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SEPARATION OF POWERS & JUDICIAL REVIEW

Separation of Powers

- Aristotle in fourth century B.C. in his treatise entitled Politics, described the **three agencies** of the government viz. the **General Assembly**, the **Public Officials**, and the **Judiciary.**
- Doctrine of separation of powers provides that none of the wings of the state shall usurp the power of the other organ.

  The inherent salient features of Separation of powers include:-

  (i) A written constitution which establishes its supremacy over any institution created under it; (Kelsen Theory of grund norm)

  (ii) The distribution of powers among the three organs of the state which have equal status;

  (iii) Legislature cannot delegate its powers to legislate to anyone.
- **Blackstone** favored judicial legislation as the strongest characteristic of the common law.
- **Bentham** regarded this as usurpation of the legislative function.
- **Montesquieu** propounded the theory of separation of powers **to avoid concentration of powers and to preserve human liberty.** If the judge behaves like a **legislator**, the power could be exercised **arbitrarily** and the judge would **prove to be the oppressor.**

  Lord Acton= "Power corrupts and absolute power corrupt absolutely"
- When American Constitution was negotiated a member of the constituent Assembly namely, **Yates** raised doubts that Judges would feel themselves totally **independent of law** and would behave arbitrarily.

- However, **Alexander Hamilton** observed that Judiciary and Legislature both are **agent of the people** of the state, so power of the people is superior to both. Intentions of the people will prevail over the acts/deeds of Legislature as well as of Judiciary.
- **Franklin D Roosevelt** – We will pack the court appointing justices who will act as judges and not as legislators.

  In Indian Constitution:
- Article 50 provides for separation of Judiciary from the Executive.
- Article 53(1) – Executive Power of Union of India lies with the President of India.
- Article 121 imposes strict restriction on Parliament not to discuss the conduct of the Judge. Similarly Article 122 – court will not enquire into the proceedings of the Parliament.
- Articles 211 and 212 Mutatis Mutandis apply for the State Legislatures and the High Courts.
- Art 361 – President of India and Governors are not answerable to any Court.
- Art 74 (2) – Court cannot examine – whether Council of Ministers advised the President and if so what was the advice.
- Separation of power enshrined in our constitution is basic feature of the Constitution of India.
- Parliament cannot amend that part of the constitution U/A 368, which constitute the basic features i.e. (Independence of Judiciary/Power of Judicial Review) as it would change the identity contents of the Constitution.
- **Judicial legislation**: The very basis and fundamental process of legislation in democracy is laying down the bill before the legislature for discussion and it is necessary even if the judiciary finds it necessary to eliminate a grave social malpractice which is affecting the lives of the people.
- The Legislature cannot for see all future problems – eventualities. The Constitution is not a short term document like a government order – that can be amended/changed/given up or substituted by another. Thus, the

Judge has a duty to interpret its provision keeping in mind the intention of the framers of the Constitution.

- The purpose of separation of powers is to have check and balance over the activities of other organs and to prevent tyrannical rule.

- ***Nand Kishore* v. *State of Punjab*** (1995) SCC 614 – Supreme Court competent to legislate while a contrary view taken by House of Lords in **Laker Airways (1977**) –observing that role of a judge is of a referee only.

In ***Vishnu Dutt Sharma* v. *Manju Sharma*,** AIR 2009 SC 2254 the Supreme Court held that on reading Section 13 of the Hindu Marriage Act, 1955 it is clear that no such ground of irretrievable breakdown of the marriage is provided by the legislature for granting a decree of divorce. The Court cannot add such a ground to Section 13 of the Act as that would be amending the Act, which is a function of the legislature.

The Supreme Court in ***Prakash Hinduja case*** (2003) held that if the Court issues a direction which amounts to legislation and is not complied with by the State, it cannot be held that the State has committed the Contempt of Court for the reason that the order passed by the Court was without jurisdiction and it has no competence to issue a direction amounting to legislation. Hence, there should be judicial restraint in this connection, and the temptation to do judicial legislation should be eschewed by the Courts. In fact, judicial legislation is an oxymoron.

There has been judicialisation of the administrative process. The regulatory agencies like Reserve Bank of India (RBI); Telecom Regulatory of India etc. are creatures of the legislature and possess legislative and judicial powers also for the reason that administrative law has grown out the need of the modern complex society for administrative agencies. The traditional separation of power had to give way in face of the need of the economic regulation. The Agencies have to frame Rules and Regulations

having the force of law and to decide cases and due to this combination the Authority is able to determine private rights and obligations. The administrative agency makes the Rules and Regulations because of delegation of powers by legislature. In fact, administrative adjudication constitutes a form of judicial mimickery and the Authority deciding a question of fact becomes a "quasi-judge". The decisions are made not by judges but by those who are part and parcel of the administration. Doctrine of separation of powers stand diluted for the reason that economic powers must be subject to "public interest". The goal of "cheap" and "inexpensive" justice by experts is one of the reason for setting up of the Agencies. They provide speedy justice in "affordable costs" and in "user friendly" manner. In fact the doctrine has not been recognized by the courts in its **absolute rigidity.** Thus the doctrine provides for an **insulation and not for separation in strict legal sense.**

Judicial Review

The Constitution, is the supreme law. It is, in terms of Hans Kelsen, the "grundnrom" of the State. All the other laws of the land derive authority from the Constitution. As the jurist, H.L.A Hart puts it, the Constitution works as the touchstone for all the other laws. The validity of other laws is to be checked according to the Constitution. If the law in question is not in line with the principle enshrined in the Constitution, then the law is to be declared unconstitutional. The same parameter is also used for executive actions. The executives are also prohibited to make any decision, which violates the basic norms or the principles important for the identity of the Constitution. The task to check the Constitutionality of the laws and of the action is done by the judiciary. This is termed as the 'judicial review'. Thus, judicial review is defined as 'the power of the court to determine whether the acts of legislature and executive are consistent with the Constitution or the Constitutional values'.

The concept of judicial review lies in the supremacy of the Constitution of the land. Since, the Judiciary is the guardian of the Constitution, thereby; it is

under its purview to check actions, which are inconsistent with the Constitution. The tool of judicial review empowers the judiciary to struck down any action, which is in conflict with the Constitution. In the Constitution of India, the principle lies under Article 13. The Article, provides that the law to be made should be in line with the norms laid down in the Constitution of India. In addition, any exiting law inconsistent with it is void to the extent of inconsistency. Thus, giving the power of judicial review to the judiciary. Articles 32 and 226 provide for the enforcement of the fundamental rights enshrined in Part III of the Constitution of India.

Guarantee of the fundamental rights is insignificant and meaningless unless the Court has power to protect the same from the arbitrary violation. At this point, the power of the judicial Review became relevant. Through the judicial review, the court has power to check the actions, which threatens to take away the fundamental rights unreasonably.

The power of judicial review is one of the basic features of the Constitution. (***Kesavananda Bharti v. State of Kerala (1973) 4 SCC ; Indira Nehru Gandhi v. Raj Narain*** AIR 1975 SC 2299; ***and Raja Rampal v. Hon'ble Speaker, Lok Sabha*** (2007) 3 SCC 184).

HISTORICAL BACKGROUND

In England, there has always been the supremacy of the Parliament. The judiciary was not supposed to review the acts of the Parliament, as the Parliament is supreme to all. Judicial review remained restricted to the executive actions. The Judiciary was concerned in keeping the action of the executive in line with the Constitutional values, though un-written in Britain. The Judiciary though expanding the scope of negligence through the case like ***Rylands v. Fletcher*** 1868 UKHL 1 (principle of strict liability), and ***Donoghue v. Stevenson*** 1932 UKHL 100 (manufacturer of goods owe a duty

towards an ultimate consumer with whom there is no contractual relation), maintained the myth that the judges do not create laws.[1]

The concept of the judicial review was carried by Britain to its colonies as well. That is why the presence of the concept was always there in the Indian legal system. Similar, was the situation in the U.S.A.. Being the colony of Britain, it inherited the common law system. The common law system, which provided the basis for the establishment of the concept of the judicial review in the U.S.A.

It was for the first time in the year 1803 that the U.S Supreme Court in ***Marbury v. Madison*** (1803) declared that the legislative actions are also under the purview of the judicial review. The Constitution of the U.S.A. does not provide any provision for the exercise of the power of the review by the judiciary. It is argued that through the case of ***Marbury*** the Court assumed the power of judicial review in itself.

Taking the note from both the countries, the farmers of the Indian Constitution though adopted the Parliamentary form of Government, but they went for the option of judicial review.

In the case of ***Golaknath v. State of Punjab*** AIR 1967 SC 1643, the Court held that the Parliament could not amend the Constitution to take away the rights provided in Part III of the Constitution. This resulted in the 24th amendment (1971)of the Constitution, which declared that the amendment powers of the Parliament are not restricted.

The controversy was rested in the case of ***Kesavanand Bharati v. State of Kerala*** AIR 1973 SC 1461 where the court though agreeing that the Parliament is not restricted to amend the Constitution, but also put a caveat of the doctrine of *basic structure.* The Court observed that the constitutional amendments are to be done keeping in mind the basic structure of the Constitution. In ***Minerva Mills v. Union of India*** AIR 1980 SC 1789 case the Court further observed that the tool of the amendment of the Constitution cannot be used to destroy the constitution itself.

[1] Sathe, S.P. Judicial Activism in India: Transgressing Borders and Enforcing Limits, 2nd ed. New Delhi: Oxford

The Supreme Court of India has used the power of judicial review from time to time to uphold the values incorporated in our Constitution.

I. Judicial Review of Administrative action:-

The ***famous "Wednesbury Case" Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*,(1947)** 2 All ER 680, is considered to be landmark in so far as the basic principles relating to judicial review of administrative or statutory direction are concerned. The couexplained the meanng of the word reasonableness explaining …

> "It is true that discretion must be exercised reasonably a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters, which he is bound to consider. He must exclude from his consideration matters, which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority… In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

The principles of judicial review of administrative action were further summarised in ***Council of Civil Service Unions* v. *Minister for the Civil Service***, (1984) 3 All ER 935, (commonly known as CCSU case) as illegality, procedural impropriety and irrationality. More grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community.

The Court explained 'irrationality' as follows:

> "By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

In ***Union of India* v. *G. Ganayutham***, AIR 1997 SC 3387 the Supreme Court after referring to the aforesaid two cases namely Wednesbury case and CCSU case held as follows:—

> " to test the validity of executive action or of administrative action taken in exercise of statutory powers, the Courts and tribunals in our country can only go into the matter, as a secondary reviewing Court to find out if the executive or the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of Wednesbury and CCSU tests. The choice of the options available is for the authority; the court/tribunal cannot substitute its view as to what is reasonable."

Judicial review lies against a decision making process and not against the decision itself (Gohil Hanubhai v. State of Gujarat, (2017) 13 SCC 621).

II. Judicial Review of Policy Decisions

In ***Monarch Infrastructure (P) Ltd.* v. *Commissioner, Ulhasnagar Municipal Corporation***, AIR 2000 SC 2272, it was held by the Supreme Court:—

> "Broadly stated, the Courts would not interfere with the matter of administrative action or changes made therein, unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is *mala fide*."

It is settled legal proposition that the policy decision taken by the State or its authorities/instrumentalities is beyond the purview of judicial review unless the same is found to be arbitrary, unreasonable or in contravention of the statutory provisions or violates the rights of individuals guaranteed under the statute. The policy decision cannot be in contravention of the statutory provisions for the reason that if Legislature in its wisdom provides for a particular right/ guarantee/benefit etc., the authority taking a policy decision cannot nullify the same.

In ***Tamil Nadu Education Deptt., Ministerial and General Sub-ordinate Services Association* v. *State of Tamil Nadu***, AIR 1980 SC 379, the Supreme Court held that the Court cannot strike down a circular/Government order or a policy merely because there is a variation or contradiction. Life is sometimes full of contradictions and even inconsistency

is not always a virtue. What is important is to know whether *mala fides* vitiates or irrationality and extraneous factors fouls. The Court held as under:—

> "Once the principle is found to be rational, the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. Every cause claims a martyr and however unhappy we be to see the seniors of yesterdays becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the Court has to adopt a hands-off policy."

In ***State of Karnataka* v. *All India Manufacturers Organisation*,** AIR 2006 SC 1846, the Supreme Court examined the scope of judicial review in case of change of policy with the change of the Government i.e.under what circumstances, the government should revoke the decision taken by the earlier Government. The Court held that policy decision taken by the State Government should not be changed with the change of the government. The Court further held

> "It is trite law that when one of the contracting parties is "State" within the meaning of article 12 of the Constitution, it does not cease to enjoy the character of "State" and, therefore, it is subjected to all the obligations that "State" has under the Constitution. When the State's acts of omission or commission are tainted with extreme arbitrariness and with *mala fides,* it is certainly subject to interference by the Constitutional Courts in this country.....We make it clear that while the State Government and its instrumentalities are entitled to exercise their contractual rights they must do so fairly, reasonably and without *mala fides*; in the event that they do not do so, the Court will be entitled to interfere with the same."

III. Judicial Review of the Economic Policy

In ***R.K. Garg* v. *Union of India*,** AIR 1981 SC 2138, the Supreme Court considered the validity of the provisions of the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 and Special Bearer Bonds (Immunities and Exemptions) Act, 1981, which provided for exemption and immunity from criminal liability of the persons who invest money in purchasing the Special Bearer Bonds from the income never disclosed earlier. The Court made the following observations:—

> "It is clear that Article 14 does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. What is necessary in order to pass the test of permissible classification under Article 14 is that the classification must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature... Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with greater play in the joints has to be allowed to the legislature. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuse. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid.....There may even be possibilities of abuse, but that too cannot itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses.The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions".

Courts have consistently refrained from interfering with the economic decisions and that wisdom and advisability of economic policies are not amenable to judicial review. (Vide: ***Arun Kumar Agrawal v. Union of India,*** AIR 2013 SC 3127*;* ***GAIL (India) Limited v. Gujarat State Petroleum Corporation Limited****,* (2014) 1 SCC 329*;* ***In Re: Natural Resources****,* (2012) 10 SCC 1*)*

Matters relating to economic issues, have always an element of trial and error, so long as a trial and error are bona fide and with best intentions, such decisions cannot be questioned as arbitrary, capricious or illegal. (Vide: ***BALCO Employees Union (Regd.) v. Union of India***, AIR 2002 SC 350).

IV. Judicial Review of Price Fixation

Price fixation is not within the provisions of the Courts. Judicial function in respect of such matters is exhausted when there is found to be a rational basis for the conclusions reached by the concerned authority. (Vide : ***Shri Sita Ram Sugar Co. Ltd. v. Union of India ,*** AIR 1990 SC 1277).

V. Judicial Review of decisions based on Expert Opinion

When technical questions arise and experts in the field have expressed various views and all those aspects have been taken into consideration by the Government in deciding the matter, the Court should restrain from interfering with the same. **(** See ***Federation of Railway Officers Association v. Union of India*** (2003) 4 SCC 289.)

VI. Judicial Review of Sub-Ordinate Legislation

In ***Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. v. Union of India & Ors.,*** (1985)1 SCC 641, the Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; "unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary". Subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution".

In ***Khoday Distilleries Ltd. v. State of Karnataka***, (1996) 10 SCC 304 the court held:

> "It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19 (1) (g) may not be available to the The tests of arbitrary action, which apply to executive actions, do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably

expected to emanate from an authority delegated with the law making power."

In ***State of Tamil Nadu v. P. Krishnamoorthy***, (2006) 4 SCC 517, the court after adverting to the relevant case law on the subject, laid down the parameters of judicial review of subordinate legislation generally thus:-

There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation;

b) Violation of fundamental rights guaranteed under the Constitution of India;

c) Violation of any provision of the Constitution of India;

d) Failure to conform to the statute under which it is made in exceeding thelimits of authority conferred by the enabling Act;

e) Repugnancy to the laws of the land, that is, any enactment;

f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

The court considering the validity of a subordinate legislation, will have to consider the nature , object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy.

But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.

Challnging the subordinate legislation, party has to certify the court that there had been abuse of power (Vide: Mangalam Organic Limited v. Union of India, AIR 2017 SC 2406)

VII. Judicial Review in Contractual Cases

In ***Sterling Computers Ltd.*** **v.** ***M & N Publications Ltd***., AIR 1996 SC 51, the Supreme Court observed as follows:—

> "While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process…..By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry."

In ***Tata Cellular V. Union of India*** AIR 1996 SC 11 the Supreme Court held that court does not have the expertise to correct the administrative decision. The quashing of decision may impose heavy administrative burden on the State and lead to increased unbudgeted expenditure. The Court can interfere if the order is affected from arbitrariness or bias or actuated by mala fides.

VIII. Judicial Review in Disciplinary Proceeding:-

Judicial Review lies against decision making process and not against the decision itself. The court cannot act as an Appellate forum and thus cannot re-appreciate the evidence. This power is limited to correct the error of law or procedure. Therefore, the court can interfere after the action/decision is found to be perverse or is such that no reasonable body of person, properly informed could come to such conclusion or where the order itself is based on irrelevant or extraneous matters/ considerations or where relevant matter has not been considered. Therefore, statutory functionary has an implicit obligation to apply his mind to pertinent and proximity matters only and eschewing the irrelevant and remote otherwise it would be said that the authority had acted unreasonably and in bad faith. Discretion must be exercised by the authority judiciously.

Purpose of judicial review is to ensure that the delinquent receive fair treatment and not to ensure that the conclusion which the authority reaches

is necessarily correct. The court does not have the power to re-appreciate the evidence and reach to its conclusion. Functions of the court is to find out whether the conclusion is based on evidence on record or whether the conclusion is based on evidence on record or whether the conclusion is based on no evidence.

(***vide: Shalini Soni v. Union of India*** AIR 1981 SC 431)

IX. Judicial Review of the Quantum of Punishment

If the sentence is not suitable to the offence i.e. not commensurate to the offence or punishment imposed is shockingly disproportionate or "shocks the conscience" of the court i.e. it is contrary to moral standards, the court can ask the disciplinary authority to reconsider the quantum of punishment or in exceptional cases in order to shorten the litigation process, it can substitute the appropriate punishment. Disproportionate punishment itself is a conclusive proof of bias.

(Vide: ***V. Ramana v. APSRCT***, AIR 2005 SC 3417; a ***Depot Manager APSRTC v. P. Jayaram Reddy***(2009)2 SCC 681).

X. Judicial Review of L.P.G

In ***K. Vinod Kumar* v. *S. Palanisamy***, AIR 2003 SC 3171, the apex Court considered the issue of grant of LPG distributorship and held that the proceedings of the Dealer Selection Board must satisfy the requirements of a *bona fide* administrative decision arrived at in a fair manner. Unless there are no *mala fides* alleged against the Dealer Selection Board or the President or any Member thereof, on specific plea raised impugning the manner of marking, the issue should not be entertained.

XI. Judicial Review of order passed under Clemency Power

The clemency power of the President/ Governor is plenary and in exercise of its power of Judicial Review, the Court should not interfere with such order generally on merits, but may examine that the President/ Governor considers all relevant material before coming to his decision.

The Court may interfere only if the order is found to have been taken without application of mind to the relevant factors or is founded on the extraneous or irrelevant considerations or is vitiated due to mala fides or patent arbitrariness. (Vide: **Sangeet v. State of Haryana** (2013)2 SCC 452; **Mohinder Singh v. State of Punjab** (2013)3 SCC 294; and **Devender Pal Singh Bhullar v. State** (2013)6 SCC 195.)

XII. *SUO MOTU* Judicial Review

Where the Court comes to the conclusion that certain orders have been passed illegally and in arbitrary manner, the Court can suo motu exercise the power of judicial review. (Vide: ***Chairman and Managing Director B.P.L. Ltd. v. S.P. Gururaja***, AIR 2003 SC 4536).

In ***Vinay Kumar v. State of Uttar Pradesh***, AIR 2001 SC 1739, the Court held that Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of person is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief. Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus standi to raise any grievance whatsoever. However, in the exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, in articulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances, even if his bona fides are doubted, but the issue raised by him, in the opinion of the court, requires consideration, the court may proceed suo motu, in such respect.

In ***Raju Ramsingh Vasave v. Mahesh Deorao Bhiavapurkar,*** (2008) 9 SCC 54, the Court held:

"We must now deal with the question of locus standi. A special leave petition ordinarily would not have been entertained at the instance of the Appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. Supreme Court, however, when a question is raised, can take cognisance of a matter of such grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry sub serves the greater public interest and has a far-reaching effect on the society, in our opinion, Supreme Court will not shirk its responsibilities from doing so." (See also: ***Manohar Joshi v. State of Maharashtra***, AIR 2012 SC 2043).