessary to be made for determination of the questions raised and other relevant factors before taking a decision whether it

should entertain the writ petition or reject it as not maintainable. It has also to be kept in mind that in case an insured or nominee of the deceased

insured is refused relief merely on the ground that the claim relates to contractual rights and obligations and he/she is driven to a long-drawn

litigation in the civil court it will cause serious prejudice to the claimant/other beneficiaries of the policy. The pros and cons of the matter in the

context of the fact-situation of the case should be carefully weighed and appropriate decision should be taken. In a case where claim by an insured

or a nominee is repudiated raising a serious dispute and the Court finds the dispute to be a bona fide one which requires oral and documentary

evidence for its determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly,

where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may

become necessary for determination of the issue raised, then a writ petition is not an appropriate remedy.

70. In G. Bassi Reddy (supra), the Supreme Court was considering whether the respondent institute is amenable to the writ jurisdiction under

Article 226 or not. In that context, the Supreme Court held in paragraph 27 as follows:

27. It is true that a writ under Article 226 also lies against a ''person'' for ''any other purpose''. The power of the High Court to issue such a writ to

''any person'' can only mean the power to issue such a writ to any person to whom, according to the well-established principles, a writ lay. That a

writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But

the words "and for any other purpose" must mean "for any other purpose for which any of the writs mentioned would, according to well-

established principles issue".

71. In J.M. Baxi (supra), having regard to the special facts of the case where the demand of nearly Rs. 46 lakh was challenged on the ground that

it was barred by time, the Supreme Court held that the High Court instead of dismissing the writ petition on the ground that alternative remedy was

available ought to have determined the questions which were raised in the writ petition on merits.

72. In Capt. Dushyant Somal (supra), the contention of the appellant that the respondent had alternative remedies under the Guardians and Wards

Act and the Cr.P.C. and so writ should not have been issued was negatived by holding that:

True, alternative remedy ordinarily inhibits a prerogative writ. But it is not an impassable hurdle. Where what is complained of is an impudent

disregard of an order of a court, the fact certainly cries out that a prerogative writ shall issue.

73. In BCPP Mazdoor Sangh (supra), the Supreme Court overruled the plea of existence of alternative remedy in the following words:

19. Though no serious objection was made as to the maintainability of the writ petition, however, learned Senior Counsel appearing for the

management pointed out that even if there is any breach by BALCO of its obligations in the matter of terms and conditions of employment, the

appellants have appropriate remedy under industrial law. Inasmuch as the claim of the employees relates to interpretation of certain clauses in the

agreement and appointment letters and no disputed facts are involved and taking note of the fact that the issue relates to employment of few

hundreds of employees and in the light of the assertion that transferring them to private organisation from a public sector undertaking without their

specific consent is arbitrary and unreasonable and also of the settled position that alternative remedy is rule of discretion and not the rule of law, we

accept the conclusion of the High Court and hold that the writ petitions under Article 226 of the Constitution filed by the employees are

maintainable.

74. In Aleque Padamsee (supra), the Supreme Court was considering an Article 32 petition praying for a direction on the police to register the

complaint as First Information Report and to conduct investigation. In paragraph 7 it was observed as follows:

7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register

the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The

basic question is as to what course is to be adopted if the police does not do it. As was held in All India Institute of Medical Sciences Employees''

Union (Regd.) through its President Vs. Union of India (UOI) and Others, , and reiterated in Gangadhar Janardan Mhatre Vs. State of

Maharashtra and Others, the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that

there was conflict in the views in All India Institute of Medical Sciences case, Hari Singh Vs. The State of U.P., , Minu Kumari and Another Vs.

The State of Bihar and Others, , and Ramesh Kumari Vs. State (N.C.T. of Delhi) and Others, , we find that the view expressed in Ramesh Kumari

case related to the action required to be taken by the police when any cognizable offence is brought to its notice. In Ramesh Kumari case the basic

issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences case, Gangadhar

case, Minu Kumari case and Hari Singh case. The view expressed in Ramesh Kumari case was reiterated in Lallan Chaudhary and Others Vs.

State of Bihar and Another, . The course available, when the police does not carry out the statutory requirements u/s 154 was directly in issue in

All India Institute of Medical Sciences case, Gangadhar case, Hari Singh case and Minu Kumari case. The correct position in law, therefore, is that

the police officials ought to register the FIR whenever facts brought to their notice show that cognizable offence has been made out. In case the

police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code. It appears that in the

present case initially the case was tagged by order dated 24-2- 2003 with WP (C) No. 530 of 2002 and WP (C) No. 221 of 2002.

Subsequently, these writ petitions were delinked from the aforesaid writ petitions.

75. Mr. Sengupta is right in his submission that despite the observations contained in paragraph 7 of the decision, direction No. 3 contained in

paragraph 8 of the decision is suggestive of entertainment of the writ petition by the Supreme Court.

76. In Sohanlal (supra), the writ petitioner Jagan Nath obtained an order from the Punjab High Court on a petition under Article 226 directing the

Union of India and Sohanlal to forthwith restore possession of a particular house on the ground that the Union of India had illegally evicted Jagan

Nath. It was in such circumstances that the Supreme Court held in paragraph 7 as follows:

7. The eviction of Jagan Nath was in contravention of the express provisions of Section 3 of the Public Premises (Eviction) Act. His eviction,

therefore, was illegal. He was entitled to be evicted in due course of law and a writ of mandamus could issue to or an order in the nature of

mandamus could be made against the Union of India to restore possession of the property to Jagan Nath from which he had been evicted if the

property was still in possession of the Union of India. The property in dispute, however, is in possession of the appellant. There is no evidence and

no finding of the High Court that the appellant was in collusion with the Union of India or that he had knowledge that the eviction of Jagan Nath

was illegal. Normally, a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual. Such an

order is made against a person directing him to do some particular thing, specified in the order, which appertains to his office and is in the nature of

a public duty (Halsbury''s Laws of England Vol. 11, Lord Simonds Edn. p. 84). If it had been proved that the Union of India and the appellant had

colluded, and the transaction between them was merely colourable, entered into with a view to deprive Jagan Nath of his rights, jurisdiction to

issue a writ to or make an order in the nature of mandamus against the appellant might be said to exist in a Court. We have not been able to find a

direct authority to cover a case like the one before us, but it would appear that so far as election to an office is concerned, a mandamus to restore,

admit, or elect to an office will not be granted unless the office is vacant. If the office is in fact full, proceedings must be taken by way of injunction

or election petition to oust the party in possession and that a mandamus will go only on the supposition that there is nobody holding the office in

question. In R. v. Chester Corporation (1855) 25 LJQB 61, it was held that it is an inflexible rule of law that where a person has been de facto

elected to a corporate office, and has accepted and acted in the office, the validity of the election and the title to the office can only be tried by

proceeding on a quo warranto information. A mandamus will not lie unless the election can be shown to be merely colourable. We cannot see why

in principle there should be a distinction made between such a case and the case of a person, who has, apparently, entered into bona fide

possession of a property without knowledge that any person had been illegally evicted therefrom.

77. This decision, therefore, could be an authority for the proposition that if a public authority in collusion with a private individual indulges in acts

of commission/omission affecting the rights of the petitioner, a writ petition would lie against the private individual too.

78. The Supreme Court in Kartar Singh (supra) was considering the constitutional validity of various central legislations enacted to prevent terrorist

activities. Hon''ble R.M. Sahai, J. (as His Lordship then was), while concurring substantially with the majority opinion, in a separate judgment

traced the history of Article 21, legislatively and judicially, and succinctly laid down what ''Right to Life'' connotes. Paragraphs 447 and 448 of the

decision are considered to be useful guide and thus quoted below:

447. ...Before embarking upon this exercise it may be worthwhile examining the depth of Article 21 of the Constitution as any law of punitive or

preventive detention has to be tested on the touchstone of the constitutional assurance to every person that he shall not be deprived of his liberty

except in accordance with procedure established by law. It is declaration of deep faith and belief in human rights. In the ''pattern of guarantee

woven in Chapter III of the Constitution, personal liberty of a man is at the root of Article 21''. Modern history of human rights is struggle for

freedom and independence of the man. One may call the right guaranteed under Article 21 as, ''natural right'' or ''basic human right'' but a society,

committed to secure to its citizens ''justice social, economic and political; liberty of thought, equality of status and liberty to promote amongst

themselves fraternit" the foundation on which edifice of the Constitution has been structured could not have done otherwise than to provide for the

human dignity and freedom as has been done by Article 21 of the Constitution which reads as under:

...

Each expression used in this article enhances human dignity and value. It lays foundation for a society where rule of law has primacy and not

arbitrary or capricious exercise of power. "Life" dictionarily means, "state of functional activity and continual change peculiar to organised matter,

and especially to the portion of it constituting an animal or plant before death; animate existence; being alive". But used in the Constitution it may

not be mere existence. As far back as 1877 Field, J. in Munn v. Illinois 94 US 113 (1877) construed similar expression in the American

Constitution as "more than animal existence". It has been approved by our Court in Kharak Singh Vs. The State of U.P. and Others, and

reiterated in Sunil Batra v. Delhi Administration (I) Sunil Batra Vs. Delhi Administration and Others etc., . It was given new dimension in Maneka

Gandhi v. Union of India Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and extended in Francis Coralie Mullin v. Administrator,

Union Territory of Delhi (1981) 1 608, when it was held: (SCC pp. 618-619, para 8)

...protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human

dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading,

writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

448. Liberty is the most cherished possession of a man. "Truncate liberty in Article 21 and several other freedoms fade out automatically".

Edmond Burke called it "regulated freedom". Liberty is the right of doing an act which the law permits. This article instead of conferring the right,

purposely uses negative expression. Obviously because the Constitution has recognised the existence of the right in every man. It was not to be

guaranteed or created. One inherits it by birth. This absolutism has not been curtailed or eroded. Restriction has been placed on exercise of power

by the State by using the negative. It is State which is restrained from interfering with freedom of life and liberty except in accordance with the

procedure established by law. Use of the word "deprive" is of great significance. According to th dictionary it means, "debar from enjoyment;

prevent (child etc.) from having normal home life". Since deprivation of right of any person by the State is prohibited except in accordance with

procedure established by law, it is to be construed strictly against the State and in favour of the person whose rights are affected. Article 21 is a

constitutional command to State to preserve the basic human rights of every person. Existence of right and its preservation has, thus, to be

construed liberally and expansively. As a corollary to it the exercise of power by the State has to be construed narrowly and restrictively. It should

be so understood and interpreted as not to nullify the basic purpose of the guarantee. No legislative or executive action can be permitted to get

through unless it passes through the judicial scanning of it being not violative of the cherished right preserved constitutionally. If the article is

construed as empowering the State to make a law and deprive a person as the Constitution permits it then the entire concept of personal liberty

shall stand frustrated. A political party voted to power may adopt repressive measures against its political foes by enacting a law and it may well be

said that deprivation being in accordance with procedure established by law it is within the constitutional frame. The procedure adopted by State

either legislatively or executively must therefore satisfy the basic and fundamental requirement of being fair and just. The word ''except'' restricts the

right of the State by directing it not to fiddle with this guarantee, unless it enacts a law which must withstand the test of Article 13. Today it appears

well-nigh settled that procedure established by law, extends both to the substantive and procedural law. Further mere law is not sufficient. It must

be fair and just law. Even in absence of any provision as in American Constitution fair trial has been rendered the basic and primary test through

which a legislative and executive action must pass.

79. In Bodhisattwa Goutam (supra), the Supreme Court while considering an appeal against the order passed by the High Court refusing to quash

criminal proceedings was seized with the question as to whether any further order could be passed in the case and the appellant be compelled to

pay maintenance during the pendency of criminal case for which show cause notice had been issued to him. While disposing of the appeal by

ordering that the appellant shall pay to the respondent a sum of Rs. 1000/- every month as interim compensation during the pendency of the

criminal case, the Court in paragraphs 6 to 10 observed as follows:

6. This Court, as the highest Court of the country, has a variety of jurisdiction. Under Article 32 of the Constitution, it has the jurisdiction to

enforce the Fundamental Rights guaranteed by the Constitution by issuing writs in the nature of habeas corpus, mandamus, prohibition, quo

warranto and certiorari. Fundamental Rights can be enforced even against private bodies and individuals. Even the right to approach the Supreme

Court for the enforcement of the Fundamental Rights under Article 32 itself is a Fundamental Right. The jurisdiction enjoyed by this Court under

Article 32 is very wide as this Court, while considering a petition for the enforcement of any of the Fundamental Rights guaranteed in Part III of the

Constitution, can declare an Act to be ultra vires or beyond the competence of the legislature and has also the power to award compensation for

the violation of the Fundamental Rights (See Rudul Sah Vs. State of Bihar and Another, ; Peoples'' Union For Democratic Rights Through Its

Secretary and Another Vs. Police Commissioner, Delhi Police Headquarters and Another,

7. For the exercise of this jurisdiction, it is not necessary that the person who is the victim of violation of his fundamental right should personally

approach the court as the court can itself take cognizance of the matter and proceed suo motu or on a petition of any public-spirited individual.

This Court through its various decisions, has already given new dimensions, meaning and purpose to many of the fundamental rights especially the

Right to Freedom and Liberty and Right to Life. The Directive Principles of State Policy have also been raised by this Court from their static and

unenforceable concept to a level as high as that of the fundamental rights.

8. This Court has, innumerable times, declared that ""Right to Life"" does not merely mean animal existence but means something more, namely, the

right to live with human dignity. (See: Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others, ; State of Maharashtra Vs.

Chandrabhan Tale, Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, and Delhi Transport Corporation Vs. D.T.C.

Mazdoor Congress and Others, . Right to Life would, therefore, include all those aspects of life which go to make a life meaningful, complete and

worth living.

9. Unfortunately, a woman, in our country, belongs to a class or group of society who are in a disadvantaged position on account of several social

barriers and impediments and have, therefore, been the victim of tyranny at the hands of men with whom they, fortunately, under the Constitution

enjoy equal status. Women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honour

and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. Women, in them, have many

personalities combined. They are mother, daughter, sister and wife and not playthings for centre spreads in various magazines, periodicals or

newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and, of course, independence to live the

roles assigned to them by Nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of

men anywhere and in every part of the world.

10. Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of

a woman and pushes her into deep emotional crisis. It is only by her sheer will-power that she rehabilitates herself in the society which, on coming

to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human

rights and is also violative of the victim''s most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many

feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not,

unfortunately, take care of the social aspect of the matter and are inept in many respects.

80. Paragraphs 24 and 25 of the decision in Chandrima Das (supra) referred to by Mr. Dutta, where the Supreme Court was dealing with a public

interest litigation, read as follows:

24. The International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory States and the meaning

given to the above words in those Declarations and Covenants have to be such as would help in effective implementation of those rights. The

applicability of the Universal Declaration of Human Rights and the principles thereof may have to be read, if need be, into the domestic

jurisprudence.

25. Lord Diplock in Salomon v. Commr. of Customs and Excise said that there is a prima facie presumption that Parliament does not intend to act

in breach of international law, including specific treaty obligations. So also, Lord Bridge in Brind v. Secy. of State for the Home Deptt. observed

that it was well settled that, in construing any provision in domestic legislation which was ambiguous in the sense that it was capable of a meaning

which either conforms to or conflicts with the International Convention, the courts would presume that Parliament intended to legislate in conformity

with the Convention and not in conflict with it.

81. In Peoples" Union for Civil Liberties (supra), the Supreme Court taking note of the fact that India is a signatory to the International Covenants

on Civil & Political Rights, 1966 observed that Article 12 of the Universal Declaration of Human Rights, 1948 is almost in similar terms as Article

17 of the said covenant and that Article 21 of the Constitution has, therefore, been interpreted in conformity with the international law.

82. Moran M. Baselios Marthoma Matthews (II) (supra) related to a dispute between the parties regarding management of ""Syrian churches"". The

Court noticed that 200 civil suits between the parties touching one aspect or the other were pending and held that the High Court erred in the

exercise of its jurisdiction in entertaining a writ petition when disputed questions of fact relating to title were involved. Paragraph 8 of the decision

being relevant is quoted below:

8. A distinction, in our opinion, must be borne in mind in regard to the exercise of jurisdiction under Article 226 of the Constitution of India in

relation to the matters providing for public law remedy vis-Ã¯Â¿Â½-vis private law remedy. The High Court while exercising its jurisdiction under

Article 226 of the Constitution, no doubt, exercises a plenary power but then certain limitations in regard thereto are well accepted. Ordinarily, a

writ of or in the nature of mandamus would be issued against a "State" within the meaning of Article 12 of the Constitution of India or the public

authorities discharging public functions or a public utility concern or where the functions of the respondents are referable to a statute, which a

fortiorari would mean that save and except for good reasons Court would not entertain a matter involving private law remedy.

83. The Court considered its earlier decision in P.R. Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others, (to which

reference shall be made at a later part of this judgment), while observing that the observations in the order of the High Court under appeal would

not bind the lower courts where the proceedings were pending.

84. In Howrah Mills (supra), while considering whether the State of West Bengal should have responded to a request for protecting the property

from trespassers so as to ensure that revival of a sinking industry is achieved and its workers are protected, the Supreme Court observed that in

such a situation it was the duty of the police of the State to give necessary protection to the struggling industry to tide over the crises and protect its

property from interference by lawless elements and unauthorized persons.

85. The decision in Jay Engineering Works (supra) though relatable to police inaction is not one directly on the point. The Government of West

Bengal had issued two circulars dated 28.3.1967 and 12.6.1997. The circular dated 28.3.1967 related to a cabinet decision dated 14.3.1967

wherein it was decided that in cases of ''gherao'' of industrial establishments by workers resulting in the confinement of managerial and other staff,

the matter should immediately be referred to the Labour Minister and his direction obtained before deciding upon police intervention for the rescue

of the confined personnel. Circular dated 12.6.1967 was issued by the Government to impress officers, specially those connected with

maintenance of law and order that the police must not intervene in legitimate labour movements and that in case of any complaint regarding unlawful

activity in connection with such movements the police must first investigate carefully whether the complaint has any basis in fact before proceeding

to take any action provided under the law.

86. It was the common case of the petitioners in the series of gherao cases that the aforesaid two circulars constituted the primary reason for the

total inaction of the police.

87. Upon these facts, the following questions arose for determination:

1. What is a ''gherao''?

2. Is ''gherao'' as practiced in this case lawful?

3. Are the circulars dated 22nd March 1967 and 12th June 1967 and/or the decisions, if any, upon which they are based lawful or competent?

4. Did the respondents 6 and 7 fail to perform their legal duties either in obedience to the said circulars or otherwise?

5. To what relief are the petitioners entitled to?

88. While answering the questions raised, Their Lordships of the Special Bench had the occasion to trace the powers of the police in different

enactments and considered whether by an executive fiat the police could be directed not to exercise its statutory powers on the face of commission

of offences punishable under law. The Court declared the impugned circulars unlawful and the respondents were directed to act in terms of the law

laid down in the judgment. It was in the circumstances that the Court observed that the police were bound to discharge their statutory duties not

only by apprehending those who committed an offence but also to take steps to prevent it from being committed. It was also observed that

prevention is the more important phase of the duty of the police and is illustrative of the homely phrase "prevention is better than cure".

89. In Mithailal (supra), the Division Bench of the Bombay High Court held as follows:

29. ...Democratic society is governed by the concept of rule of law. The police are essentially a law enforcing agency. It is he who enforces the

liability, maintains the public order, regulates traffic, keeps the lawless elements in check, brings the offenders to book and so on and so forth.

Police after advent of independence of India and becoming a parliamentary democracy, practically became a servant of people. Now whilst

maintaining law and order as servants of the democracy, it has to act as guide of the people, to counsel them towards the responsible civil life.

Police service is essential and police have to spend most of their time in working with the people from whom they too expect cooperation. The

police instead of being ante are now of the People and for the People....

90. A learned Judge of the Bombay High Court, in Transmissions P. Ltd. (supra), was seized with the question as to whether the petitioners are

entitled to claim police protection or assistance for enforcing their right of entering the factory premises and enjoying their properties. On

consideration of the provisions contained in the Cr.P.C. as well as the Bombay Police Act, 1951, it was held that the Writ Court would not be

powerless to intervene if the police fail or refuse to carry out their duty.

91. At this juncture, it would also be worthwhile to take note of a decision of the Division Bench of the Kerala High Court in Midland Rubber and

Produce Co. Ltd. Vs. Supdt. of Police and Others, . Hon"ble Justice AR. Lakshmanan (as His Lordship then was) speaking for the Bench, while

referring to the decision of the Apex Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and

Others Vs. V.R. Rudani and Others, , held as follows:

It is clear from the above pronouncement that a writ of mandamus should be issued to police authorities to enforce law. It is needless to say that

duties imposed on the police authorities are to prevent the commission of crimes including the commission of cognizable offences. It is immaterial

whether such crime is committed against an individual or public at large. In this view of ours it is necessary for us to grant the relief to the appellant

because he is complaining of the inaction on the part of the police authorities to prevent the respondents from committing offences and also rescue

the appellant from the clutches of the contesting respondents who have taken law in their own hands and are preventing the management from

exercising their fundamental right to engage their own men and carry on a lawful trade or business as above. For the foregoing reasons the writ

petition and writ appeal are allowed....

92. In D.S. Nakara (supra), the Supreme Court while dealing with cut-off dates fixed for entitlement to pensionary benefits delved deep into the

aspect of socialism and observed as follows:

33. Recall at this stage the Preamble, the flood light illuminating the path to be pursued by the State to set up a Sovereign Socialist Secular

Democratic Republic. Expression ""socialist"" was intentionally introduced in the Preamble by the Constitution (Forty-second amendment) Act,

1976. In the objects and reasons for amendment amongst other things, ushering in of socio-economic revolution was promised. The clarion call

may be extracted:

The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution,

which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of Government and the

public for some time...

It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism...to make the directive principles more

comprehensive....

What does a Socialist Republic imply? Socialism is a much misunderstood word. Values determine contemporary socialism pure and simple. But it

is not necessary at this stage to go into all its ramifications. The principal aim of a socialist State is to eliminate inequality in income and status and

standards of life. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security

from cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of

Marxism and Gandhism leaning heavily towards Gandhian socialism. During the formative years, socialism aims at providing all opportunities for

pursuing the educational activity. For want of wherewithal or financial equipment the opportunity to be fully educated shall not be denied.

Ordinarily, therefore, a socialist State provides for free education from primary to PhD but the pursuit must be by those who have the necessary

intelligence quotient and not as in our society where a brainy young man coming from a poor family will not be able to prosecute the education for

want of wherewithal while the ill equipped son or daughter of a well-to-do father will enter the portals of higher education and contribute to

national wastage. After the education is completed, socialism aims at equality in pursuit of excellence in the chosen avocation without let or

hindrance of caste, colour, sex or religion and with full opportunity to reach the top not thwarted by any considerations of status, social or

otherwise. But even here the less equipped person shall be assured a decent minimum standard of life and exploitation in any form shall be

eschewed. There will be equitable distribution of national cake and the worst off shall be treated in such a manner as to push them up the ladder.

Then comes the old age in the life of everyone, be he a monarch or a mahatma, a worker or a pariah. The old age overtakes each one, death being

the fulfilment of life providing freedom from bondage. But here socialism aims at providing an economic security to those who have rendered unto

society what they were capable of doing when they were fully equipped with their mental and physical prowess. In the fall of life the State shall

ensure to the citizens a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure, relieving

the boredom and the humility of dependence in old age. This is what Article 41 aims when it enjoins the State to secure public assistance in old

age, sickness and disablement. It was such a socialist State which the Preamble directs the centres of power - Legislative, Executive and Judiciary

- to strive to set up. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society is a long march but during this

journey to the fulfilment of goal every State action whenever taken must be directed, and must be so interpreted, as to take the society one step

towards the goal.

93. These are more or less all that have been cited before me by learned Counsel. I feel a lot more educated and am encouraged to make a shift

from my rigid stand, which I had expressed at the commencement of hearing. But one thing is clear, there is no precedent directly on the point of

conflicting interest of the present nature and that the slate is clean on which I have the chance to scribble.

94. All human beings cherish certain basic human freedoms which occupy prime position among the higher values of life. One of those is abiding

faith in the rule of law and the sanctity of personal liberty. Bound as I am by the Constitution Bench decisions in P.D. Shamdasani (supra), Vidya

Verma (supra) and ADM, Jabalpur (supra), I would have had no other alternative but to hold that howsoever dear and precious the right to life

and liberty might be to a person, if such right is sought to be invaded by a private individual and not by the State and a writ petition is filed for

enforcement of the right so invaded, the Writ Court''s jurisdiction would not extend and the deprivation ought to be eschewed relegating the victim

of deprivation to avail his remedy under the ordinary laws of the country.

95. I, however, wonder whether the framers of the Constitution, or even the erudite Hon''ble Judges who adorned the seats of Judges of the

Supreme Court during the fifties or even thereafter while deciding ADM, Jabalpur (supra) ever imagined of a situation of conflict of the present

nature between parents and children. Much water has flown down the Ganges since the decisions in A.K. Gopalan (supra), P.D. Shamdasani

(supra), Vidya Verma (supra) and ADM, Jabalpur (supra) were rendered. The rigid interpretation of Article 21 given by the Courts therein though

have not been overruled by subsequent decisions, the difference in opinion in respect of interpretation of Article 21 is largely noticeable in the air

and the ratio of such decisions, to my mind, have been diluted to a large extent by subsequent decisions. I consider Maneka Gandhi v. Union of

India (supra) to be the first decision in a series of decided cases which broadened the horizons of Article 21.

96. That a narrow construction of Article 21 was placed by the Supreme Court in ADM, Jabalpur (supra) has been expressed in paragraph 448

of the decision in Kartar Singh (supra), which reads as follows:

449. How fundamental is the guarantee under Article 21 of the Constitution can be well appreciated when one looks at the constitutional

amendment made in the year 1978. By the 44th Amendment Act, 1978, Article 359 was amended and it was provided that Articles 20 and 21

could not be suspended even during emergency. The occasion for it arose due to narrow construction placed by this Court in Additional District

Magistrate, Jabalpur v. Shivakant Shukla (supra) denying a citizen his right to challenge even arbitrary arrest and detention.

97. It is also noted that even during the sixties, with passage of time, the Supreme Court [without overruling Vidya Verma (supra)] has entertained

petitions u/s 491 of the old Cr.P.C. holding that such provision is expressly concerned with directions of the nature of Habeas Corpus and directed

making over custody of the infant from one parent to the other [see Gohar Begam Vs. Suggi alias Nazma Begam and Others, Similar course of

action was followed in Mohd. Ikram Hussain Vs. State of U.P. and Others,

98. Judicial activism has expanded the scope of Article 21 to such an extent that deprivation of liberty otherwise than according to procedure

established by law is also well within the Court''s interference now. The decision in Bodhisattwa Goutam (supra), it is noted, has been referred to

with approval quite recently in Dinesh @ Buddha Vs. State of Rajasthan, , where rape has been considered to be a crime not only against basic

human rights but also violative of the victim''s most cherished fundamental right, viz. the right to life contained in Article 21 of the Constitution.

99. Without fear of admonition, I may venture to hold that the efficacy of the decisions of the Supreme Court in A.K. Gopalan (supra), P.D.

Shamdasani (supra), Vidya Verma (supra) and ADM, Jabalpur (supra) as binding precedents stand eroded in view of the radically changed socio-

economic conditions of the country. Interpretation of Article 21 made therein having regard to the present day socio-economic scenario of the

country may not hold good. The scope and ambit of Article 21 having been expanded during the last three decades, the view that protection under

Article 21 would not be applicable in respect of wrong doing by a private individual does not appear to be of much relevance.

100. The law declared by the Supreme Court State of Punjab and Others Vs. Amritsar Beverages Ltd. and Others, in this connection may also be

noted. The Punjab General Sales Tax Act, 1948 vis-a-vis advancement in information technology was under consideration there. The Court had

the occasion to rule as follows:

9. The Act was enacted in the year 1948. Information technology at that time far from being developed was unknown. The Constitution of India is

a living organ. It had been interpreted differently having regard to different societal situations. [See Liverpool and London S.P. and I Asson. Ltd.

Vs. M.V. Sea Success I and Another, , Union of India (UOI) Vs. Naveen Jindal and Another, , John Vallamattom and Another Vs. Union of

India (UOI), and Kapila Hingorani Vs. State of Bihar, Same principle is applicable in respect of some statutes.

10. Creative interpretation had been resorted to by the Court so as to achieve a balance between the age-old and rigid laws on the one hand and

the advanced technology, on the other. The judiciary always responds to the need of the changing scenario in regard to development of

technologies. It uses its own interpretative principles to achieve a balance when Parliament has not responded to the need to amend the statute

having regard to the developments in the field of science.

101. Yet again, in Anuj Garg and Others Vs. Hotel Association of India and Others, , the Supreme Court was considering the constitutional

validity of Section 30 of the Punjab Excise Act, 1914. The Court reiterated the need to interpret the laws having regard to changed societal

conditions as follows:

7. The Act is a pre-constitutional legislation. Although it is saved in terms of Article 372 of the Constitution, challenge to its validity on the

touchstone of Articles 14, 15 and 19 of the Constitution of India, is permissible in law. While embarking on the questions raised, it may be

pertinent to know that a statute although could have been held to be a valid piece of legislation keeping in view the societal condition of those

times, but with the changes occurring therein both in the domestic as also in international arena, such a law can also be declared invalid.

9. Changed social psyche and expectations are important factors to be considered in the upkeep of law. Decision on relevance will be more often

a function of time we are operating in. Primacy to such transformation in constitutional rights analysis would not be out of place....

102. Law not being a static concept, it is quite but natural that with passage of time its interpretation might change to keep pace with needs of the

society. In Common Cause, A Registered Society Vs. Union of India and Others, the Supreme Court noticed that in its earlier decisions ''Life'' has

been explained in a manner which has infused ""LIFE"" in to the letters of Article 21.

103. Article 21 of the Constitution being the heart of the Fundamental Rights [see Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and

others etc. etc., has received expanded meaning in the following decisions:

1. Right to travel [seeManeka Gandhi v. Union of India (supra) and Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer,

Government of India, New Delhi and Others,

2. The right to go abroad [see: State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others, ;

3. The right to privacy [see: Kharak Singh Vs. The State of U.P. and Others, and Gobind Vs. State of Madhya Pradesh and Another,

4. The right against solitary confinement [see: Sunil Batra Vs. Delhi Administration and Others etc.,

4. The right against bar fetters [see: Charles Sobraj Vs. Supdt. Central Jail, Tihar, New Delhi,

5. The right to legal aid [see Madhav Hayawadanrao Hoskot Vs. State of Maharashtra,

6. The right to speedy trial [see: Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, and Common Cause, A Registered

Society Vs. Union of India (UOI) and Others,

7. The right to fair trial [see: Commissioner of Police, Delhi and another Vs. Registrar, Delhi High Court, New Delhi,

8. The right against torture and custodial violence [see: D.K. Basu Vs. State of West Bengal,

9. The right against handcuffing [see: Prem Shankar Shukla Vs. Delhi Administration,

10. The right against delayed execution [see: T.V. Vatheeswaran Vs. State of Tamil Nadu,

11. The right against custodial violence [see: Sheela Barse Vs. State of Maharashtra, ;

12. The right against public hanging [see: A.G. of India v. Lachma Devi, 1989 Supp (1) SCC 264

13. The right to doctor''s assistance [see: Pt. Parmanand Katara Vs. Union of India (UOI) and Others,

14. The right to food, shelter and clothing [see: M/s. Shantistar Builders Vs. Narayan Khimalal Totame and others,

15. The right to free legal services/aid [see: Khatri and Others Vs. State of Bihar and Others, and State of Maharashtra Vs. Manubhai Pragaji

Vashi and others,

16. The right to primary education [see Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and T.M.A. Pai

Foundation and Others Vs. State of Karnataka and Others,

17. The right to health and medical care [see: Consumer Education and Research center and others Vs. Union of India and others, and State of

Punjab and others Vs. Mohinder Singh Chawala, etc.,

18. The right to pollution-free environment [see: M.C. Mehta and Another Vs. Union of India (UOI) and Others,

19. The right to safe drinking water [see: A.P. Pollution Control Board Vs. Prof. M.V. Nayadu (Retd.) and Others,

20. The right of a woman to work with dignity and to a working environment safe and protected from sexual harassment or abuse [see: Vishaka

and others Vs. State of Rajasthan and Others, and Apparel Export Promotion Council Vs. A.K. Chopra, ;

21. The right to a quality life [see: Hinch Lal Tiwari Vs. Kamala Devi and Others,

22. The right to family pension [see: S.K. Mastan Bee Vs. The General Manager, South Central Railway and Another,

23. The right to reputation [see: State of Bihar Vs. Lal Krishna Advani and Others, , and State of Maharashtra Vs. Public Concern for

Governance Trust and Others,

24. The right to reproductive choice of a woman [see: Suchita Srivastava and Another Vs. Chandigarh Administration,

104. It can thus be seen that the earlier narrow exposition of law has given way to a more bold, unequivocal, comprehensive and wide

interpretation of Article 21 which perhaps was unimaginable in the yesteryears. The interpretation so given is consistent with the rights under the

Universal Declaration of Human Rights and the International Covenants. One cannot be oblivious of reality while interpreting a provision, be it

constitutional or statutory. The people of the country look up to the Courts of Law for justice and it would be gross injustice if I proceed to decline

to entertain the petitions, following the old decisions which the Supreme Court has chosen to depart from (albeit without referring to the same).

105. Interestingly, while considering the case of the prisoners blinded by police officers in Khatri (II) (supra), the Supreme Court was considering

a submission made by advocate for the State of Bihar that even if the prisoners had been blinded by the police, the State was not liable to bear

compensation for violation of constitutional right. While dealing with the question, Hon"ble P.N. Bhagwati, J. observed as follows:

4. ...These rival arguments raised a question of great constitutional importance as to what relief can a court give for violation of the constitutional

right guaranteed in Article 21. The court can certainly injunct the State from depriving a person of his life or personal liberty except in accordance

with procedure established by law, but if life or personal liberty is violated otherwise than in accordance with such procedure, is the court helpless

to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies

for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty.....

(underlining for emphasis by me)

106. It seems the Supreme Court being duly fortified by the above observations regarding forging of new tools and devising new remedies for

vindicating one"s fundamental right has delivered the coup de grace by its decision in Bodhisattwa Gautam (supra) wherein, after noticing the broad

parameters for assisting rape victims laid down in Delhi Domestic Working Women"s Forum Vs. Union of India (UOI) and Others, , and holding

that such decision recognizes the right of a rape victim to compensation since it is not only a violation of one"s basic human right but also

Fundamental Right, the Court in exercise of its inherent jurisdiction passed direction for interim compensation to be paid to the respondent, the

victim of rape, by the accused (even though the accused was yet to be convicted).

107. Article 21 consists of only 18 words. If one counts the number of words employed in expressing the various fundamental rights under Part III

of the Constitution, it is possibly the shortest of all the rights, yet, its significance in life is all pervasive providing protection to all human beings

including foreigners. A man is assured of certain freedoms right from the day he is born, - freedom of life and liberty. Article 21 recognises such

freedom. No law is required to be enacted to protect or guarantee the right to life or of liberty. That is why a man is said to be born free and has

the right to stay free all along his life unless, of course, he indulges in unlawful activities which, if proved, may result in penal consequences depriving

him of such right. But so long he does not, it is the duty of the State to preserve his freedom, implied by the negative expression in Article 21.

108. Life and liberty in Article 21 has been so interpreted that it no longer is confined to prevent encroachment of the right guaranteed thereunder

by the executive except in accordance with law but would also take within its ambit deprivation of right to life and/or personal liberty even by an

individual. No matter what the situation is, the State must protect the life and liberty of an individual from being invaded.

109. I end my discussion on the expansive interpretation of Article 21 here and move on to discuss the other relevant issues relating to the extent of

powers exercisable by the police, the factors that ought to exercise the consideration of the Writ Court and whether it would be prudent to lay

down guidelines for future implementation by the police.

110. In this batch of petitions, I am really concerned with the powers of the police to enforce law and order as distinguished from public order.

While discussing what ''law and order'' and ''public order'' mean, the Supreme Court in The Commissioner of Police and Others Vs. Smt. C.

Anita, , has observed as follows:

7. ...While the expression ''law and order'' is wider in scope inasmuch as contravention of law always affects order, ''public order'' has a narrower

ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even

tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of ''law and order'' and

''public order'' is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo

of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few

individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude

and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting ''public order'' from that

concerning ''law and order''. The question to ask is:

Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an

individual leaving the tranquillity of the society undisturbed?

111. It would now be worthwhile to note the statutory provisions that impose duties on police officers and decisions touching their powers.

Section 23 of the Police Act provides as follows:

23. Duties of police-officers.-It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to

him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and

public nuisances; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose

apprehension sufficient ground exist; and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a

warrant, to enter and inspect any drinking-shop, gaming-house or other place of resort of loose and disorderly characters.

112. In terms of Regulation 205 of the Police Regulations of Bengal, 1943 it is one of the duties of the Officer-in-Charge of a police station, within

the limits of his jurisdiction to ensure preservation of peace and for the prevention and detection of crime. In order to check crime his first aim

should be to obtain correct information, inter alia, about criminals and criminal classes.

113. Similar is the provision in respect of the Officers-in-Charge of police stations under the jurisdiction of the Kolkata Police (see Regulation 4 of

Chapter V).

114. Section 149 of the Cr.P.C. ordains that every police officer may interpose for the purpose of preventing the commission of any cognizable

offence and shall, to the best of his ability, prevent such commission.

115. In The State of Punjab Vs. Barkat Ram, , the Supreme Court, inter alia, held as follows:

8. The Police Act, 1861 (Act 5 of 1861), is described as an Act for the regulation of police, and is thus an Act for the regulation of that group of

officers who come within the word ""police"" whatever meaning be given to that word. The preamble of the Act further says: ''whereas it is expedient

to re-organise the police and to make it a more efficient instrument for the prevention and detection of crime, it is enacted as follows''. This

indicates that the police is the instrument for the prevention and detection of crime which can be said to be the main object and purpose of having

the police. Sections 23 and 25 lay down the duties of the police officers and Section 20 deals with the authority they can exercise. They can

exercise such authority as is provided for a police officer under the Police Act and any Act for regulating criminal procedure. The authority given to

police officers must naturally be to enable them to discharge their duties efficiently. Of the various duties mentioned in Section 23, the more

important duties are to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances

and to detect and bring offenders to justice and to apprehend all persons whom the police officer is legally authorised to apprehend. It is clear,

therefore, in view of the nature of the duties imposed on the police officers, the nature of the authority conferred and the purpose of the Police Act,

that the powers which the police officers enjoy are powers for the effective prevention and detection of crime in order to maintain law and order.

116. The learned Judge of the Bombay High Court in Transmissions P. Ltd. (supra) noticed the decision of Lord Denning in R. v. Metropolitan

Police Commissioner, Ex parte Blackburn, wherein on the point of discretion exercisable by the police, it was observed as follows:

Although the chief officers of police are answerable to the law, there are many fields in which they have a discretion with which the law will not

interfere. For instance, it is for the Commissioner of Police, or the chief constable, as the case may be, to decide in any particular case whether

enquiries should be pursued, or whether an arrest should be made, or a prosecution brought. It must be for him to decide on the disposition of his

force and the concentration of his resources on any particular crime or area. No court can or should give him direction on such a matter. He can

also make policy decisions and give effect to them, as, for instance, was often done when prosecutions were not brought for attempted suicide; but

there are some policy decisions with which, I think, the courts in a case can, if necessary, interfere. Suppose a chief constable were to issue a

directive to his men that no person should be prosecuted for stealing any goods less than $100 in value. I should have thought that the court could

countermand it. He would be failing in his duty to enforce the law.

117. While deciding the issues that have surfaced, I would fail in my duty to dispense justice if I do not take judicial notice of the ground realities.

More than two decades ago, the concept of presentation of writ petitions before this Court alleging ""police inaction"" was, perhaps, unknown. Now

the situation has come to such a pass that the rules of this Court provide a separate code for ""police inaction"" matters to be heard by the learned

Judge having determination of Residuary (Group IX) matters. At times writ petitions are also presented against ""police in action"" meaning thereby

that the police is alleged to have exceeded its jurisdiction. Non-registration of FIR despite being seized of information relating to commission of

cognizable offence, registration of complaint as FIR despite the same not disclosing any offence or in respect of matters purely civil in nature to

harass the accused, neglect or deliberate inaction to arrest despite rejection of prayer of the accused for anticipatory bail, encouraging wrongdoers

to infringe people''s rights, failure to recover missing minor girls abducted for immoral purposes, perfunctory investigation likely to aid the accused

in the long run, interference in private disputes and seeking to assume the role of a civil adjudicator, are some instances of matters brought to the

judicial notice of a Judge taking up residuary matters. Number of writ petitions alleging police inaction and excess police action is swelling.

Although interference by the Writ Court to a large extent is declined either due to availability of alternative remedy or because disputed questions

are involved, people continue to throng the corridors of the High Court with an expectation that it is the temple where justice would be available

and the Court is urged to set things right. The police have been entrusted with the duty to secure the safety and security of the people; they are to

prevent and detect crime; they are to maintain order, peace and tranquility in the area within their jurisdiction; they are the enforcers of law. Being

public servants they are as much bound by the law as any other person of the street. One vital question that normally arises in all such matters is

why should the police be accused of being partisan? Why should a disciplined force be accused of indiscipline? The answer is not far to seek.

Public impression of integrity of the police force, or for that matter other branches of administration, is not very encouraging. The impression that

has gained ground is that a good chunk of the police force and public servants in other fields are corrupt. People are taking it in their stride but

there can be no two opinions that the nation is faced with a severe crisis, which ought to be overcome immediately by identifying the black sheep

or else ruination is imminent. So far as instances of corruption in the police force are concerned, the same are largely noticeable when judicial

review of decisions, taken in connection with matters of disciplinary action taken against errant police officers, is sought for. Instances of the police

force being remiss or negligent are also discernible from reports that senior police officers submit to Court when called upon in terms of orders

passed by it. Constables entrusted to control vehicular traffic accepting gratification from errant drivers of vehicles in broad daylight is a daily

feature. Corruption, remissness, negligence etc. of police officers can be traced to collusion with that section of society who use the police force for

achieving their narrow self-interest. To build up an efficient force is no mean job; it is necessary to have officers of the highest caliber which

regrettably is lacking nowadays. It is in matters where the Court has reasonable ground to suspect such collusion that writ powers ought to be

exercised even though a private dispute may be at the root of the controversy that has traveled to the Court.

118. As noticed above, right to life has been interpreted to mean something more than survival or animal existence; it would include the right to live

with human dignity and that can be achieved if Article 21 is construed in a manner to embrace private individuals also who may violate the

fundamental right of others guaranteed by Article 21 and get away without being penalized if he has the blessings of the police.

119. In the event it is brought to the notice of a police officer that life of an individual is under threat at the instance of another or that personal

liberty of one is likely to be invaded by the other and the police officer despite being under an obligation to prevent the likely commission of any

cognizable offence remains inactive, a writ petition, alleging failure of the police officer to perform his statutory duty, may lie and such writ petition

does not deserve to be dismissed in limine on the ground that the conflict of interest arises out of a pure and simple private family dispute or that

alternative remedy under the ordinary laws are available. If an elderly person does not survive after being threatened by his son either due to shock

or the threat is translated into action, the remedies available in law would be meaningless for the deceased.

120. Similarly, if an individual without being authorized by law poses a threat to the life of another or seeks to deprive the other of his personal

liberty or intrudes on one''s privacy and the Court of Writ is approached to redress a grievance voiced that the police has put up a show of

activating itself and has not taken legal measures at the instigation of that individual, would the Court fold its hands and deny relief? In an

appropriate case, if the Court is satisfied that the police have been colluding with one party to the detriment of the complainant, the answer to the

aforesaid question cannot but be in the affirmative.

121. As Roscoe Pound had observed, flexibility is the greatest virtue of the law Courts and as and when the situation so demands, the law Courts

ought to administer justice in accordance therewith and as per the needs of the situation. The Courts of law exist for the society. If in a given

situation the Court feels the requirement to interfere in accordance with principles of justice, equity and good conscience, it ought to rise to the

occasion for redressing the grievances of a large section of society who due to old age and other kinds of disablement expect the Court of Writ to

uphold their human right to have access to justice and consequently to enforce the fundamental right to life and personal liberty.

122. It is elementary law that an alternative remedy is not a bar to entertain a writ petition and, in any event, a writ petitioner ought not to be

relegated to the alternative forum when he complains of breach of the most fundamental of all fundamental rights guaranteed under the Constitution,

i.e. the protection of Article 21. The decision in Aleque Padamsee (supra) and other previous decisions referred to therein did not pertain to

complaints from persons threatened with invasion of their right guaranteed under Article 21. Having regard to the law declared in Haryana

Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , to the effect that Courts should not place reliance on decisions without

discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed, that observations of Courts are not

to be read as Euclid''s theorems nor as provisions of the statute, and that the observations must be read in the context in which they appear, I do

not consider it proper on facts and in the circumstances to hold that in view of the decision in Aleque Padamsee (supra), the writ petitions should

not at all be entertained.

123. It cannot possibly be disputed that the arms of the Writ Court are wide and long enough to redress any legitimate grievance. The power of

the Court ranges from testing the validity of legislation enacted by Parliament/Legislature and to strike it down if found ultra vires; to lay down

guidelines in the absence of legislation on a particular point and to direct that such guidelines would operate as law till such time appropriate

legislation is enacted; to interfere with policy decisions of the executive if the same are found to be unreasonable or contrary to statutory provision;

to quash criminal proceedings in exceptional cases to prevent miscarriage of justice; to award compensation to victims of custodial violence and so

on and so forth. The length and width of the powers conferred by Article 226 need not be dilated elaborately here since the same are well-

recognized. It must, however, be borne in mind that in exercise of Writ Jurisdiction, the Courts are obliged to promote justice and not to defeat it.

The Judges must be sensitive to the needs of the hour and would be justified in finding out ways and means for imparting justice through legal

measures to those classes of persons who find their lives to be mutilated by the cruel hands of destiny.

124. At the same time, the Courts ought also to bear in mind that a private individual accused of violating the right guaranteed to another under

Article 21 is as much entitled to the same right as the complainant in addition to his entitlement to equal protection of the laws. In exercising its vast

jurisdiction, the Courts ought not to be swayed by passing passions, populist sentiments or misplaced sympathy. The power exercisable is

extraordinary and, therefore, it is only in extraordinary cases of violation of fundamental and statutory rights that the Court would unfold itself and

exercise the power to issue prerogative writs. No wonder, the Courts have evolved restrictions, by now well accepted by judicial decisions as the

self-imposed restrictions, keeping in mind the principle that wider the power the authority enjoys the more circumspect it must be while exercising

those powers. As cautioned in Chandra Bhan Dubey (supra), a Writ Court does not act like a proverbial ''bull in the china shop''. It is, therefore,

up to the Court before whom the lis is brought to consider the rival claims in accordance with well-recognized principles of self-imposed

restrictions and to decide whether interference is at all necessary or not.

125. Keeping pace with the needs of changing society, the Parliament has introduced two enactments of late in respect of two separate classes at

the receiving end, viz. (i) women and (ii) parents and senior citizens.

126. The first of these is the DV Act introduced in 2005 to protect women from domestic violence. The other is the 2007 Act. These enactments,

containing a list of do''s and don''ts, seek to redefine the facets of human life in present day circumstances.

127. I am of the clear opinion that rights traceable in the said statutes when exercised by the victims of deprivation and proceedings are pending

before the appropriate forum, it would not be sound exercise of discretion to interfere on a writ petition and seek to determine rights of parties.

That would amount to a parallel remedy being pursued, which ordinarily is legally impermissible.

128. Any discussion on the topic of ""police inaction"" vis-Ã¯Â¿Â½-vis exercise of writ powers would be incomplete without reference to certain other

decisions of the Supreme Court having some bearing on the issue at hand.

129. The first of these is Mohammed Hanif Vs. The State of Assam, . While reiterating that writ remedy is a remedy in public law and explaining

general principles governing exercise of writ jurisdiction under Article 226, the Supreme Court observed that the jurisdiction being extra-ordinary

in nature it is not meant for declaring private rights of parties.

130. Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others, , is the next. The Supreme Court was considering an appeal against an

order passed by the High Court under Article 226 of the Constitution. The respondents in the appeal had been successful in invoking the writ

jurisdiction for enforcement of a private right to immovable property against the appellants despite the fact that pendency of a civil suit between the

parties was known to the High Court. While allowing the appeal, the Supreme Court held in paragraph 6 as follows:

6. Mr Arun Jaitley, the learned Counsel appearing on behalf of respondent 1 has supported the impugned judgment on the ground that prayer for

issuing a direction against Delhi Administration and Commissioner of Police who were respondents 1 and 2 was also made. It has to be

appreciated that the present appellants were respondents 3 and 4 before the High Court; and the High Court has by the impugned order,

considered it fit to allow the prayer of the respondents against them for removal of the grills for access to the backyard. According to the stand of

the landlord-respondent, since the police were taking a partisan attitude against her, the filing of a writ petition became necessary. We are unable

to follow this argument. There is no doubt that the dispute is between two private persons with respect to an immovable property. Further, a suit

covering either directly a portion of the house-property which is in dispute in the present case or in any event some other parts of the same

property is already pending in the civil court. The respondent justifies the step of her moving the High Court with a writ petition on the ground of

some complaint made by the appellants and the action by the police taken thereon. We do not agree that on account of this development, the

respondent was entitled to maintain a writ petition before the High Court. It has repeatedly been held by this Court as also by various High Courts

that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy

under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of a statutory authority is

alleged. And in such a case, the Court will issue appropriate direction to the authority concerned. If the real grievance of the respondent is against

the initiation of criminal proceedings, and the orders passed and steps taken thereon, she must avail of the remedy under the general law including

the Criminal Procedure Code. The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies,

under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to

a litigant. The jurisdiction is special and extraordinary and should not be exercised casually or lightly. We, therefore, hold that the High Court was

in error in issuing the impugned direction against the appellants by their judgment under appeal. The appeal is accordingly allowed, the impugned

judgment is set aside and the writ petition of the respondents filed in the High Court is dismissed. There will be no order as to costs.

(underlining for emphasis by me)

131. The other decision is P.R. Murlidharan (supra) referred to above, where a dispute arose as to whether the respondent was entitled to

continue in the capacity of Madathipathi and Sthiradhyakshan of a particular Sangh. A suit filed earlier by the respondent for declaration that he

was entitled to continue was dismissed for default. The application for restoration was also dismissed. After such dismissal, he filed a writ petition

praying for police protection. The High Court while allowing the prayer observed that the respondent was entitled to hold the said office and that

the State and the police officials were under a legal obligation to give protection to his life and properties. The appeal was allowed by the Supreme

Court. Hon''ble S.B. Sinha, J. (as His Lordship then was) observed in paragraph 12 as follows:

12. It is one thing to say that in a given case a person may be held to be entitled to police protection, having regard to the threat perception,but it is

another thing to say that he is entitled thereto for holding an office and discharging certain functions when his right to do so is open to question. A

person could not approach the High Court for the purpose of determining such disputed questions of fact which were beyond the scope and

purport of the jurisdiction of the High Court while exercising writ jurisdiction as it also involved determination of disputed questions of fact.

Respondent 1 who sought to claim a status was required to establish the same in a court of law in an appropriate proceeding. He for one reason or

the other, failed to do so. The provisions of Order 9 Rule 9 of the CPC stare on his face. He, therefore, could not have filed a writ petition for

getting the selfsame issues determined in his favour which he could not do even by filing a suit. Indeed the jurisdiction of the writ court is wide while

granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution, but while doing so it could

not collaterally go into that question, determination whereof would undoubtedly be beyond its domain. What was necessary for determination of

the question arising in the writ petition was not the interpretation of the documents alone, but it required adduction of oral evidence as well. Such

evidence was necessary for the purpose of explaining the true nature of the deed of trust, as also the practice followed by this trust. In any event,

the impleading applicant herein, as noticed hereinbefore, has raised a contention that he alone was ordained to hold the said office as per the bye-

laws of the trust. The qualification of the first respondent to hold the office was also in question. In this view of the matter, we are of the opinion

that such disputed questions could not have been gone into by the High Court in a writ proceeding.

(underlining for emphasis by me)

132. Hon''ble P.K. Balasubramanyan, J. (as His Lordship then was), in a concurring judgment observed as follows:

17. A writ petition under the guise of seeking a writ of mandamus directing the police authorities to give protection to a writ petitioner, cannot be

made a forum for adjudicating on civil rights. It is one thing to approach the High Court, for issuance of such a writ on a plea that a particular party

has not obeyed a decree or an order of injunction passed in favour of the writ petitioner, was deliberately flouting that decree or order and in spite

of the petitioner applying for it, or that the police authorities are not giving him the needed protection in terms of the decree or order passed by a

court with jurisdiction. But, it is quite another thing to seek a writ of mandamus directing protection in respect of property, status or right which

remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of

process for a writ petitioner to approach the High Court under Article 226 of the Constitution seeking a writ of mandamus directing the police

authorities to protect his claimed possession of a property without first establishing his possession in an appropriate civil court. The temptation to

grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain

effective and meaningful only when it is exercised prudently and in appropriate situations.

18. In the case on hand, various disputed questions arose based on a deed of trust and the facts pleaded by the writ petitioner and controverted by

the other side. The High Court should have normally directed the writ petitioner to have his rights adjudicated upon, in an appropriate suit in a civil

court. The fact that a writ petitioner may be barred from approaching the civil court, in view of Order 9 Rule 9 of the Code of Civil Procedure, or

some other provisions, is no ground for the High Court to take upon itself, under Article 226 of the Constitution, the duty to adjudicate on the civil

rights of parties for the purpose of deciding whether a writ of mandamus could be issued to the police authorities for the protection of the alleged

rights of the writ petitioner. A writ of mandamus directing the police authorities to give protection to the person of a writ petitioner can be issued,

when the court is satisfied that there is a threat to his person and the authorities have failed to perform their duties and it is different from granting

relief for the first time to a person either to allegedly protect his right to property or his right to an office, especially when the pleadings themselves

disclose that disputed questions are involved. My learned Brother has rightly pointed out that the High Court was in error in proceeding to

adjudicate on the rights and obligations arising out of the trust deed merely based on the affidavits and the deed itself. I fully agree with my learned

Brother that the High Court should not have undertaken such an exercise on the basis that the right of the writ petitioner under Article 21 of the

Constitution is sought to be affected by the actions of the contesting respondents and their supporters and that can be prevented by the issue of the

writ of mandamus prayed for.

19. A writ for ""police protection"" so-called, has only a limited scope, as, when the court is approached for protection of rights declared by a

decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil court

or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order.

(underlining for emphasis by me)

133. The principles (emerging from the aforesaid decisions and discussions and the submissions of learned amicus curiae and learned Counsel) that

the Court ought to bear in mind while deciding allegations of police inaction in respect of alleged violation of rights to life and of liberty as well as

property may be summarized as follows:

a. Whenever a writ petition is presented before the Writ Court alleging police inaction, the Judge ought to separate the chaff from the grain and

entertain only those matters which deserve adjudication for upliftment of our constitutional jurisprudence keeping in mind the extra-ordinary powers

conferred on him by the Constitution itself vis-a-vis exercise of such power for enforcement of the rights guaranteed under Part III of the

Constitution or for any other purpose for which any of the writs would, according to well-established principles, issue;

b. A Court of Writ may interfere for issuing directions to an authority who has failed to discharge a statutory duty. The police authorities may be

directed to give protection to a writ petitioner when the Court is satisfied that there is justification in his perception of threat to his person by a

private party or when his right of personal liberty is likely to be invaded by such party and the police is found to be hands in glove with him;

c. The Court may also direct the police to register a complaint as FIR, notwithstanding the provisions in the Cr.P.C., when acts purporting to

constitute offences under the Indian Penal Code (hereafter IPC) thereby leading to invasion of the right recognised by Article 21 are alleged or in

an appropriate case where interference is considered necessary with the caveat that further proceedings or investigation would be conducted

entirely uninfluenced by the fact that the FIR was registered on the directions of the High Court;

d. The police may be directed to intervene when the Court is approached for protection of rights declared by a decree of a civil court, or by an

order passed by it, determining rights of parties finally or even at least at an interlocutory stage in an unambiguous manner and that too in

furtherance of the decree or order;

e. No direction ought to issue to protect one"s right to property when a Civil Court has been approached and the lis is pending before it for

adjudication;

f. Adjudication by the Writ Court of disputed questions of fact regarding right, title and interest in respect of immovable properties emerging from

affidavit evidence ought to be eschewed and the parties granted liberty to pursue the channel of civil litigation;

g. It would not be proper to exercise power if a writ of mandamus is sought for directing the police to protect a claimed possession of a property

without first establishing such possession free from all doubts;

h. Discretion concededly must be reserved to the police to decide its course of action upon receipt of a complaint. However, the officer- in-charge

concerned is duty-bound to register FIR on the basis of such an information disclosing cognizable offence since provision of Section 154 of the

Cr.P.C. is mandatory and veracity of the allegations levelled in the complaint is not a matter for consideration of the police before registering a case

[see: Ramesh Kumari v. State (supra)]; and

i. If a party approaches the Superintendent of Police or the competent authority with a prayer for deputing police personnel upon payment of

requisite cost by him and such prayer is not heeded, the Court would be justified in passing a mandatory direction for consideration of such prayer

according to law.

Exercise of writ powers under Article 226 would thus be proper, effective and meaningful only upon prudent and pragmatic exercise, and that too

in appropriate situations.

134. Having regard to the above it may not be inappropriate to lay down certain guidelines to be followed by the police when it is approached by

parents complaining of violence against their children:

i) immediately on receipt of a complaint which discloses cognizable offence it would be the duty of the police to register the complaint as FIR and

commence investigation;

ii) if the complaint discloses a non-cognizable offence, the police ought to obtain orders from the Magistrate as required under law;

iii) it would be open to the police after receipt of a complaint to enter into a dialogue with the parents and the accused son/daughter-in- law and to

coax and to cajole them to resolve their disputes and differences but in the process there must never be any coercion or compulsion;

iv) to suitably advice those parents who are oblivious of the recent enactments like the DV Act, 2005 and the 2007 Act and to seek remedies

before the appropriate forum;

v) in a case where an allegation relating to dispossession from property is received, the police may conduct a probe to ascertain the worth of the

allegations and if it is established that the parents have been dispossessed from their own property, a request to the children to restore possession

in favour of the parents by resorting to amicable settlement could be made but if the children do not agree, no further step ought to be taken by the

police for restoring possession and the parents advised to obtain appropriate orders from the Court of law;

vi) if the parents have already taken recourse to the DV Act, 2005/the 2007 Act, the police would be well advised from interfering in the disputes

between the parties and leave the issue to be decided by the appropriate forum.

135. Keeping in mind the above principles, I shall now proceed to deal with each writ petition separately.

136. W.P. 3915 (W) of 2010 (Kalpana Pal v. State of W.B. and Ors.)

137. The petitioner is the mother of the respondent No. 5, aged about 65 years. For reasons mentioned in the writ petition she is constrained to

reside in the matrimonial home of her daughter. It has been alleged in the petition that the petitioner''s husband and the father of the respondent No.

5 died testate on 2.1.2009. The residential house at 120D, Linton Street, Kolkata 700014 was bequeathed in favour of the petitioner. Coming to

learn thereof the respondent No. 5 started pressurising the petitioner to convey title thereof in his favour. Refusal to accede to the request was

followed by physical and mental torture. The petitioner requested her daughter and son-in-law to dissuade the respondent No. 5 from indulging in

pressurising her, but to no avail. Gradually, the degree of torture on the petitioner was increased. Apart from abusing the petitioner, the respondent

No. 5 slapped her with his slipper. The petitioner was made to work as maid in her own house and to perform all household chores. The

respondent No. 5 started bringing pork while the petitioner used to take meal, knowing fully well that being a Hindu widow she would not be able

to tolerate the same. Other acts of cruelty have been mentioned which need not be elaborated. Suffice to say that the respondent No. 5 made the

life of the petitioner miserable for which she had to take shelter in her daughter''s matrimonial home. The petitioner had applied for probate of the

will of her late husband. Served with notice of such proceedings, the respondent No. 5 broke the padlock on the bedroom of the petitioner and

started assaulting her brutally. The petitioner complained to the police authorities on 12.1.2010. It is further alleged that the respondent No. 5

poured water on the body of the petitioner and disconnected the geyser forcing her to take her bath with cold water and made her to sleep on wet

bed. A further complaint dated 5.2.2010 was lodged. It is alleged that the police officers of the local police station apart from calling the

respondent No. 5 and warning him did not act in accordance with law by not taking cognizance of the complaint lodged by the petitioner. Feeling

aggrieved thereby, this petition has been presented with a prayer for ordering the respondents 1 to 4 to take immediate action on the basis of such

complaints lodged by the petitioner and to command the respondent No. 5 to allow her to stay at the said residential premises and not to create

any disturbances in any manner whatsoever.

138. The respondent No. 5 was represented by learned advocate. It has been submitted on his behalf that the petitioner has left the said premises

on her own volition. He has denied the allegation of torture. According to him, if the police has not acted on the basis of the complaint lodged by

the petitioner the Court of Writ instead of interfering ought to direct the petitioner to pursue her remedy under the Cr. P.C. He has, however, not

disputed the petitioner''s right of residence. It has also been submitted by him that the petitioner did not disclose in the petition that proceedings u/s

144(2) of the Cr.P.C. was initiated by her which has since been dropped and filed by an order dated 9.9.2009.

139. Written instructions furnished by the Officer-in-Charge, Beniapukur Police Station to Mr. Rajdeep Biswas, learned advocate for the State,

has been placed before the Court. The police officer has observed that the relation between the petitioner and the respondent No. 5 soured after

the will referred to above surfaced. The situation worsened when the petitioner applied for probate before the Civil Court. The respondent No. 5

has been contesting such application. Apart from a cursory reference to resolve the dispute between the petitioner and the respondent No. 5

through counseling on one occasion, there appears to be no indication as to how the complaints lodged by the petitioner have been dealt with by

the officer-in-charge.

140. I have perused the complaints annexed to the petition. The same prima facie disclose commission of cognizable offence. It is

incomprehensible as to why the Officer-in-Charge, Beniapukur Police Station or his subordinates did not take appropriate action thereon as

envisaged in law. It appears to be a clear case of non-discharge of statutory duty by the police. Inaction of the police to discharge statutory duty is

well substantiated and, therefore, this writ petition stands disposed of with a direction upon the said Officer-in-Charge to take appropriate action in

accordance with law on the basis of such complaints. Since the respondent No. 5 has not disputed the petitioner''s right of residence, the petitioner

shall be at liberty to inform the said Officer-in-Charge the date on and from which she would like to return and to continue to stay thereat. Once

such information is received, the said Officer-in-Charge shall extend utmost cooperation and appropriate assistance, as is warranted in the

circumstances, so that the petitioner may henceforth live peacefully and without any disturbance from the side of the respondent No. 5. The

respondent No. 5 shall restrain himself from indulging in any act which is a cause of concern for the petitioner and affects her dignity and if any

subsequent complaint is lodged against him by the petitioner disclosing commission of offence punishable under the penal laws, the police shall

immediately take action.

141. There shall be no order as to costs.

W.P. No. 3609 (W) of 2010 (Renuka Bala Mondal and Anr. v. State of W.B. and Ors.)

142. Parents of the respondent No. 5 have presented this writ petition complaining that he and his wife, the respondent No. 6 have been inflicting

mental and physical torture and the police despite being informed have failed to act on their consequent complaint.

143. It is alleged in the petition that the petitioner No. 1 and her mother, Binapani Halder inherited a property left behind by Sacchidananda Halder

(since deceased), her father. The property was not partitioned. However, Binapani Halder under compulsion executed a deed of gift in favour of

the respondents 5 and 6 which was registered on 23.3.1998 in the office of the Sub-Registrar, Diamond Harbour. By the said deed the entire

property of the deceased Sacchidananda Halder was transferred to the respondents 5 and 6 without the knowledge of the petitioner No. 1 who

claims 50% share therein. Challenging the deed of gift and consequent transfer of property, the petitioner No. 1 has instituted title suit against the

respondent No. 5 and the same is pending in the court of the learned Civil Judge (Junior Division), Diamond Harbour. The respondents 5 and 6

have since taken over possession of a substantial portion of the property belonging exclusively to the petitioner No. 1 and creating pressure on her

to convey the title thereof to the respondent No. 5. Refusal to accede to such request resulted in manhandling of the petitioner No. 2 by the

respondent No. 6 by fists and blows. Despite receiving the complaint, the police authorities have not taken any action resulting in the present

petition.

144. The writ petition has been contested by the private respondents. It has been submitted by Mr. Das, learned Advocate that deed of gift

executed by the grandmother of the respondent No. 5 in his favour has been challenged before the Civil Court and, therefore, this is not a fit and

proper case for exercise of writ powers by this Court. According to him, the Court of Writ ought to direct the parties to await the decision of the

Civil Court and no order should be passed which might prejudice the interest of the respondent No. 5 in the pending suit.

145. Mr. Chatterjee, learned advocate for the State has failed to assist the Court for want of instructions from the Officer-in-Charge of the

concerned police station.

146. On perusal of the writ petition I do not find any complaint lodged with the police authorities disclosing assault by the respondent No. 5. The

petitioners have annexed to the petition copies of receipt issued by Falta Police Station endorsing the general diary entry number. In the absence of

the complaints lodged by the petitioner with the police station, it is difficult for this Court to issue any positive direction.

147. I therefore dispose of the writ petition observing that if in future any complaint alleging cognizable offence committed by the respondents 5

and 6 on the petitioners is received by the local police station, it shall proceed to act in accordance with law.

148. However, nothing contained herein shall affect the civil proceedings pending between the parties and the Court below shall proceed to decide

the issue pending before it uninfluenced by the result of this petition.

149. There shall be no order as to costs.

W.P.22614 (W) of 2009 (Sudhir Kumar Chakraborty v. State of W.B. and Ors.)

150. The respondent No. 4 is the elder son of the petitioner, who is aged about 69 years. He lives on his retirement benefits. He has a house

property which he purchased along with his wife jointly. The petitioner complains of the respondent No. 4 having no source of income but being

addicted to drinks. The petitioner is after threatened for money and assaulted physically if money is not given. Sometimes circumstances compelled

the petitioner to accede to the requirement of the respondent No. 4. He further complains of pressure being created by the respondent No. 4 to

transfer the house property in his favour. Not being able to withstand the pressure from the respondent No. 4, complaint was lodged with the

Inspector-in-Charge, Jagaddal Police Station. Despite receiving such complaint, the police it is alleged did not cause any probe. The respondent

No. 4 was not even called at the police station. Accordingly, order has been prayed for on the police authorities to take appropriate steps on the

complaint lodged by the petitioner and to save his life and property.

151. Inspector-in-charge, Jagaddal Police Station has furnished written instructions to his learned Advocate. The same has been placed before me.

It appears therefrom that the allegation that no enquiry was made, has been denied. However, on enquiry, it could be ascertained that the

respondent No. 4 and his wife jointly inflicted mental torture on the petitioner and created pressure for money on several occasions. The allegation

that the respondent No. 4 threatened the petitioner to hand over the house property has also been found true. Based on such local enquiry, the

respondent No. 4 and his wife have been cautioned and advised not to disturb the petitioner in any way. Prosecution vide Jagaddal PSPR No.

943/2009 dated 31.12.2009 under Sections 107/116 of the Cr.P.C. has been submitted. The respondent No. 4 has not appeared despite service.

152. Considering the written instructions furnished by the Inspector-in-Charge, I direct him to ensure that life of the petitioner and his wife is not

endangered at the instance of the respondent No. 4. The Inspector-in-Charge shall maintain strict vigil so that the respondent No. 4 in future may

not disturb the petitioner or his wife in any manner whatsoever and thereby affect their dignity. If at all any complaint is lodged by the petitioner

alleging commission of cognizable offence, the Inspector shall proceed in accordance with law.

153. The writ petition stands disposed of accordingly, without any order for costs.

W.P. 13564(W) of 2009 (Jaya Rani Sakhari and Anr. v. State of W.B. and Ors.)

154. The petitioner and her husband are aged about 60 and 70 years respectively. The petitioner''s husband raised and constructed a dwelling

house where they are residing with their married daughter, since deserted by her husband, as well as the respondents 3 and 4, their son and

daughter-in-law respectively. It is claimed by the petitioner that the respondents 3 and 4 have been given permissive possession in respect of a

portion of the dwelling house and that they are gratuitous licensees.

155. The petitioner and her husband due to old age have been suffering from various ailments and their daughter is looking after them. However,

the respondents 3 and 4, who are in the employment of the Government, have never contributed towards their maintenance and other expenses

pertaining to the dwelling house. However, for some time past, the respondents 3 and 4 have been creating various sorts of problems and

harassing the petitioner and her husband in respect of peaceful enjoyment of possession of the dwelling house by resorting to various illegal

activities with a view to dispossess and/or to evict them. Here also, it is alleged that pressure has been mounted on the petitioner and her husband

to transfer the dwelling house and since the petitioner and her husband have not agreed to comply with such illegal demand, they have been

subjected to persistent mental and physical torture inflicted by the respondents 3 and 4.

156. Finding no other alternative, the petitioner intended to lodge a complaint with the Officer-in-Charge, Baguiati Police Station to ensure that

they are not forcibly dispossessed by the respondents 3 and 4. However, the police refused to receive the written complaint. Consequently, the

complaint was despatched to the Superintendent of Police, North 24-Parganas as well as the Officer-in-Charge, Baguiati Police Station by

registered post. However, no action having been taken, the petitioner presented this petition before the Court praying for an order on the

respondents 1 and 2 to take appropriate legal action against the respondents 3 and 4 on the basis of the complaint being Annexure ''P-3'' to the

petition.

157. The Officer-in-Charge, Baguiati Police Station has furnished written instructions to his learned advocate on the basis of enquiry conducted by

an Assistant Sub-Inspector of Police. Prosecution has been submitted vide NCR 279 dated 30.6.2009 under Sections 107/116 of the Cr.P.C.

against the respondents 3 and 4 and both have been directed to maintain peace. It has further been observed in the written instructions that the

dispute arises out of family problems and that no cognizable offence has taken place so far.

158. The respondents 3 and 4 have not appeared despite service.

159. Having considered the averments in the petition and the contents of the written instructions, I find that the petitioner has been residing with her

husband and daughter in the dwelling house constructed by him. The police have submitted prosecution against the respondents 3 and 4 and,

therefore, cannot be accused of total inaction. However, it shall henceforth be the duty of the police to ensure protection to the petitioner and her

near ones and to take such action as is warranted in the circumstances according to law, if the respondents 3 and 4 breach order, peace and

tranquility in and around the locale and disturb peaceful leading of life by the petitioner.

160. The writ petition stands disposed of accordingly, without any order for costs.

W.P. 3968 (W) of 2010 (Smt. Jayasree Mitra v. State of W.B. and Ors.)

161. The petitioner, aged about 66 years, is the mother of the respondent No. 5. It is claimed in the petition that her husband having died a

premature death without leaving any savings of his own, the petitioner shouldered full responsibility to bring up her son and daughter. The

petitioner''s mother was the owner of three buildings which she inherited after the death of her mother. The respondent No. 5 after getting married

in the year 2005 has been staying with the petitioner. No kind of money support is provided; on the contrary, the respondent No. 5 has been

constantly pressurising her to make a gift in his favour in respect of the house properties. Being under the influence of alcohol, the respondent No.

5 even assaulted her. Unable to bear the physical and mental torture and perceiving a threat to her life, the petitioner lodged written complaint with

the Officer-in-Charge, Narkeldanga Police Station. However, no further action having been taken by the police authorities on such complaint, this

petition was presented praying for an order on the respondent No. 4 to take immediate action and/or measures for restraining the respondent No.

5 from continuing with his illegal conduct.

162. The complaints which are part of the petition, if correct, reflect the uncivilised attitude of the respondent No. 5. Prima facie, the allegations

contained therein disclose commission of cognizable offence.

163. The respondent No. 5 was represented by learned advocate. He denied and disputed the material allegations in the petition and contended

that in view of the decision in Aleque Padamsee (supra), the writ petition is not maintainable.

164. The Officer-in-Charge, Narkeldanga Police Station has furnished written instructions to his learned advocate it appears therefrom that on the

basis of complaint lodged by the petitioner, Narkeldanga Police Station Case No. 72 dated 22.5.2010 under Sections 341/323/506/427/114 of

the IPC has been registered against the respondent No. 5 and his wife. They were arrested on 27.2.2010 but later on were released from

detention on condition to appear before the learned Additional Chief Judicial Magistrate, Sealdah on 1.3.2010. By an order dated 1.3.2010

passed by the said Magistrate, they have been remanded to C.B. till 1.7.2010. It further appears therefrom that on visit to the residence of the

petitioner, the officer concerned requested her to pursue the remedy contemplated in the DV Act.

165. In the present case no positive direction is required since a case has already been registered against the respondent No. 5. It shall be the duty

of the police to ensure that the respondent No. 5 and his wife do not in any manner harass the petitioner or otherwise interfere with her right to live

with dignity. If at all any further complaint is lodged by the petitioner, the same must exercise due consideration of the Officer-in-Charge and steps

shall be taken in accordance with law.

166. The petitioner shall be free to pursue her remedy as advised by the Officer in charge and as provided in the DV Act.

167. The writ petition stands disposed of, without any order for costs.

W.P. No. 5474 (W) of 2010 (Pradip Ojha v.State of W.B. and Ors.)

168. The petitioner is a retired employee of Lipton India Ltd. Due to his failing health, he sought voluntary retirement from service in the year 1998.

Whatever little benefit he received from the employer has been spent for the well-being of the family and proper up-bringing of the respondent No.

5, his son, who is a graduate. The petitioner in due course of time arranged his son"s marriage with the expectation that the daughter-in-law would

look after him and his wife. However, to his utter dismay, she (respondent No. 6) started torturing them, so much so that their life became

miserable. No sort of maintenance has been paid. The respondents 5 and 6 have been mounting pressure so that the petitioner and his wife vacate

the residential premises and take shelter in an old age home. The ill and wretched condition of the petitioner and his wife arising out of misdeeds of

the respondent No. 5 led the petitioner to ask for maintenance whereupon the respondent No. 5 became furious and beat the petitioner and his

wife. The petitioner lodged a complaint with the Muchipara Police Station on 6.3.2010 but unfortunately no action has been taken resulting in

presentation of this petition praying for order on the police authorities and in particular the Officer-in-Charge, Muchipara Police Station to take

immediate action against the respondents 5 and 6 for commission of offence.

169. Upon receipt of the complaint, the Officer-in-Charge has registered Muchipara Police Station (Sl. 1) Case No. 111 dated 9.3.2010 under

Sections 341/323/114 of the IPC. Respondents 5 and 6 surrendered before the Chief Metropolitan Magistrate on 20.3.2010 and the Court was

pleased to grant bail till 12.7.2010. Investigation is in progress.

170. The respondents 5 and 6 did not appear. Copies of the writ petition were dispatched to them on 19.3.2010 by Regd. Post. Since a month

had elapsed from date of dispatch, the writ petition was heard ex-parte on 18.5.2010. 171. In this case too, I find the accusation that the police

has largely remained inactive is not borne out by the facts stated in the written instructions. Proceedings are pending before the Court and the

respondents 5 and 6 have obtained bail. In such circumstances while observing that the police may carry on investigation in accordance with law, I

direct that the petitioner and his wife ought to be extended all sorts of assistance and protection so that they may spend the remaining days of their

lives peacefully and without any sort of discomfiture for having complained against the respondents 5 and 6 to the police.

172. The writ petition stands disposed of, without order for costs.

W.P. 10423(W) of 2009 (Sk. Abdullah and Anr. v. State of W.B. and Ors.)

173. The petitioners are the parents of the respondent No. 4. Respondent No. 5 is the wife of the respondent No. 4. The first petitioner is the

absolute owner of a multistoried building. There are several tenants in the said building. The petitioners carry on business from a shop room and

have been surviving on the income derived from rents as well as the small business.

174. In this petition too, it has been alleged that the respondent No. 4 has been constantly pressurising the petitioners to transfer the immovable

property in his name. Out of love and affection the petitioners did not lodge any complaint with the police initially but since the degree of torture

increased day by day and forcible possession of the shop room was taken by the respondent No. 4, a diary was lodged with the local police

station on 8.6.2009. A further complaint was lodged by the petitioner No. 2 on 10.6.2009. Having learnt of lodging of complaint dated

10.6.2009, the respondent Nos. 4 and 5 became furious and threatened the petitioners with dire consequences. The respondent No. 5 even

threatened to lodge a complaint u/s 498A of the Indian Penal Code. Citing the above incident, a further complaint dated 12.6.2009 was lodged.

The petitioners are however aggrieved because no action till date has been taken by the police authorities to redress their grievance.

175. None has entered appearance on behalf of the private respondents despite despatch of copy of the writ petition by registered post.

176. Learned advocate for the State has placed before the Court written instructions furnished by a Sub-Inspector of Police attached to Golabari

Police Station. It appears therefrom that the accusation of the petitioners that the respondent No. 4 has taken charge of the business run from the

shop room is correct and that over such issue the parties have been quarreling with each other. The police authorities upon receipt of complaint

dated 8.6.2009 submitted prosecution vide NCR 352 dated 18.3.2009 u/s 107 of the Cr.P.C before the Court of Executive Magistrate (Sadar),

Howrah against both the parties. The instructions are, however, silent on action taken in respect of complaints dated 10.6.2009 and 12.6.2009.

177. The complaint dated 10.6.2009 does reveal that the petitioner No. 2 was assaulted by the respondent No. 4 and received physical injury.

No explanation has been furnished as to why the complaint was not registered as First Information Report u/s 154 of the Cr.P.C. The police must

be held to be negligent on this scope.

178. However, it appears that despite the writ petition having been filed on 18.6.2009 it was effectively argued for the first time on 10.5.2010.

Hearing of the writ petition was adjourned on two previous occasions on the ground of the petitioners'' inability to argue. At this distant point of

time, it would not be proper for the Court to direct the police to register First Information Report on the basis of the complaint dated 10.6.2009. It

shall be open to the petitioners to avail their remedy under the Cr.P.C. Needless to observe that the officers of the local police station shall

maintain constant watch and ensure that there is no breach of peace and tranquility in the locality as a result of the dispute between the petitioners

and the private respondents. If in the near future any further complaint disclosing commission of cognizable offence is received by the local police

station, FIR ought to be registered immediately and steps in furtherance thereof shall be taken to conduct investigation in accordance with law,

uninfluenced by any observation contained herein. The police authorities shall also ensure that the lives of the petitioners are not endangered at the

instance of the private respondents.

179. So far as taking over of forcible possession of the shop room is concerned, no relief can be granted to the petitioner by the Writ Court. It

shall be open to the petitioners to pursue the channel of civil litigation for restoration of possession.

180. The writ petition, accordingly, stands disposed of without any order for costs.

W.P.5499 (W) of 2010 (Sri Santosh Kumar Chowdhury v. State of W.B. and Ors.)

181. The petitioner, aged about 82 years, claims to be the owner of an immovable property within Habra Municipality. The petitioner admittedly

has gifted the property in equal shares to his two sons including the respondent No. 4 and did not retain any portion thereof for his own residence.

Admittedly, he is residing with his younger son. He complains of unbearable torture, both physical and mental, being inflicted on him by his elder

son being the private respondent. The private respondent demanded a share of the monthly pension received by the petitioner, a retired

government employee. Complaint lodged by the petitioner on 10.2.2010 was diarised vide GDE No. 644 of 2010 but no further action was taken.

An allegation of assault on the petitioner by the said private respondent is found in paragraph 11 of the petition. In paragraph 12, an allegation of

refusal of the respondent No. 3, the Officer-in-Charge, Habra Police Station to take any step on the complaint of the petitioner on the ground that

there exists a family dispute between the petitioner and his son is pleaded. Feeling aggrieved thereby, the petitioner has prayed for order on the

respondent No. 3 to protect his life and property on the basis of the various complaints including the one dated 10.2.2010.

182. The private respondent was unpresented despite despatch of copy of the writ petition by registered post.

183. Instructions furnished by the Officer-in-Charge, Habra Police Station to the learned advocate for the State reveals existence of a long pending

dispute between the father and the elder son. The allegation of torture could not be substantiated. The reason therefore is that the petitioner and the

private respondent reside in separate mess. At the same time, apprehending breach of peace over the issue, prosecution against the private

respondent and his wife have been submitted u/s 107 of the Cr.P.C. for maintaining peace vide PR No. 56/2010 dated 22.2.2010. The

respondent No. 4 and his wife have been asked not to inflict any torture on the petitioner and to maintain peace.

184. From the writ petition it does not appear that the private respondent has physically harmed the petitioner. The allegations are vague and

based thereon no positive direction on the police can be given. However, the police authorities are directed to maintain peace in and around the

residences of the petitioner and the private respondent. They shall further ensure that as a result of the ongoing dispute, there is no loss of life and

limbs. If at all any complaint is received by the police authorities in future from the petitioner disclosing commission of cognizable offence, they shall

proceed to discharge their statutory duty without compelling the petitioner to knock the doors of the Court for justice.

185. The writ petition stands disposed of, without any order for costs.

W.P.15344 (W) of 2009 (Manindra Nath Santra v. State of W.B. and Ors.)

186. The petitioner is a septuagenarian and father of three sons and a daughter. He claims to have spent his earnings for bringing up his children

and also for construction of a dwelling house at Bhabanipore in the North 24 Parganas under Police Station Bishnupur. The eldest son is a daily

labourer and, therefore, unable to maintain the petitioner. His second son is in private employment and staying at Kharagpur. The younger son is a

school teacher and his wife is also a teacher in an Anganwari Kendra, both of whom reside with the petitioner. It is alleged in paragraph 7 that the

younger son being a member of the local gram panchayat drove the petitioner and his wife out of their dwelling house and forcefully occupied the

rooms of the petitioner. Also the belongings were thrown out. The petitioner and his wife have now been forced to take shelter at the cow- shed

rooms since 2006. It is further pleaded that the ouster of the petitioner and his wife were brought to the notice of the local gram panchayat as well

as the local police station but to no avail. Proceedings u/s 144(2) of the Cr.P.C. were initiated. Ultimately, on 9.1.2009 the gram panchayat had

convened a meeting for amicable settlement of the dispute between the petitioner and his younger son but the younger son denied to cooperate

and, as such, the matter could not proceed further. On 31.7.2009, a complaint was lodged which was diarised vide GDE 2594 dated 31.7.2009.

It appears from the complaint that a prayer was made before the Officer-in-Charge to ensure that the petitioner and his wife could return to his

home and spend the rest of his life peacefully.

187. The respondents 4 and 5, being the younger son of the petitioner and his wife, have not appeared before this Court despite despatch of copy

of writ petition by registered post.

186. Written instructions furnished to the learned advocate for the State by the Inspector-in-Charge, Bishnupur Police Station have been placed. It

appears therefrom that prosecution was submitted against the respondents 5 and 6 u/s 107 of the Cr.P.C. They appeared before the learned Sub-

Divisional Judicial Magistrate on 29.10.2009 as well as on 1.3.2010. So far as the allegation of ouster is concerned, it appears that the

respondents 5 and 6 removed the petitioner from the room which was being occupied by him and shifted him to a smaller room. The petitioner did

not wish to occupy the smaller room and insisted that he would stay in the room so long being occupied by him. Since his request was not

accepted by the respondents 5 and 6, he started staying in a "kacha" room which was being used as cow-shed long back. The allegations of police

inaction have been disputed and reference has been made to the prosecution that had been submitted against the respondents 5 and 6 u/s 107 of

the Cr.P.C. It has also been stated that the petitioner has initiated criminal miscellaneous case No. 166/08 u/s 125 of the Cr.P.C. in the Court of

the learned Judicial Magistrate, 9th Court at Alipore against the respondent No. 5 and that the said case is sub-judice.

187. If at all the petitioner has approached the Magistrate for maintenance, the proceedings shall be decided by the Magistrate in accordance with

law. The Inspector-in-charge without being ruffled by the allegation of inaction levelled by the petitioner against him shall mediate and try to bring

about an amicable settlement between the petitioner and the respondents 5 and 6 so that the petitioner in the remaining years of his life can spend

his days in peace in his ancestral property. If the effort of the Inspector-in-Charge fails, the parties shall be left to pursue their remedies under the

ordinary laws. Needless to observe, close vigil shall be maintained at the locale to avoid any untoward incident of breach of peace and tranquility.

188. The writ petition stands disposed of, without any order as to costs.

W.P. 6090 (W) of 2010 (Paresh Chandra Nandi and Anr. v. State of W.B. and Ors.)

189. Parents of the respondent No. 4 are the petitioners before this Court complaining of inaction of the police to mitigate their sufferings inflicted

by him. It appears that trouble started in the life of the petitioners after the respondent No. 4 was given in marriage to the respondent No. 5. After

2005, the respondents 4 and 5 decided to live in the same house but in a different mess. The petitioners did not object since they did not want to

snatch the roof over the heads of the respondents 4 and 5. Gradually, the respondents 4 and 5 started pressurising the petitioners to transfer the

house property in their name as well as to transfer the proprietorship business of the petitioner No. 1 in favour of the respondent No. 4. Unable to

bear the pressure mounted by the respondent No. 4, the petitioners were compelled to complain to the police authorities at Pandua in respect of

unlawful acts. This was followed by proceedings u/s 144 of the Cr.P.C. before the learned Executive Magistrate, Hooghly. The police authorities

refused to act citing the dispute to be civil in nature which emboldened the respondents 4 and 5 to enhance the extent of torture finding that the

police would not act on the complaint, the petitioner No. 2 initiated proceedings u/s 12 of the DV Act. It is further pleaded that the Protection

Officer under the DV Act has filed a report dated 12.2.2009 finding merit in the application filed by the petitioner No. 2.

190. As a counter blast, the respondent No. 5 more than 7 years after her marriage with the respondent No. 4 has filed an application u/s 156(3)

of the Cr.P.C. before the learned Judicial Magistrate, Asansol alleging offence punishable u/s 498A of the Indian Penal Code. The case and the

counter case are pending. It is in the aforesaid backdrop that the Court of Writ has been approached by the petitioners with a prayer to direct the

police to stop physical torture and threat at the instance of the respondent Nos. 4 and 5 and to initiate criminal proceedings against them.

191. Respondents 4 and 5 have refused to accept copy of the writ petition tendered to them as it appears from the affidavit of service. None has

also appeared for the State respondents and, therefore, the version of the police authorities is also not forthcoming.

192. From the aforesaid recital of facts, it is clear that proceedings under the general law are pending before the appropriate forum. Since the

Protection Officer has already enquired into the complaint of the petitioner No. 2 and submitted his report before the Judicial Magistrate, 2nd

Court, Sadar, Hooghly, law shall take its own course. Any observation, if made herein, is likely to affect the merits of such proceedings and,

therefore, I decline to give any positive direction to the police to prevent the respondents 4 and 5 from acting in offensive manner. Needless to

observe, the police shall ensure that the right to life of the petitioners is not endangered by the respondents 4 and 5 so long the proceedings are not

concluded according to law.

193. The writ petition stands disposed of, without any order for costs.

W.P. 9389 (W) of 2010 (Sankar Kumar Chatterjee and Anr. v. State of W.B. and Ors.)

194. The petitioners are the parents of respondents 7 and 8. The respondents 9 and 10 are the daughters-in-law of the petitioners. All of them

reside in common premises. It is claimed that the private respondents have been threatening the petitioners since long for getting jewellery and

money and also to have the property of the petitioner No. 2 registered in their name.

195. The petitioners have given details of the complaints lodged with the police authorities from time to time against the private respondents who, it

is claimed therein, have unleashed violence on them for not acting as per their dictates. They allege complete inaction of the police to come to their

rescue.

196. On 6.4.2008, the petitioners lodged a complaint with Behala Police Station being G.D. No. 502/08, alleging that they were mercilessly

beaten up by the respondent No. 8 with stones. After having assaulted the petitioner No. 2, she went to Vidyasagar Hospital for her treatment.

The doctor of the hospital also wrote on his prescription about such assault.

197. On 16.1.2010, the respondent No. 8 poured kerosene oil on the door of the petitioners" room and set the door on fire. The petitioners

lodged a general diary with the Behala Police Station being G.D. No. 1055/2010, on 17.1.2010.

198. On 8.4.2010, the petitioners again lodged a complaint with the same police station being G.D. No. 618/2010, alleging atrocities of the

respondents 7 and 8.

199. On 16.4.2010 at about 8.30 a.m. the respondents 7 and 8 along with their wives again started pressurizing the petitioners for getting their

names inserted in the will. When the petitioners refused to do so, they mercilessly beat them up and even they throttled the petitioner No. 2 and

threatened her that they would kill her if she does not insert their name.

200. On 17.4.2010 at about 6 a.m., the respondents 7 and 8 abused the petitioners in filthy language. On the selfsame day, the petitioner No. 2

went to Behala Police Station being G.D. No. 1344/2010, and requested the Officer-in- Charge to take appropriate action against the

respondents 7 to 10. But the Officer-in-Charge did not take any positive action against them.

201. The written instructions furnished to the learned advocate for the State by the Officer-in-Charge, Behala Police Station reveal apprehension

of breach of peace because of the uncompromising attitude of the private respondents leading to submission of prosecution vide Behala P.S. P.R.

No. 169/10 dated 5.5.2010 u/s 107 of the Cr.P.C. It is also revealed therefrom that the petitioner No. 2 is the owner of the property in question.

202. None has appeared for the private respondents despite dispatch of copy of writ petition to them by Regd. Post on 7.5.2010. The hearing of

this petition was concluded on 16.6.2010 and hence it is presumed that they have been duly served.

203. Having regard to the contents of the police version, I am of the considered view that the petitioners are entitled to relief on this petition. The

police do not appear to have taken any positive action until 5.5.2010. It is only after a day of presentation of this petition that it submitted

prosecution. The duty the police owe to the petitioners was not duly discharged. Accordingly, it is directed that so long the petitioners are alive, the

police shall ensure that the private respondents do not indulge in overt acts and cause disturbance in the petitioners" day to day life. Every possible

step shall be taken to protect the petitioners" right to life. Any future complaint lodged by them against the private respondents shall be given due

consideration and dealt with in accordance with law. However, any dispute relating to property shall not form the subject matter of probe by the

police and the parties must agitate such issue before the civil court.

204. The writ petition stands disposed of, without order for costs.

W.P. 6546 (W) of 2010 (Chandi Charan Khan and Anr. v. State of W.B. and Ors.)

205. The petitioners are the parents of respondent No. 7. Respondent No. 8 is the daughter-in-law of the petitioners. Respondents 9 and 10 are

the father-in-law and the brother-in-law of the respondent No. 7 respectively.

206. The petitioner No. 1 claims to be the owner of several immovable properties.

207. The son of the petitioners got married to the respondent No. 8 without the petitioners" consent. This resulted in differences between them.

208. It is claimed that on 22.2.2008, the respondent No. 7 gave an undertaking not to create any trouble and if he creates trouble, then he would

leave the house. Inspite of such undertaking, the respondent No. 8 continued to trouble the petitioners with the help of some antisocials. Finding no

other alternative, the petitioner No. 1 on 26.3.2009 submitted an application before the Sub-Divisional Officer, Uluberia, Howrah, seeking

administrative protection from the said authority.

209. It is further claimed that on 24.4.2009, the respondents 7, 9 and 10 entered the house of the petitioners and beat up the petitioner No. 2.

After this incident, the petitioner No. 2 had to be treated in the Sub-Divisional Hospital and an injury report was issued by the attending doctor.

On the self same day, the petitioners lodged a complaint with the Sub-Divisional Police Officer, Uluberia and Sub-Divisional Officer, Uluberia

complaining about the reign of terror unleashed on them by the respondents 7, 8, 9 and 10 and their men and agents.

210. On 2.6.2009, the petitioners lodged a complaint with Uluberia Police Station alleging that respondent No. 7 locked one of the residential

rooms of the petitioners on R.S. Plot No. 125 and drove them out of the said room but the police officials refused to record such complaint.

211. On 1.6.2010, the younger son of the petitioners lodged a complaint before the Sub-Divisional Officer, Uluberia praying that the petitioners

stayed at their residential house peacefully may be ensured.

212. When both the Sub-Divisional Officer, Uluberia and the Sub-Divisional Police Officer, Uluberia did not pay heed to the application filed by

the petitioners'' younger son, he filed an application before the District Magistrate for taking necessary action by breaking the padlock of the door

put by respondent No. 7 so that the petitioners may stay there peacefully.

213. However, despite approaching the police officers for breaking open the padlock so as to enable the petitioners to stay there, no action was

initiated. Since then, the petitioners have been running from pillar to post without the desired result having yielded. Finding no other alternative, this

petition dated 30.3.2010 has been presented before this Court, inter alia, praying for direction on the respondents/police officers to investigate the

complaints lodged against the respondents 7 to 10 as well as to remove the padlock of the room at plot No. 125 and to put the petitioners in

possession thereof by rendering necessary assistance.

214. It also appears from the petition that the petitioner No. 1 addressed a representation dated 15.2.2010 to the District Magistrate Howrah

complaining of involvement of Sri Tanmoy Bhattacharya, A.S.I. The said representation was forwarded to the Superintendent of Police, Howrah

for conducting an enquiry into such complaint. The Additional Superintendent of Police (Rural), Howrah on 12.3.2010 sent a message to the

petitioner No. 1 requesting him to attend his office chamber on 16.3.2010 in connection with an enquiry. It is, however, alleged that the said police

officer did not meet the petitioners when they went to his office.

215. None appeared for the private respondent No. 7 despite service as it appears from the affidavit-of-service. The other respondents refused to

accept service.

216. The Inspector-in-Charge, Uluberia Police Station through his learned advocate submitted a report. It appears therefrom that few days after

their marriage, respondents 7 and 8 jointly started creating pressure upon the petitioner No. 1 and insisted on handing over share of the property to

them which was flatly refused by the petitioner No. 1. This led to differences between them. It appears therefrom that both the petitioner No. 1

and the respondent No. 7 are desperate and dangerous and have no respect for each other. More than a year back prosecution u/s 107 of the

Cr.P.C. was submitted against both of them. No evidence was found against A.S.I. Tanmoy Bhattacharya in respect of his alleged involvement.

The police observed that the dispute between the petitioner No. 1 and the respondent No. 7 is civil in nature.

217. The petitioners have relied on an order dated 11.12.2009 passed by a learned Judge of this Court directing the police authorities to provide

necessary assistance to the petitioner therein so that she could stay at her residence peacefully. It was also observed therein that if any obstruction

is created by the private respondents, the police officers would take stern action in the matter.

218. In so far as the prayer of the petitioners as reflected in prayer (b) of the petition is concerned, I do not consider it proper to make any order

to that effect. The police are not supposed to interfere in civil dispute; therefore, it shall be open to the petitioners to seek relief by pursuing the

channel of civil litigation.

219. I have considered the order of this Court dated 11.12.2009 referred to above. No law has been declared therein having the effect of a

binding precedent and, therefore, I do not propose to issue similar direction.

220. Regarding the petitioners'' prayer for investigation into the complaints, I direct the Superintendent of Police, Howrah, to take the process

started by him by Memo dated 24.11.2009 to its logical conclusion, if such process has not yet been concluded. If concluded, the petitioners shall

be duly informed of the opinion formed by him.

221. The officers attached to the local police station shall ensure that as a result of the acrimonious relationship between the petitioner No. 1 and

the respondent No. 7, peace and tranquility in the locale is not breached and that there is no loss of lives and limbs.

222. The writ petition stands disposed of, without any order for costs.

W.P. 5318 (W) OF 2010 (Smt. Sabitry Das v. State of W.B. and Ors.)

223. The petitioner has four sons and four daughters. On 1.6.1990, the husband of the petitioner died. In the ground floor of her house, there are

four shop rooms. The trade licenses of doctor''s chamber, spectacles unit, medicine shop and grill manufacturing unit, operating therefrom are all

along in the name of the petitioner. The petitioner at present is residing at the said house with her unmarried mentally challenged elder daughter

namely Pratima Das, unmarried younger deaf and dumb daughter namely Baby Das, married sons Shankar Das and Ratan Chandra Das and their

family. Others are staying outside.

224. The respondents 5 and 6 got married on 6.5.2001 of their own accord and started living in a separate mess.

225. On 10.3.2007, the respondents 5 and 6 came to the house of the petitioner and started torturing her for money and other articles.

Respondent No. 5 not only abused the petitioner but he, along with his men and agents, threatened the petitioner with dire consequences.

Respondent No. 6 also threatened the petitioner and her family by saying that if the petitioner does not transfer the property in their name they

would initiate criminal case u/s 498A of the IPC.

226. After having been abused and assaulted by the respondents 5 to 8, the petitioner at the end of 2007 lodged G.D. entries with the local police

station but to no avail.

227. She also lodged several complaints against the respondents 5 to 8 before the local panchayat and the Protection Officer under the D.V. Act

but all were in vain. However, when the respondent No. 6 lodged a fabricated complaint with the police station against the petitioner, the police

then immediately took steps in accordance with law and Jagaddal P.S. Case No. 628 dated 14.12.2009 u/s 498A/325/506 I.P.C. was registered

on the basis of complaint lodged by the respondent No. 6.

228. This petition dated 11.3.2010 was presented praying for orders on the respondents 5 to 8 and their men and agents not to harass, torture and

assault the petitioner and her other family members, as well as not to disturb the petitioner"s possession. Direction has also been prayed for on the

respondents 2 to 4 to provide immediate and necessary protection to the petitioner and her family members.

229. From the written instructions furnished by the officer-in-charge, Jagaddal P.S. it appears that the investigation of the case referred to above

has ended in submission of chargesheet No. 378 dated 29.12.2009.

230. It further appears therefrom that several complaints have been lodged by the petitioner as well as by her sons. Prosecution reports vide Nos.

174 and 175, both dated 21.4.2010 u/s 107 of the Cr.P.C. have been submitted against the respective parties. It is reported that the differences

have arisen out of family affairs and property disputes and deep tension is prevailing between the parties over long-standing acrimony.

231. The private respondents have not appeared despite service.

232. However, I do not consider that this is an appropriate case where interference of the Writ Court is warranted. Proceedings are pending

before the court below and any observation is bound to prejudice the interest of one party or the other.

233. The writ petition stands disposed of with a direction upon the police to ensure that life of one party is not endangered at the instance of the

other and that order, peace and tranquility prevails in the locale.

234. There shall be no order as to costs.

W.P. 6122 (W) of 2010 (Jatindra Nath Biswas v. State of W.B. and Ors.)

235. The petitioner, aged about 85 years, is the father of the respondent No. 3. It is claimed in the petition that the father and the son are residing

in the same premises; that the respondent No. 3 does not look after the petitioner; that the respondent No. 3 abuses the petitioner in filthy language

and also tortures him; that since the petitioner is a cardiac patient, it has become impossible for him to bear the mental pressure and he is finding it

difficult to spend the last days of his life.

236. The petitioner refers to an incident of 1.5.2009. According to him, the respondent No. 3 physically assaulted him for which the petitioner had

to be treated at R.G. Kar Hospital Medical College and Hospital.

237. The respondent No. 3, it is further claimed, is trying to grab the petitioner''s property for which a complaint was lodged with the Officer-in-

Charge, Chitpur Police Station on 31.3.2009. Prior to filing this writ petition on 24.3.2010, the petitioner appears to have approached the said

officer-in-charge once again on 10.3.2010. The petitioner referred to earlier complaint which was diarised vide GDE No. 1793 dated 21.2.2010

and the fact that the respondent No. 3 has not been abiding by a settlement which had been arrived at between the parties. The petitioner sought

for advice from the said officer-in-charge as to how and in what manner he could divest the respondent No. 3 of his property.

238. None has appeared for the said officer-in-charge despite despatch of copy of the writ petition by registered post on 29.3.2010.

239. I have heard learned advocate for the petitioner and the respondent No. 3. On perusal of the petitioner''s representation dated 10.3.2010, I

do not find that the same refers to any offence having been committed by the respondent No. 3. Learned advocate for the respondent No. 3 is

right in his submission that the petitioner had sought for an advice from the said officer-in-charge and that there is no allegation of commission of

offence by the respondent No. 3 in the recent past.

240. The petitioner has prayed for an order on the police authority to consider the complaint lodged by him dated 31.3.2009. If indeed the police

did not take any action on the basis of the petitioner''s complaint, why it took the petitioner a year''s time to approach the Court has not been

explained. Having perused the contents of the writ petition, it appears to me that strained relationship between the petitioner and the respondent

No. 3 has resulted in the former presenting in the petition out of anguish. In the event the said officer-in-charge has not tendered advice to the

petitioner in terms of his request dated 31.3.2010, a writ petition would not lie since it is no part of the duty of the Officer-in-Charge of a police

station to advice on matters pertaining to civil law. The petitioner cannot be granted any relief.

241. The writ petition stands dismissed.

242. This order of dismissal shall not preclude the petitioner to seek remedy before the appropriate forum, if so advised.

W.P. 16523 (W) of 2009 (Nirapada Ghosh and Anr. v. State of W.B. and Ors.)

243. The petitioners are the parents and parents-in-law of the respondents 3 and 4 respectively. It is claimed in the petition that the petitioners,

who are retired teachers, are aged above 70 years having good reputation in the locality. The first petitioner is suffering from paralysis and needs

regular medical attention. The second petitioner has been suffering from gastric and arthritis problems as well as other old age diseases. Both of

them are not in a position to move freely.

244. It has been alleged in the petition that the respondents 3 and 4 have been constantly creating mental pressure and multifarious problems, as a

result whereof their right to live peacefully is being vitally affected.

245. It has further been alleged that the respondents 3 and 4 are trying to oust the petitioners from their own house.

246. It is also the petitioners'' claim that although their daughter intends to look after them, the respondents 3 and 4 have been preventing her to

look after her parents.

247. It has been stated in the petition that the respondent No. 4 lodged a false, baseless and biased complaint against both the petitioners before

the Officer-in-Charge, Sankrail Police Station on 26.5.2009. Pursuant thereto, Sankrail Police Station Case No. 279 of 2009 dated 26.5.2009

under Sections 498A/323 of the IPC has been registered against the petitioners and their daughter and son-in-law. However, all the accused

persons were released on anticipatory bail.

248. Since the petitioners obtained orders of release, the respondents 3 and 4 further assaulted them and it is their grievance that till date the police

has not taken any action to make the respondents 3 and 4 behave in an orderly fashion.

249. Mr. Mondal, learned advocate for the State has denied the material allegations against the police authorities. According to him, if the

petitioners seek the assistance of the police, the same shall be extended to them in accordance with law.

250. Learned advocate for the respondents 3 and 4 resisted the writ petition by submitting that the same is not maintainable either in law or on

facts. The remedy of the petitioners lie in pursuing the ordinary legal remedies and no case for interference of the Writ Court has been made out.

251. I have heard learned advocates for the parties. Considering the nature of grievance voiced in this writ petition, I direct the Officer-in-Charge,

Sankrail Police Station to ensure that the petitioners are not harmed in any manner by the respondents 3 and 4. He shall further ensure that the

petitioners are not ousted from their property except in accordance with law. However, in the event, the respondents 3 and 4 commit any

cognizable offence, it shall be open to the petitioners to pursue their remedy under the Cr.P.C. Nothing in the order shall affect the criminal

proceedings pending against the petitioners and the same shall be taken to its logical conclusion uninfluenced by the result of this petition.

252. The writ petition stands disposed of, without any order as to costs.

W.P. 4957 (W) of 2010 (Akbar Ali Sk. v. State of W.B. and Ors.)

253. The petitioner, aged about 72 years, is the father of the respondents 8 and 9. It is alleged that due to misbehaviour of the respondents 8 and

9, the petitioner has been residing separately with immense trouble and difficulty. The respondents 8 and 9 tortured the petitioner and thereby

created pressure on him to execute a deed in their favour in respect of all his movable and immovable properties. Infuriated by the petitioner''s

refusal, it is further alleged that the respondents 8 and 9 have driven him out from his residence. The petitioner has to pass his days sometimes in

the house of his relatives, or in the cowshed or mosque with tremendous mental agony. He approached the Officer-in-Charge, Bishnupur P.S. and

narrated his grievance. His grievance was diarised on 15.3.2006, 13.5.2006, 20.1.2008 and 1.2.2008. However, the police did not take any

further action.

254. Further representation/complaint was lodged with the Superintendent of Police on 7.12.2009 requesting him to ensure that he can reside in

his own house but such request was not heeded. Follow up steps taken by the petitioner by addressing further representation dated 6.2.2010 to

various administrative authorities not having yielded any result, this petition dated 8.3.2010 was presented, inter alia, praying for order on the

official respondents to extend necessary protection so that the petitioner can reside in his own house.

255. There is no proof of service on the respondent No. 8. However, respondent No. 9 was duly served and a learned advocate filed his power

to represent the respondent No. 9. But he did not appear on 29.7.2010 when the writ petition was finally heard and judgment was reserved.

256. By order dated 17.6.2010, I had called for affidavits from the respondents. However, no counter affidavit has been filed.

257. Mr. Trivedi, learned advocate for the State, placed before the Court the written instructions furnished to him by the Inspector-in-Charge,

Bishnupur Police Station. It appears therefrom that the petitioner is the father of four sons and four daughters. As a result of differences that

cropped up between the petitioner on the one hand and the family members on the other, the petitioner has now been living in the house of a fellow

villager. Several sittings were held in the police station to bring about an amicable settlement but no fruitful result yielded. A prosecution u/s 107,

Cr.P.C. has been submitted against the two sons of the petitioner vide Bishnupur P.S. PR Case No. 88 dated 23.3.2010.

258. Since the respondent No. 9 has not controverted the statements made in the petition by filing counter affidavit, the allegation that the petitioner

was driven out from his residence is presumed to be true. The Inspector-in-Charge, Bishnupur P.S. therefore shall extend every possible

protection to the life of the petitioner and if he intends to reside in his own house, he shall ensure that the respondent No. 9 does not create any

obstruction. He shall further ensure that as a result of the differences between the parties, there is no breach of peace and tranquility.

259. The writ petition stands disposed of, without any order as to costs.

W.P. 473 of 2010 (Smt. Pranati Ghosh v. State of W.B. and Ors.)

260. The petitioner is the mother of the respondent No. 6. In this writ petition, she has claimed the following relief:

a) A writ of and/or in the nature of Mandamus do issue commanding the respondent No. 3 to protect the petitioner from physical torture made by

the respondent No. 6 himself, or his men and/or agents in any manner whatsoever;

b) A writ of and/or in the nature of Mandamus do issue commanding the respondent police authority to take proper steps against the respondent

No. 6 or his men and/or agents if the respondent No. 6 indulges in such physical torture on the petitioner in any manner whatsoever;

c) A writ of and/or in the nature of Mandamus do issue commanding the respondent No. 4 and 5 from allowing the respondent No. 6, to withdraw

any amounts lying in the fixed deposits of the petitioner without the consent of the petitioner.

261. On perusal of the writ petition, it appears that the petitioner and the respondent No. 6 are joint account holders of fixed deposit accounts in a

bank and under monthly income scheme in a post office. The dispute primarily centers on withdrawal of maturity proceeds from the said accounts.

It has been alleged by the petitioner that the respondent No. 6 has fraudulently withdrawn the proceeds to her utter prejudice and detriment. It has

also been alleged that the respondent No. 6 had been inflicting severe torture on the petitioner for which she lodged a complaint with the Officer-

in-Charge, Shyampukur Police Station dated 20.2.2010 but no fruitful action yielded.

262. The petition has been opposed by Mr. Biswaroop Bhattacharya, learned advocate for the respondent No. 6. According to him, someone

else has provoked the petitioner to file the writ petition and money is the only consideration. He has referred to the reply sent by the respondent

No. 6 upon receipt of the petitioner''s lawyer''s notice dated 19.12.2009. The respondent No. 6 claimed that the investments were made by him

out of his own earning and the certificates/receipts were all along with him. Since the accounts could be operated by either of the account holders

or the survivor, no wrong was committed by the respondent No. 6 in withdrawing the maturity proceeds. Mr. Bhattacharya, however, denied that

the respondent No. 6 is not looking after his mother or that he has been torturing her.

263. From the written instructions furnished to the learned advocate for the State, it appears that the petitioner is the step mother of the respondent

No. 6. The respondent No. 6 happens to be a teacher. Enquiry further revealed that the respondent No. 6 earns a living by rendering tuitions to

students and after saving money out of his income, the same were deposited in the bank and the post office accounts in the joint names of the

petitioner and the respondent No. 6. It is the respondent No. 6 who on maturity of the accounts has been withdrawing the proceeds.. Enquiry

further revealed that the wife of the respondent No. 6 lodged a complaint against the petitioner alleging torture. However, nothing has been stated

in such instructions regarding the action taken by the police on the basis of the complaints of the petitioner dated 18.12.2009 and 20.2.2010.

264. I have heard learned Counsel for the parties.

265. Considering the contents of the writ petition, I do not find any reason to interfere. In so far as prayer (c) of the petition is concerned, it has

been admitted in the petition that the accounts are in the joint names of the private parties and that the same are to be operated on either or

survivor basis. If at all the petitioner considers herself to have been wronged by the respondent No. 6, it is open to her to pursue the channel of

civil litigation for relief.

266. However, the police are directed to ensure that as a result of the acrimonious relationship between the petitioner and the respondent No. 6,

there is no loss of lives and limbs. If at all the petitioner and the respondent No. 6 do not sort out their differences amicably, it shall be open to

either of them to seek relief by pursuing the ordinary legal remedies. 267. The writ petition stands disposed of.

268. There shall be no order as to costs.

269. Photocopy of this judgment and order shall be retained with the records of each of the petitions barring W.P. No. 3915(W) of 2010, duly

countersigned by the Assistant Court Officer.

270. Department is directed to note that each of the petitioners, on applying for certified copy of this judgment and order, shall not be compelled

to obtain the entirety thereof. If any of the petitioners applies for the judgment (pages 1 to 73), and the order passed on the particular writ petition

filed by him/her, the same shall be furnished accordingly.

271. Urgent photostat certified copy of this judgment and order, if applied for, shall be given to the applicant as early as possible in tune with the

above direction.