IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE
&
THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 29TH DAY OF OCTOBER 2014/7TH KARTHIKA, 1936

WP(C).NO. 32529 OF 2007 (S)

PETITIONER(S):

S.SUDIN
PADIPURAYIL HOUSING COLONY, KEEZHATTINGAL, ATTINGAL
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.R.MANOJ
SMT.SINDHU MANOJ

RESPONDENT(S):
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1. THE UNION OF INDIA AND OTHERS
ITS SECRETARY, MINISTRY OF INFORMATION AND
BROADCASTING, NEW DELHI.

2. THE STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, STATE SECRETARIAT
THIRUVANANTHAPURAM.

3. THE PRASAR BHARATHI (BROADCASTING
CORPORATION OF INDIA), NEW DELHI, REPRESENTED BY
ITS CHAIRMAN.

4. THE PRESS COUNCIL OF INDIA, REPRESENTED
BY ITS CHAIRMAN, NEW DELHI.

5. THE MATHRUBHUMI DAILY, REPRESENTED BY
ITS EDITOR, CALICUT, KERALA STATE.

6. THE MALAYALA MANORAMA DAILY, REPRESENTED
BY ITS EDITOR, KOTTAYAM, KERALA STATE.

7. THE KERALA KAUMUDI DAILY REPRESENTED BY ITS EDITOR, THIRUVANANTHAPURAM, KERALA STATE.

8. THE DESHABHIMANI DAILY, REPRESENTED BY ITS EDITOR, ERNAKULAM, KERALA STATE.

9. THE INDIAN EXPRESS DAILY, REPRESENTED BY ITS EDITOR, ERNAKULAM, KERALA STATE.

10. THE MANGALAM DAILY, REPRESENTED BY ITS EDITOR, KOTTAYAM, KERALA STATE.

11. THE MADHYAMAM DAILY, REPRESENTED BY ITS EDITOR, THIRUVANANTHAPURAM, KERALA STATE.

12. THE ASIANET TELEVISION, REPRESENTED BY ITS MANAGING DIRECTOR, THIRUVANANTHAPURAM.

13. THE SURYA TELEVISION, REPRESENTED BY ITS MANAGING DIRECTOR, THIRUVANANTHAPURAM.

14. THE KAIRALI TELEVISION, REPRESENTED BY ITS MANAGING DIRECTOR, THIRUVANANTHAPURAM.

15. THE INDIAVISION TELEVISION, REPRESENTED BY ITS MANAGING DIRECTOR, ERNAKULAM.

16. THE JEEVAN TELEVISION, REPRESENTED BY ITS MANAGING DIRECTOR, ERNAKULAM.

17. THE AMRITHA TELEVISION, REPRESENTED BY ITS MANAGING DIRECTOR, ERNAKULAM.

18. THE COMMUNIST PARTY OF INDIA, (MARXIST), REPRESENTED BY ITS GENERAL SECRETARY (KERALA) PALAYAM, THIRUVANANTHAPURAM.

19. THE COMMUNIST PARTY OF INDIA, REPRESENTED BY ITS SECRETARY, NEAR MODEL SCHOOL THIRUVANANTHAPURAM.

20. THE INDIAN NATIONAL CONGRESS, REPRESENTED BY ITS PRESIDENT (KERALA) THIRUVANANTHAPURAM.

21. THE BHARATHEEYA JANATHA PARTY,
REPRESENTED BY ITS SECRETARY (KERALA)
THIRUVANANTHAPURAM.

22. THE VISHWA HINDU PARISHAD, REPRESENTED
BY ITS SECRETARY, KALOOR, KOCHI.

23. THE INDIAN UNION MUSLIM LEAGUE,
REPRESENTED BY ITS SECRETARY, KOZHIKODE.

R,R1 & 4 BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR
R,R8,18 BY ADV. SRI.M.K.DAMODARAN (SR.)
R,R8 BY ADV. SRI.P.K.VIJAYAMOHANAN
R,R8, 18 BY ADV. SRI.GILBERT GEORGE CORREYA
R,R19 BY ADV. SMT.AYSHA YOUSEFF
R,R19 BY ADV. SMT.MOLLY JACOB
R,R6 BY ADV. SRI.MILLU DANDAPANI
R,R21 BY ADV. SRI.P.S.SREEDHARAN PILLAI
R,R21 BY ADV. SMT.C.G.PREETHA
R,R21 BY ADV. SMT.P.RANI DIOTHIMA
R,R.10 BY ADV. SRI.GEORGEKUTTY MATHEW
R,R.9 BY ADV. SRI.U.K.RAMAKRISHNAN (SR.)
R,R.9 BY ADV. SRI.E.K.MADHAVAN
R,R.9 BY ADV. SMT.P.VIJAYAMMA
R,R.9 BY ADV. SRI.V.KRISHNA MENON
R,R5 BY ADV. SRI.T.G.RAJENDRAN
R,R16 BY ADV. SRI.C.J.JOY
R,R12 BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR
R,R11 BY ADV. SRI.M.ASOKAN
R,R11 BY ADV. SRI.DEVAPRASANTH.P.J.
R,R15 BY ADV. SMT.R.RANJINI
R,R1,3 BY ADV. SRI.S.SUJIN, SC, IHRD
R,R13 BY ADV. SRI.NAGARAJ NARAYANAN
R,R13 BY ADV. SRI.SAIJO HASSAN
R,R18 BY ADV. SRI.ALAN PAPALI
R,R2 BY ADV. ADVOCATE GENERAL
R,R2 BY SPECIAL GOVERNMENT PLEADER SMT.GIRIJA GOPAL
R1 BY ADV. SRI.N.NAGARESH,ASG OF INDIA (NO MEMO)
R19 BY ADV. SRI.T.M.MOHAMMED YOUSUFF(SR.)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ALONG WITH W.P(C) NO.21455 OF 2012 AND CONNECTED CASE ON 25.09.2014, THE COURT ON 29.10.2014 DELIVERED THE FOLLOWING:

"C.R."

ASHOK BHUSHAN, Ag. CJ,
A.M.SHAFFIQUE, J
&
A.K.JAYASANKARAN NAMBIAR, J.

W.P(C).No. 32529 of 2007,
W.P(C).No. 21455 of 2012,
W.P(C).No. 2183 of 2008,
W.P(C).No. 31985 of 2007,
W.P(C).No. 30778 of 2005,
W.P(C).No. 32086 of 2007,
W.P(C).No. 34345 of 2007,
&
W.P(C).No. 36376 of 2007

Dated this the 29th day of October, 2014

JUDGMENT

Ashok Bhushan, Ag.CJ.

This bunch of Writ Petitions have been listed before the Full Bench on a reference made by a Division Bench of this Court. The Division Bench took the view that the issues raised in the Writ Petitions are of public importance, hence they require to be heard by a Full Bench.

2. This bunch of Writ Petitions highlights the

grievance and suffering by common people of the State, on whom by the call of observing hartal by different political parties and organizations forces closure of all their activities, including respective businesses and vocations. The petitioners' grievances are compounded by not taking appropriate action and measures by the State, who is obliged to secure lives and properties of members of the society. The grievance is that in spite of two Full Benches of this Court having declared 'bandh' and 'forced hartal' unconstitutional, the political parties and various organizations are giving call for hartals and prosecuting their calls, which are nothing but forced hartals. Some of the petitioners, for example, petitioners in W.P(C).No.32529 of 2007, W.P(C).No.2183 of 2008 and W.P(C).No.21455 of 2012, who are aggrieved by failure of the State authorities to ensure normal functioning of the people in bandhs and forced hartals, have come with the prayer for restraining the print and

electronic media from publishing any news regarding call of hartals given by political parties and different organizations.

3. In bunch of these Writ Petitions several prayers have been made by different petitioners giving relevant facts and details. Counter affidavits by some political parties, the State Government and other respondents have been filed. For noticing the issues raised before the Full Bench and the pleadings of the parties it is sufficient to note the pleadings and reliefs in all the Writ Petitions. We now proceed to note the facts and issues brought on record in above Writ Petitions for deciding the bunch of Writ Petitions.

4. W.P(C).No.32529 of 2007 has been filed by the petitioner, who claims to be working as the Principal of an educational institution affiliated to the Central Board of Secondary Education. The Writ Petition has been instituted seeking orders restraining publication or

broadcasting of calls for bandh or hartal by political parties and other organizations. The petitioner by referring to two Full Bench judgments of this Court as noted above pleaded that in spite of various directions issued by the Full Bench of this Court, the State Government machinery did not do anything to mitigate the sufferings of the common people on the day of bandh/hartal. It is pleaded that on the days of hartal, an uncontrollable situation had arisen wherein self proclaimed violators of law, started holding the public to ransom in the name of hartal and bandh. The petitioner pleads that the root cause of enforcing a call for bandh/hartal is the wide circulation, propaganda and importance given to the same by news papers, television and radio. This is so, in view of the fact that once political party decides to call for a bandh/hartal, all they have to do is to convey the decision to the respective newspaper/television and once the news is

flashed, people remain within their homes, fearing adverse consequences, if they violate the call for bandh, as is proved by past experiences, which inter alia amounts to aiding/abetting the call for bandh/hartal. The petitioner has impleaded representatives of television channels and newspapers operating in the State of Kerala. Representatives of political parties are also impleaded in the Writ Petition. The petitioner has also pleaded that Norms of Journalistic Conduct have been framed under the Press Council Act, 1978 and going by the said Regulation, vis-a-vis, the declarations of this Court and the Supreme Court, the petitioner pleads that newspapers ought not publish any call for bandh/hartal by any political party or group, since such action would directly infringe the rights guaranteed to a citizen under Articles 19(1)d and 21 of the Constitution of India. It is pleaded that the third respondent, Prasar Bharathi (Broadcasting Corporation of India), is obliged under the

Prasar Bharati (Broadcasting Corporation of India) Act, 1990 to discharge various obligations, including promoting social justice and advance the welfare of the weaker sections of the society, which refrain from broadcasting/telecasting any call for bandh/hartal made by the political parties. Similar pleadings have been made that Cable Television Networks ought not broadcast any news relating to call for bandh/hartal. The petitioner in the Writ Petition has prayed for the following reliefs:

> *"i) declare that broadcasting/publishing/ telecasting news/call for hartal/bandh/ general strike by respondents 3 to 17 would amount to enforcing such call and hence un-constitutional and violative of the rights guaranteed under Article 21 of the Constitution of India.*
>
> *ii) issue a writ of mandamus or any other appropriate writ, direction or order directing respondents 1 to 4 to adopt effective measures to ensure that*

respondents 5 to 17 do not broadcast/publish/telecast any news or call for hartal/bandh/strike, which acts have been declared to be unconstitutional by the Full Bench of this Honourable Court in Bharat Kumar v. Union of India, 1997(2) KLT 287 and K.V.V.E. Samithi v. State of Kerala 2002 (2) KLT 430."

5. W.P(C).No.31985 of 2007 has been filed by an organization, which has been formed for achieving overall welfare of the common people and to assist them in the matter of attaining protection whenever there is violation of human rights and impediments. The organization claims to have noted the recent trend among the political parties to call hartals/bandhs frequently, only to impose their political image forcefully on the public. The Writ Petition was filed in the wake of two prominent political parties in the State giving call of hartals to be observed on 27.10.2007 and 01.11.2007.

The petitioners plead that calling of hartal causes lot of inconveniences to the public and many a time unlawful things are happening on the hartal days created by both political supporters and antisocial elements under the guise of political reactions. The leaders who call on hartals often declare that distribution of milk, newspapers and medical shops will be spared on the hartal day, which statement itself shows that they will sabotage the other routine activities of the public, such as travelling, opening of shops for business etc. and these activities will be hindered. People are forced to remain at home on the hartal day, thereby not attending their workplace and refrain from travelling, because of the hidden threat and danger to their lives. The reason for observing hartal on 27.10.2007 in the Malabar region was to protest against the indifferent attitude of Air India for the overall development of Calicut Airport. It was further pleaded that even though the Chief Minister

of Kerala made request to refrain from observing hartal on 01.11.2007, since the arrival of His Excellency the President of India to Kerala was scheduled on that day, but the fourth respondent reiterated that they will proceed with observing hartal on 01.11.2007. It is further pleaded that a Full Bench of this Court in ***Bharth Kumar v. State of Kerala*** (1997(2) KLT 287 (FB) had held that no political party or organization can claim that it is entitled to paralyse the industry and commerce in the entire State or Nation and is entitled to prevent the citizen not in sympathy with its view point from exercising their Fundamental Rights or from performing their duties for their own benefit or for the benefit of the State or the Nation. The Full Bench has declared that calling bandh is illegal and unconstitutional. The judgment of the Full Bench was confirmed by the Supreme Court in ***Communist Party of India (M) v. Bharat Kumar*** (1997(2) KLT 1007(SC). Reference and

reliance has been placed on ***George Kurian v. State of Kerala*** (2004(2) KLT 758). It is submitted that the petitioner had issued legal notice on earlier occasion and reference to legal notice dated 5.8.2007 Exhibit P2 has been made. It is further pleaded that by noticing the call made by the second respondent to observe hartal in Malabar region on 27.10.2007, the petitioner organization had issued legal notice on 24.10.2007. The petitioner filed the Writ Petition on 26.10.2007 seeking the following reliefs (as amended):

> *"i) issue a writ of prohibitory, prohibiting/restraining the 2nd respondent proceeding with the call for observing Harthal on 27.10.2007 in Malabar region (Palakkad to Calicut), as it is illegal and unconstitutional.*
>
> *ii) issue a writ of prohibitory prohibiting/restraining the 4th respondent proceeding with the call for observing hartal on 1-11-2007 as the same is illegal and unconstitutional.*

> *iii) issue a writ of mandamus or any other appropriate writ, order or direction directing the 7th respondent to recover and realize compensation for the damage if any caused to the public/private property, from the respondents 1 to 6 as per Prevention of Damages to Public Property Act, 1984.*

Counter affidavits by some of the political parties, i.e., 6th respondent, Communist Party of India (Marxist) CPM and 11th respondent Communist Party of India (CPI) have been filed.

6. W.P(C).No.21455 of 2012 has been filed by the petitioner, who is a practicing lawyer of the Kozhikode Bar, who also claims to be a social worker. The Writ Petition has been filed in the wake of a call for hartal on 15.9.2012. Writ of prohibition has been prayed for banning the hartal declared on 15.9.2012. A prayer has also been made for restraining the members of the print

and electronic media from publishing any news regarding the announcement of hartal by any political parties or organization in State of Kerala.

7. W.P(C).No.2183 of 2008 has been filed by the petitioner, who claims to be a retired school teacher and a social worker. He has shown his concern for protection of rights of the children and proper running of educational institutions. The petitioner pleads that in spite of bandh and hartal having been declared as unconstitutional by this Court as well as the Supreme Court, frequent forced hartal calls are made and such illegal calls are being published in various medias. The petitioner has given details of hartals conducted in the year 2007 in Exhibit P1. It is pleaded that those details are uploaded in the website “www.harthal.com”. The petitioner pleaded that making of such calls, including publishing of it, with the intention to cause fear or alarm in the mind of the public is an offence under Section 503

of the Indian Penal Code. It is pleaded that the worst affected by such calls of hartals are the children. The schools will not be able to complete their lessons in view of such frequent hartals. Examinations in Universities in the State getting postponed. It is further pleaded that various all India examinations are conducted on all India basis and on days when examinations are scheduled if call of hartal is given, students of Kerala shall be deprived from participating in such examinations. The petitioner has prayed for the following reliefs:

> *"i. To issue a writ, direction or order in the nature of mandamus or such other appropriate writ, direction or order commanding the respondent to take immediate steps to see that no call for bundh or forced hartals, as prohibited by this Hon'ble Court in Bharat Kumar vs State of Kerala 1997(2) KLT 287 and Peoples council for Social Justice vs State, 2002(2) KLT 548 are published in*

any media and appropriate action is taken against the violators under the Indian Penal Code, 1860 and Prevention of Insults to National Honour Act, 1971;

ii. To issue a writ, direction or order in the nature of mandamus or such other appropriate writ, direction or order commanding the respondent to create a separate fund for the purpose of paying compensation to the victims of the hartals and bundhs, forthwith and to recover the same from the concerned persons by invoking the provisions of the Kerala Revenue Recovery Act, 1968, who make such illegal calls;"

8. W.P(C).No. 30778 of 2005 has been filed by an association registered under the provisions of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act. The members of the association are mainly wholesale distributors of Kottayam District. The members are distributing various products to retailers. The petitioner's case is that

because of the frequent calls of bandhs, hartals and general strikes by political parties, organizations, trade unions etc., citizens are threatened from travelling for attending to their duties. The members of the petitioner association are unable to transact their business. It is pleaded that although the members of the petitioner association are ready to carry out business on the days on which hartal or bandh is called, if given sufficient police protection by the police. In spite of requests by the members of the petitioner association to give adequate police protection to carry out business on bandh or hartal days, sufficient police protection to carry out the business has not been given. It is pleaded that the members of the petitioner association are suffering huge loss in the business. The following prayers are made in the Writ Petition:

> *"i) Declare that the bandh called by the BJP on 9.11.2004 and the Hindu Aikyavedi on 15.11.2004 are unconstitutional and violative*

of Articles 19 and 21 of the Constitution of India.

ii) *Direct the 7th respondent BJP as well as 13th respondent Hindu Aikyavedi to deposit an amount of 10 lakhs each as compensation for the illegal action of calling harthal on 9.11.2004 and 15.11.2004 and to keep the said amount in a special fund and to disburse the same to the members of the petitioner association and other persons who have suffered loss or damage due to the above bandh;*

iii) *To declare that the bandh or harthal or general strike called or enforcement of bandh or harthal or general strike will amount to an unconstitutional act;*

iv) *Direct the police authorities and the district administration to give effective and adequate protection for members of the association to carry out their business;*

v) *Direct the police authorities to take video photos during the call of a bandh/harthal/general strike etc. so as to identify the miscreants and to book them under law;"*

9. W.P(C).No.32086 of 2007 has been filed by a

voluntary organization, which is aggrieved by the action of the respondents in calling hartals in the State as well as in Malabar region. Following are the prayers made in the Writ Petition:

> *"a) Issue a writ of mandamus, directing the respondents 1 to 2 to take immediate and effective steps to ensure the safety of the citizens who disagree with the hartal, protect their right to work and travel and to protect public property on the days of hartals called for by respondents 3 and 4.*
>
> *b. Issue a writ of mandamus, directing the respondents 1 to 2 to maintain visible police presence throughout the State especially outside railway stations, bus depots, main roads, main junctions, hospitals, courts, schools, colleges, market and business places for taking effective and prompt action against the violence on the days of hartals called for by respondents 3 and 4.*
>
> *c) Issue a writ of mandamus, directing the*

respondents 1 and 2 to assess the loss caused to the State due to the destruction of public property by the organizers of the bandhs and hartals and to recover the same from the culprits.

d) Issue a writ of mandamus, directing the respondents 1 and 2 to take immediate and effective steps to complete the investigations and to finalize all pending criminal cases registered against the organizers of the Bandhs and hartals, if necessary by constituting special court."

10. W.P(C).No.34345 of 2007 has been filed pleading that frequently bandhs and hartals are called by political parties without caring the hardships and difficulties faced by the general public. The petitioner claims to be running a business, which suffers huge loss on the date of hartals. It is pleaded that examinations are indefinitely adjourned on account of hartals and bandhs, causing great loss to the students. The KSRTC are

also suffering loss on account of the hartals, as they are not able to operate bus services on hartal days. In a month the loss suffered by the Corporation is more than several crores. The petitioner has come up praying for the following reliefs in the Writ Petition:

> *"i) Issue a writ of mandamus directing respondents 5 to 7 to take adequate measures to see that normal life of the citizens is not paralysed and that is to be done not by declaring holidays or postponing examinations but by giving effective protection to those who are not participating any such harthals or bunds or strikes called by respondents 1 to 4;*
>
> *ii) Issue a writ of mandamus directing respondents 5 to 7 to recover damages from the persons who actually cause damages and also from political parties, organizers and persons who actually cause damages and also from political parties, organizers and persons who call for such harthals or general strike;*

iii) Issue a writ of mandamus directing respondents 5 to 7 to take action under the Prevention of Damages to Public Property Act, 1984 against the organizers of harthals and bundhs;

iv. Issue a writ of mandamus directing respondents 5 to 7 to adequately compensate persons who have suffered losses immediately as the government has failed to fulfill its constitutional obligations to protect life and property of the citizens and to direct the government to take steps to recover the same from the persons who cause such damages or injuries and also from persons and political parties or organizers who call for such harthals or general strikes;

v) Issue a writ of mandamus directing respondents 5 to 7 to see that public transport system including KSRTC and private buses and private vehicles are not prevented from running on roads on harthal and bundh days;

vi) Issue a writ of Prohibition prohibiting 5th respondent or any of the Universities in Kerala from postponing or adjourning public examinations and tests on the ground of harthals and bundhs;

vii) Issue a declaration declaring that calling and holding of harthal or bundh is an act of criminal intimidation which affect public order and security of the nation and is punishable u/s.503 I.P.C".

11. W.P(C) No.36376 of 2007 has been filed by State President of the Senior Citizens Welfare Association of India. The petitioner prays for a writ of mandamus directing the respondents to totally ban the call for hartal and blockade of roads by organizations such as political parties or otherwise. A counter affidavit on behalf of Government of Kerala has been filed stating that this Court has not banned a hartal in toto. Following is pleaded in paragraphs 2, 3, 5 and 6:

"2. It is submitted that this Hon'ble

Court has not banned a hartal in toto. However, as and when political parties declared hartal the Government is duty bound to ensure that it does not cause hindrance to normal life of the general public. It is submitted that the Government are taking immediate action in such instances so as to ensure that public and private property is protected, besides the safety of the citizen. Detailed instruction in this regard is being given to all subordinate officers and bandobust arrangements with visible police presence will be made whenever necessary. Action will be taken for proper patrolling at important places like Railway Stations, Airports etc. Whenever complaints of violence are received, cases were promptly registered and such cases will

be expeditiously investigated. Action will also be initiated to recover damages from those who cause damages to public properties.

3. It is submitted that with regard to damages to properties, provisions are available to realize the damages caused during hartals. Every effort is being made to register cases, whenever complaints are received by Police. Action is also being taken to charge the cases expeditiously.

5. It is submitted that when political parties are declaring Harthals, instructions are being given to subordinate officers to file Civil Suits claiming damages from the agitations in the case of destruction of property besides registering criminal cases.

6. It is submitted that as and when

information regarding declaration of harthal is received, the Government used to take adequate precautions so that the rights of citizens are sufficiently protected. During Hartals proper and adequate Police Bandobust arrangements are being made. Forceful closure of shops and obstruction of employees are prevented. During the entire Harthal period, the Police force in the State will stand mobilized. The Government are taking all possible steps to ensure that the general public is not deprived of their rights and claims."

12. The main reliefs, which have been claimed in different Writ Petitions has been noted as above. The reliefs claimed in different Writ Petitions can be summarized to the following effect:

"i) Writ or direction directing the State

authorities to adopt effective measures to ensure that various news papers/TV channels do not broadcast/publish/ telecast any news of hartal/bandh/strike;

ii) *Issue a writ or order directing the State to totally ban calling for bandh/hartal/general strike;*

iii) *Issue a writ or direction directing the State authorities to recover and realize compensation for the damages caused to the public/private property from the political parties/organization calling hartal/strike/bandh as per the Prevention of Damages to Public Property Act, 1984;*

iv) *Issue a direction directing the political parties/ organizations calling for bandh/strike to deposit an amount for payment of compensation for illegal action of calling hartal;*

v) *Issue a direction to the State as well as the police authorities to take effective measures as already directed by two Full Bench of this Court in* ***Bharat***

Kumar v. Union of India *(1997(2) KLT 287) and* ***George Kurian v. State of Kerala*** *(2004(2) KLT 758);*

vi) Direct the police authorities to take video/ photos during the call of a bandh/harthal/general strike etc. so as to identify the miscreants who can be booked under law;

vii) Issue a direction to the State to create a fund for payment of compensation to the victims of hartals/bandhs, who suffer physical injury as well as destruction of their property; and

viii) Issue a direction to the State administrative authorities to take steps expeditiously to get all criminal cases registered consequent to hartal/bandh decided at an early date.

13. We have heard Sri.P.B.Sahasranaman, Sri.T.S.Harikumar, Sri.M.J.Thomas, Sri.R.Manoj, Smt.Daisy Philipose, Sri.Philip J.Vettickattu, learned counsel appearing for the petitioners and Senior Counsel

Sri.T.M.Mohammed Youseff, Sri.Swathy Kumar, Sri.Gilbert Correya, Sri.Devaprasanth, Sri.Millu Dandapani, Sri.Nandagopal Nambiar and Smt.Girija Gopal, Special Government Pleader appearing for the respondents.

14. From the submissions raised by learned counsel for the parties an d pleadings on record, the following are the main issues, which arise for consideration before this Full Bench:

I. Whether the print and electronic media can be prohibited from publishing/ broadcasting/ telecasting any news for call of hartal/strike by a political party or an organization?

II. Whether call for hartal/strike deserves to be totally banned?

III. What are measures which can be taken by State for regulating/restricting call for hartal/strike given by political parties/different organizations?

IV. What measures have to be taken by State/District Administration/police

administration on day of hartal/strike to ensure that every person is able to attend his normal duty/business and life and property both private and public is protected?

V. What are the measures for prosecution of guilty and mechanism for claiming damages/compensation for damage/ destruction of private and public properties during hartal/strike?

VI. Whether call of hartal/strike violates the Prevention of Insults to National Honour Act, 1971?

VII. Whether calling and carrying out hartal/strike is to be declared an offence punishable under Section 503 IPC.

VIII. To what relief the petitioners are entitled?

Issue No.I: Prohibiting the Print and Electronic media.

15. The first issue, which is the principal relief in first three Writ Petitions is with regard to prohibiting

broadcasting/telecasting news/call for hartal/bandh/ general strike by print media, press, radio and televisions. The prayers made in the above first three Writ Petitions have already been quoted above.

16. Learned counsel for the petitioners, in support of the above prayers, submits that Full Benches of this Court as well as Apex Court, as noted above, have already declared calling bandh and forced hartal as unconstitutional. Printing news of above bandh and hartal and giving publicity by media is nothing but an illegal and unconstitutional act. It is submitted that the root cause of enforcing a call for bandh/hartal is the wide circulation, propaganda and importance given to the same by news papers, televisions and radio. It is submitted that once a political party decides to call for a bandh/hartal, all they have to do is to convey the decision to the respective newspaper/television and once the news is flashed, people remain within their

homes, fearing adverse consequences. This inter alia amounts to aiding/abetting the call for bandh/hartal by media. It is further submitted that under the Press Council Act, 1978, the Council has framed Norms of Journalistic Conduct, which direct the newspapers to exercise due restraint and caution in presenting any news, comment or information, which is likely to jeopardize, endanger or harm the paramount interests of the State and Society. It is submitted that publicising news of hartal and bandh is nothing but to endanger or cause harm to the interests of the society and public in general. Similarly, it is contended that Prasar Bharati Corporation established under Section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 is obliged to discharge its functions in a manner to promote social justice and combat exploitations and evils which may damage the weaker sections of the society. It is submitted that the Corporation ought not to

broadcast such news or publish information, which is likely to endanger and harm the people in general. It is submitted that in view of the declaration of law by the Full Bench of this Court and Apex Court, as noted above, as well as the statutory provisions, this Court may issue a direction prohibiting the press and media from printing and publishing any news for call for bandh/hartal.

17. Learned counsel for some of the respondents, i.e., political parties, have submitted that no prohibition can be imposed on press and media from publishing any news regarding call for bandh/hartal. It is submitted that it is the Fundamental Right of press guaranteed under Article 19(1)(a) of the Constitution of India to print/publish the views of the press and media, which is necessary for a healthy democracy. It is further submitted that the public in general has also a right to know about all events happening in the State and blacking out any such information from the public in

general shall again violate the rights of the people guaranteed under the Constitution of India. The role of media is to function as a constructive opposition in a democracy and they are supposed to oppose what is bad and to support what is good.

18. Before we proceed to examine the rival contentions of learned counsel for the parties as noted above, it is useful to note relevant constitutional provisions as well as law on the subject as declared by the Supreme Court.

19. Our Constitution is the documentation of the founding faiths of a nation and the fundamental directions for their fulfillment. The Constitution is not just a document in solemn form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlined therein. The founding fathers of the Constitution, cognizant of the reality of life wisely engrafted the Fundamental Rights and Directive Principles

in Chapters III and IV for a democratic way of life. The fundamental rights have in fact proved to be the most significant constitutional control on the Government, particularly legislative power. Article 19 of the Constitution is an arch on which edifice, i.e., the basic structure has been built and developed. In the present case, we mainly are concerned with the right guaranteed under the Constitution to "freedom of speech and expression". Article 19(1) and 19(2), which are relevant for the present case, are quoted as follows:

> ***"19. Protection of certain rights regarding freedom of speech, etc.***—*(1) All citizens shall have the right—*
>
> *(a) to freedom of speech and expression;*
>
> *(b) to assemble peaceably and without arms;*
>
> *(c) to form associations or unions [co-operative societies];*
>
> *(d) to move freely throughout the territory of India;*
>
> *(e) to reside and settle in any part of the territory of India; [and]*

(f) [* *]*

(g) to practise any profession, or to carry on any occupation, trade or business.

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

20. Although Article 19(1)(a) does not specifically refers to the "freedom of press", but it is now well established that right of freedom of press is inherent and ingrained in the right of speech and expression guaranteed under Article 19(1)(a) of the Constitution.

21. **Patanjali Sastri**, J speaking for majority in one of the earliest cases of the Supreme Court has

recognized and propounded the freedom of press. In **R*omesh Thappar v. State of Madras*** (AIR 1950 SC 124) the Supreme Court considered Article 19(1)(a) as well as Article 19(2) of the Constitution. In the above case, the petitioner was a printer, publisher and editor of a weekly journal in English. The Government of Madras, in exercise of their powers under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, issued an order imposing a ban upon the entry and circulation of the journal in the State of Madras. The said order was challenged before the Apex Court. Following was laid down in paragraphs 11, 13 and 14 of the judgment:

> *11. ".....Thus, very narrow and stringent limits have been set to permissible legislative abridgment of the right of free speech and expression and this was doubtless due to the realization that freedom of speech and of the press lay at the foundation of all democratic*

organizations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular Government, is possible. A freedom of such amplitude might involve risks of a abuse. But the framers of the Constitution may well have reflected with Madison who was 'the leading spirit in the preparation of the First Amendment of the Federal Constitution", that "it is better to leave a few of its noxious branches to their luxuriant growth than, by pruning them away, to injure the vigour of those yielding the proper fruits" (Quoted in Near v. Minnesotta283 U. S 607 at 717-8).

xx xx xx

13. It was, however, argued that S.9 (IA) could not be considered wholly void, as, under Art. 13(1) an existing law inconsistent with a fundamental right as void only to the extent of the inconsistency and no more. In so far as the securing of the public safety or the maintenance of public order would include the security of the State, the

impugned provisions was covered by cl.(2) of Art. 19 and must, it was said, be held to be valid. We are unable to accede to this contention. Where a law purposes to authorize the imposition of restrictions on a fundamental right in language made enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and viod. In other words cl.(2) of Art. 19 having allowed the imposition of restriction on the freedom of speech and expression only in cases where danger to public security is involved, an enactment, which is capable of being applied to cases where no such danger could arise, cannot be held to be constitutional and valid to any extent.

14. The application is therefore allowed

and the order of the respondents prohibiting the entry and circulation of the petitioner's journal in the State of Madras in hereby quashed."

22. In another case, which was decided by the Supreme Court on the same day, i.e., ***Brij Bhushan v. state of Delhi*** (AIR 1950 SC 129) speaking for the majority, **Patajali Shastri**, J. has laid down following in paragraph 25:

"25.There can be little doubt that the imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression declared by Art.19 (1) (a).As pointed out by Blackstone in his Commentaries,

"the liberty of the press consists in laying no previous restraint upon publications, and not in freedom from censure for criminal matter when published. Every freeman has all undoubted right to lay what sentiments he pleases before the public; to forbid this, is to

destroy the freedom of the press." *Blackstone's Commentaries, Vol. IV. pp. 151, 152.*

The only question therefore is whether S. 7 (1) (c) which authorizes the imposition of such a restriction falls within the reservation of cl. (2) of Art. 19"

23. The Constitution Bench of this Court in ***Express Newspaper Ltd. v. Union of India*** (AIR 1958 SC 578) had occasion to consider Article 19(1)(a) of the Constitution in context of freedom of press. The Apex Court in the said case examined the Constitutional Law as well as American Law on the freedom of speech and expression. The Apex Court in the above case has laid down the following in paragraphs 131, 132, 142 and 143:

131. These are the only two decisions of this Court which involve the interpretation of Art. 19 (1) (a) and they only lay down that the freedom of speech and expression includes freedom of propagation of ideas

which freedom is ensured by the freedom of circulation and that the liberty of the press is an essential part of the right to freedom of speech and expression and that liberty of the press consists in allowing no previous restraint upon publication.

132. There is however, a considerable body of authority to be found in the decisions of the Supreme Court of the United States of America bearing on this concept of the freedom of speech and expression. Amendment I of that Constitution lays down :
"*Congress shall make no law....abridging the freedom of speech or of the press.....*"

xx xx xx

142. It is clear from the above that in the United States of America :

(a) the freedom of speech comprehends the freedom of press and the freedom of speech and press are fundamental personal right of the citizens;

(b) the freedom of the press rests on the assumption that the widest possible dissemination of information from

diverse and antagonistic sources is essential to the welfare of the public;

(c) Such freedom is the foundation of free Government of a free people;

(d) the purpose of such a guarantee is to prevent public authorities from assuming the guardianship of the public mind ; and

(e) freedom of press involves freedom of employment or non-employment of the necessary means of exercising this right or in other words, freedom from restriction in respect of employment in the editorial force.

143.This is the concept of the freedom of speech and expression as it obtains in the United States of America and the necessary corollary thereof is that no measure can be enacted which would have the effect of imposing a pre-censorship curtailing the circulation or restricting the choice of employment or unemployment in the editorial force. Such a measure would certainly tend to infringe the freedom of

speech and expression and would therefore be liable to be struck down as unconstitutional."

24. In today's free world freedom of press is the heart of social and political intermingling. The press has now assumed the role of the public educator making formal and non-formal education possible in large scale particularly in the developing world where television and other kind of modern communications are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which democratic electorate cannot make responsible judgments. The Apex Court in its several judgments have explained and elaborated the right of freedom of press. In ***Bennett Coleman Co. v. Union of India*** [(1972)2 SCC 788] Justice A.N.Ray speaking for Constitution Bench has laid down following in paragraphs 45 and 80:

"45*. It is indisputable that by freedom*

of the press is meant the right of all citizens to speak, publish and express their views. The freedom of the press embodies the right of the people to read. The freedom of the press is not antithetical to the right of the people to speak and express.

xx xx xx

***80**. The faith of a citizen is that political wisdom and virtue will sustain themselves in the free market of ideas so long as the channels of communication are left open. The faith in the popular Government rests on the old dictum, "let the people have the truth and the freedom to discuss it and all will go well." The liberty of the press remains an "Art of the Covenant" in every democracy. Steel will yield products of steel. Newsprint will manifest whatever is thought of by man. The newspapers give ideas. The newspapers give the people the freedom to find out what ideas are correct. Therefore, the freedom of the press is to be enriched by removing the restrictions on page limit and allowing them to have new editions or new*

papers. It need not be stressed that if the quantity of newsprint available does not permit grant of additional quota for new papers that is a different matter. The restrictions are to be removed. Newspapers have to be left free to determine their pages, their circulation and their new editions within their quota of that has been fixed fairly."

25. **Justice Beg** in his concurrent judgment has laid down in paragraph 98 as follows:

***"98**. Although, our Constitution does not contain a separate guarantee of Freedom of the Press, apart from the freedom of expression and opinion contained in Article 19 (1)(a) of the Constitution, yet, it is well recognized that the Press provides the principal vehicle of expression of their views to citizens. It has been said: "Freedom of the Press is the Ark of the Covenant of Democracy because public criticism is essential to the working of its institutions. Never has criticism been more necessary than today, when the weapons of propaganda are so strong and so*

subtle. But, like other liberties, this also must be limited"."

26. In ***Express Newspapers Pvt. Ltd. and others v. Union of India and others*** [(1986)1 SCC 133] the Supreme Court again emphasized that freedom of press is not only valuable freedom in themselves but are basic to a democratic form of Government. The following was laid down by the Supreme Court in paragraph 75 of the judgment:

*"**75.** I would only like to stress that the freedom of thought and expression, and the freedom of the press are not only valuable freedoms in themselves but are basic to a democratic form of Government which proceeds on the theory that problems of the Government can be solved by the free exchange of thought and by public discussion of the various issues facing the nation. It is necessary to emphasize and one must not forget that the vital importance of freedom of speech and expression involves the freedom to dissent to a free democracy like ours.*

Democracy relies on the freedom of the press. It is the inalienable right of everyone to comment freely upon any matter of public importance. This right is one of the pillars of individual liberty—freedom of speech, which our Court has always unfailingly guarded. I wish to add that however precious and cherished the freedom of speech is under Article 19(1)(a), this freedom is not absolute and unlimited at all times and under all circumstances but is subject to the restrictions contained in Article 19(2). That must be so because unrestricted freedom of speech and expression which includes the freedom of the press and is wholly free from restraints, amounts to uncontrolled licence which would lead to disorder and anarchy and it would be hazardous to ignore the vital importance of our social and national interest in public order and security of the State."

27. The right to express one's views by words of mouth or in writing or through audio-visual instrumentalities is not a right guaranteed only to every

citizen, but is a right guaranteed to newspapers, radios and television channels also. The Apex Court in ***Life Insurance Corporation of India v. Manubhai D.Shah*** [(1992)3 SCC 637] has laid down the following in paragraphs 6, 7 and 8:

> ***"6.*** *A constitutional provision is never static, it is ever-evolving and ever-changing and, therefore, does not admit of a narrow, pedantic or syllogistic approach. If such an approach had been adopted by the American Courts, the First Amendment — (1791) — "Congress shall make no law abridging the freedom of speech, or of the press" — would have been restricted in its application to the situation then obtaining and would not have catered to the changed situation arising on account of the transformation of the print media. It was the broad approach adopted by the Court which enabled them to chart out the contours of ever-expanding notions of press freedom. In Dennis v. United States Justice Frankfurter observed:*

> *"... The language of the First Amendment is to be read not as barren words found in a dictionary but as symbols of historic experience illuminated by the presuppositions of those who employed them."*

Adopting this approach in Joseph Burstyn, Inc. v. Wilson the Court rejected its earlier determination to the contrary in Mutual Film Corporation v. Industrial Commission of Ohio and concluded that expression through motion pictures is included within the protection of the First Amendment. The Court thus expanded the reach of the First Amendment by placing a liberal construction on the language of that provision. It will thus be seen that the American Supreme Court has always placed a broad interpretation on the constitutional provisions for the obvious reason that the Constitution has to serve the needs of an ever-changing society.

7. *The same trend is discernible from the decisions of the Indian courts also. It must be appreciated that the Indian*

Constitution has separately enshrined the fundamental rights in Part III of the Constitution since they represent the basic values which the people of India cherished when they gave unto themselves the Constitution for free India. That was with a view to ensuring that their honour, dignity and self respect will be protected in free India. They had learnt a bitter lesson from the behaviour of those in authority during the colonial rule. They were, therefore, not prepared to leave anything to chance. They, therefore, considered it of importance to protect specific basic human rights by incorporating a Bill of Rights in the Constitution in the form of fundamental rights. These fundamental rights were intended to serve generation after generation. They had to be stated in broad terms leaving scope for expansion by courts. Such an intention must be ascribed to the Constitution-makers since they had themselves made provisions in the Constitution to bring about a socio-economic

transformation. That being so, it is reasonable to infer that the Constitution-makers employed a broad phraseology while drafting the fundamental rights so that they may be able to cater to the needs of a changing society. It, therefore, does not need any elaborate argument to uphold the contention that constitutional provisions in general and fundamental rights in particular must be broadly construed unless the context otherwise requires. It seems well settled from the decisions referred to at the Bar that constitutional provisions must receive a broad interpretation and the scope and ambit of such provisions, in particular the fundamental rights, should not be cut down by too astute or too restricted an approach. See Sakal Papers (P) Ltd. v. Union of India.

8. *The words "freedom of speech and expression" must, therefore, be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. It,*

therefore, includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television. Every citizen of this free country, therefore, has the right to air his or her views through the printing and/or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy. Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship. It cannot be gainsaid that modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in

any set-up, more so in a democratic set-up like ours, dissemination of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution. It follows that a citizen for propagation of his or her ideas has a right to publish for circulation his views in periodicals, magazines and journals or through the electronic media since it is well known that these communication channels are great purveyors of news and views and make considerable impact on the minds of the readers and viewers and are known to mould public opinion on vital issues of national importance. Once it is conceded, and it cannot indeed be disputed, that freedom of speech and expression includes freedom of circulation and propagation of ideas, there can be no doubt that the right extends to the citizen being permitted to use the media to answer the criticism levelled against the view propagated by him. Every free citizen has an

undoubted right to lay what sentiments he pleases before the public; to forbid this, except to the extent permitted by Article 19 (2), would be an inroad on his freedom. This freedom must, however, be exercised with circumspection and care must be taken not to trench on the rights of other citizens or to jeopardise public interest. It is manifest from Article 19(2) that the right conferred by Article 19(1)(a) is subject to imposition of reasonable restrictions in the interest of, amongst others, public order, decency or morality or in relation to defamation or incitement to an offence. It is, therefore, obvious that subject to reasonable restrictions placed under Article 19(2) a citizen has a right to publish, circulate and disseminate his views and any attempt to thwart or deny the same would offend Article 19(1)(a).”

28. The Apex Court had occasion to consider all earlier cases of the Supreme Court in ***Secretary, Ministry of Information & Broadcasting, Govt. of India and others v. Cricket Association of Bengal***

and others [(1995)2 SCC 161]. Article 19(1)(a) of the Constitution of India was elaborately considered and explained after noticing the earlier cases of the Supreme Court in paragraphs 43, 44 and 45 of the judgment:

> ***"43.*** *We may now summarize the law on the freedom of speech and expression under Article 19(1)(a) as restricted by Article 19(2). The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfillment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours*

of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. That is why freedom of speech and expression includes freedom of the press. The freedom of the press in terms includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population in the country, as well as abroad, as is possible to reach.

44. *This fundamental right can be limited only by reasonable restrictions under a law made for the purposes mentioned in Article 19(2) of the Constitution.*

45. *The burden is on the authority to justify the restrictions. Public order is not the same thing as public safety and hence no restrictions can be placed on the right to freedom of speech and expression on the ground that public safety is endangered.*

> *Unlike in the American Constitution, limitations on fundamental rights are specifically spelt out under Article 19(2) of our Constitution. Hence no restrictions can be placed on the right to freedom of speech and expression on grounds other than those specified under Article 19(2).”*

Explaining Article 19(2) of the Constitution, the following was laid down in paragraph 151 of the judgment:

> ***“151.*** *Article 19(1)(a) declares that all citizens shall have the right of freedom of speech and expression. Clause (2) of Article 19, at the same time, provides that nothing in sub-clause (i) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with the foreign States, public order, decency or morality or in relation to contempt of court, defamation*

or incitement of an offence. The grounds upon which reasonable restrictions can be placed upon the freedom of speech and expression are designed firstly to ensure that the said right is not exercised in such a manner as to threaten the sovereignty and integrity of India, security of the State, friendly relations with the foreign States, public order, decency or morality. Similarly, the said right cannot be so exercised as to amount to contempt of court, defamation or incitement of an offence. Existing laws providing such restrictions are saved and the State is free to make laws in future imposing such restrictions. The grounds aforesaid are conceived in the interest of ensuring and maintaining conditions in which the said right can meaningfully and peacefully be exercised by the citizens of this country."

29. In ***Sahara India Real Estate Corporation Ltd. v. SEBI*** [(2012)10 SCC 603] the Apex Court had occasion to consider Press and Media Law. It was submitted before the Apex Court that freedom of press

guaranteed in Article 19(1)(a) of the Constitution is not only for the benefit of the owners or proprietors of the newspapers or of the editors or journalists, in essence, it embodies the people's right to know about the working of administration and about the alleged malfeasance of Government authorities. The Apex Court, speaking through Justice S.H.Kapadia, C.J., has laid down the following in paragraph 25:

> ***"25.*** *....Freedom of expression is one of the most cherished values of a free democratic society. It is indispensable to the operation of a democratic society whose basic postulate is that the Government shall be based on the consent of the governed. But, such a consent implies not only that the consent shall be free but also that it shall be grounded on adequate information, discussion and aided by the widest possible dissemination of information and opinions from diverse and antagonistic sources. Freedom of expression which includes freedom of the press has a capacious content*

and is not restricted to expression of thoughts and ideas which are accepted and acceptable but also to those which offend or shock any section of the population. It also includes the right to receive information and ideas of all kinds from different sources. In essence, the freedom of expression embodies the right to know. However, under our Constitution no right in Part III is absolute. Freedom of expression is not an absolute value under our Constitution. It must not be forgotten that no single value, no matter exalted, can bear the full burden of upholding a democratic system of government. Underlying our constitutional system are a number of important values, all of which help to guarantee our liberties, but in ways which sometimes conflict. Under our Constitution, probably, no values are absolute. All important values, therefore, must be qualified and balanced against other important, and often competing, values. This process of definition, qualification and balancing is as much required with respect to

> *the value of freedom of expression as it is for other values. Consequently, free speech, in appropriate cases, has got to correlate with fair trial. It also follows that in an appropriate case one right (say freedom of expression) may have to yield to the other right like right to a fair trial. Further, even Articles 14 and 21 are subject to the test of reasonableness after the judgment of this Court in Maneka Gandhi v. Union of India.*

30. From the foregoing discussion, it is abundantly clear that freedom of press is one of the cherished constitutional values of our democracy. Any restriction on the right of freedom of press cannot be imposed except by a law under Article 19(2) of the Constitution. As noted above, right under Article 19(1)(a) of the Constitution is subject to reasonable restriction imposed by law in the interest of sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order decency or morality or in

relation to contempt of court, defamation or incitement to an offence. Thus, the restriction, if any, can be imposed by a law. Learned counsel for the petitioners have referred to the provisions of the Press Council Act, 1978, specifically Section 13. Sub Sections (1) and (2) of Section 13 on which reliance has been placed is to the following effect:

> ***"13. Objects and functions of the Council****.—(1) The objects of the Council shall be to preserve the freedom of the Press and to maintain and improve the standards of newspapers and news agencies in India.*
>
> *(2) The Council may, in furtherance of its objects, perform the following functions, namely:*
>
> *(a) to help newspapers and news agencies to maintain their independence;*
>
> *(b) to build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards;*
>
> *(c) to ensure on the part of newspapers,*

news agencies and journalists, the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship;

(d) to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism;

(e) to keep under review any development likely to restrict the supply and dissemination of news of public interest and importance;

(f) to keep under review cases of assistance received by any newspaper or news agency in India from any foreign source including such cases as are referred to it by the Central Government or are brought to its notice by any individual, association of persons or any other organisation:

Provided that nothing in this clause shall preclude the Central Government from dealing with any case of assistance received by a newspaper or news agency in India from any foreign source in any other manner it thinks fit;

(g) to undertake studies of foreign newspapers, including those brought out by any embassy or other representative in India of a foreign State, their circulation and impact.

Explanation.—For the purposes of this clause, the expression "foreign State" has the meaning assigned to it in Section 87-A of the Code of Civil Procedure, 1908 (5 of 1908);

(h) to promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers or in news agencies:

Provided that nothing in this clause shall be deemed to confer on the Council any functions in regard to disputes to which the Industrial Disputes Act, 1947 (14 of 1947), applies;

(i) to concern itself with developments such as concentration of or other aspects of ownership of newspapers and news agencies which may affect the independence of the Press;

(j) to undertake such studies as may be entrusted to the Council and to express

its opinion in regard to any matter referred to it by the Central Government;

(k) to do such other acts as may be incidental or conducive to the discharge of the above functions."

31. The above provision cannot be read as containing any prohibition or restriction on print media. Press Council has been given power to censure under Section 14, which cannot be read as any restriction on the right of press. Learned counsel has referred to the Norms of Journalistic Conduct framed by the Press Council of India. Norm 23 has been relied, which is to the following effect:

"23. Paramount National Interest: Newspapers shall, as a matter of self regulation exercise due restraint and caution in presenting any news, comment or information, which is likely to jeopardize, endanger or harm the paramount interests of the State and Society, or the rights of

individuals with respect to which reasonable restrictions may be imposed by law on the right to freedom of speech and expression, under clause (2) of Article 19 of the Constitution of India."

32. The above norm is a measure of self regulation by newspaper by which newspaper has to exercise due restraint and caution in presenting news, comment or information, which is likely to jeopardize, endanger or harm the paramount interests of the State and society. The above clause also refers to reasonable restrictions under clause (2) of Article 19 of the Constitution of India. The said norm has to be read as measure of self regulation and restraint by the newspapers itself, but from the above clause, no right of prohibition from publishing a news can be read. The provisions of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 have also been referred to, especially Section 12 (2)(h). Section 12 enumerates the functions and powers

of Corporation. Section 12(2)(h) reads as under:

> *"12.* ***Functions and powers of Corporation****.-*
>
> *xx xx xx*
>
> *(2)(h). Promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society."*

33. The above provision incorporates the objects of the Corporation, which has to be followed in the discharge of its function. There cannot be any dispute that the Corporation has to follow the objective of the Corporation while discharging various obligations, including promoting social justice and advancing the welfare of the weaker sections of the society. The said provision cannot be read to meet any kind of restriction on the Broadcasting Corporation in giving information regarding call for bandh or hartal by media.

34. One more aspect, which has been highlighted by learned counsel appearing for the respondents,

political parties, is that putting any kind of restriction on press and media shall be denying right guaranteed to an individual, namely, right to know. Right of information, i.e., right to know has also been read as one of the Fundamental Rights. The Apex Court in ***Dinesh Trivedi v. Union of India*** [(1997)4 SCC 306] has laid down the following in paragraph 16:

> ***"16.*** *In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute. This Court has had many an opportunity to express itself upon this issue. In the case of State of U.P. v. Raj Narain, Mathew, J. eloquently expressed this proposition in the following words: (SCC p. 453, para 74)*
>
> *"In a government of responsibility like*

ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against

oppression and corruption."

35. The Apex Court again in ***People's Union for Civil Liberties v. Union of India*** [(2004)2 SCC 476] has emphasized that right of information is the facet of the freedom of speech and expression.

36. There cannot be any dispute that people have right to know all events and incidents, which take place around them and around the world. Suppression of any information from the people shall be negation of their right to know and right of information.

37. We, thus, fully subscribe to the submission made by learned counsel for the respondents that any prohibition on press and media from publishing any call for bandh or hartal shall be violative of the right of the people to know and receive information.

38. Before we conclude our discussion on the above subject, we deem it fit and proper to make certain observations regarding self restraint and self

regulation on press and media, which have been emphasized by the Supreme Court time and again. As noted above, the Code of Conduct framed by the Press Council of India, i.e., Clause 23 emphasises about the self regulation and restraint in presenting any news, which is likely to jeopardize and endanger or harm the paramount interests of the society.

39. The media now-a-days is all pervasive and covering all aspects of life, good or bad. The object of media has been and is to bring to the notice of the people in general information or news, which may help the society to educate and to use the information to unearth any offence, crime or illegality. It is common knowledge that any call for bandh or hartal widespread violence and destruction of property, both public and private, takes place, which facts and figures have been brought on record before us by both the parties. Now after amendments are made in the Indian Evidence Act,

evidence in electronic form is also admissible. Media can be utilised to book those culprits who indulge in destruction of public and private properties and cause physical harm to the members of the society. Bringing relevant materials with the above objectives before the administration shall be beneficial and felicitate the administration and Courts of Law to punish wrong doers. The role of press has been noted and explained by the Apex Court in several judgments in ***Harijai Singh, Re*** [(1996)6 SCC 466]. The following was laid down in paragraphs 9 and 10 of the judgment:

> ***"9.*** *It is thus needless to emphasise that a free and healthy press is indispensable to the functioning of a true democracy. In a democratic set-up, there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the*

burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action. The primary function, therefore, of the press is to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion and can be an instrument of social change. It may be pointed out here that Mahatma Gandhi in his autobiography has stated that one of the objectives of the newspaper is to understand the proper feelings of the people and give expression to it; another is to arouse among

the people certain desirable sentiments; and the third is to fearlessly express popular defects. It, therefore, turns out that the press should have the right to present anything which it thinks fit for publication.

10. *But it has to be remembered that this freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalists. In an organized society, the rights of the press have to be recognized with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of press freedom must not be thrown open for wrong doings. If a newspaper publishes what is*

improper, mischievously false or illegal and abuses its liberty it must be punished by court of law. The editor of a newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason that his utterances have a far greater circulation and impact than the utterances of an individual and by reason of their appearing in print, they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the press itself. To quote from the report of Mons Lopez to the Economic and Social Council of the United Nations "If it is true that human progress is impossible without freedom, then it is no less true that ordinary human progress is impossible without a measure of regulation and discipline". It is the duty of a true and responsible journalist to strive to inform the people with accurate and impartial presentation of news and their views after dispassionate evaluation of the facts and information received by them and

to be published as a news item. The presentation of the news should be truthful, objective and comprehensive without any false and distorted expression."

40. The Apex Court in ***Hindustan Times v. High Court Allahabad*** [(2011)13 SCC 155] had noted that with the immense power, lot of responsibilities are also on the shoulders of the press. The Apex Court in the said case has observed that the press has responsibility also not to provide any information that is factually wrong or biased information. The following was laid down in paragraphs 4 and 6 of the judgment:

"4. *With this immense power, comes the burden of responsibility. With the huge amount of information that they process, it is the responsibility of the media to ensure that they are not providing the public with information that is factually wrong, biased or simply unverified information.*

xx xx xx

6. *The unbridled power of the media can*

become dangerous if checks and balances are not inherent in it. The role of the media is to provide to the readers and the public in general with information and views tested and found as true and correct. This power must be carefully regulated and must reconcile with a person's fundamental right to privacy. Any wrong or biased information that is put forth can potentially damage the otherwise clean and good reputation of the person or institution against whom something adverse is reported. Pre-judging the issues and rushing to conclusions must be avoided."

41. From the foregoing discussion, we conclude that this Court, in exercise of writ jurisdiction, cannot issue any writ restraining from publishing/broadcasting any information regarding call of hartal/strike.

42. We observe that in the context of hartal and forced hartal/strike, information and details collected by press and media can be shared with administration and

Courts for purpose of identifying wrong doers, so that people, who suffer any kind of injury of life and property should get an early justice.

43. As observed above, media has also to enforce self regulation and restraint on itself in publishing/ broadcasting information and news, which may not advance the interest of the society. The act of violence and destruction of public and private property has to be strongly condemned and those who indulge any such act have to be brought before the law.

Issue No.2. Hartal/Strike whether can be totally banned.

44. The second issue which falls for our consideration is as to whether Hartal/Strike can be totally banned. Petitioners in the Writ Petition have submitted that Hartal having been declared as unconstitutional by a Full Bench of this Court as well as the Supreme Court, political parties and various organizations are still calling for Hartal/total

Strike which is nothing but Bundh organized by them disrupting the entire normal life of the common man. It is submitted that people who resort to barbaric methods of achieving their objects damage public and private property causing national loss. On one day of Hartal there is substantial loss of production which cannot be compensated. It is submitted that only alternate to deal with such unconstitutional act is to totally ban the call and conduct of Hartal.

45. Learned Senior counsel appearing for the Communist Party of India who has filed counter affidavit in W.P(C) No.31985 of 2007 has refuted the submission and submitted that the Apex Court in ***Communist Party of India's case*** (supra) has approved the general strike or call for Hartal. It is denied that by the call of Hartal all shops are forced to shut down and the people are compelled to remain home thereby not attending their work place. Hartal is voluntary and

there is no restrain from attending normal duties and no force or violence is used to enforce Hartal.

46. Before we proceed to answer the above issue, it is relevant to refer to the Full Bench decision of this Court reported in **Bharath Kumar v. State of Kerala** (1997[2] KLT 287 (FB). The Full Bench in the aforesaid case heard the writ petitions praying for declaration that calling for or holding of Bundh is unconstitutional and illegal. It was pleaded in the Writ Petitions before this Court that Bundh is violative of articles 19 and 21 of the Constitution of India and violated the State Policy embodied in the Constitution and the fundamental duties. The Full Bench laid down the following in paragraphs 12, 13, 17 and 18:

> *"12. It is true that there is no legislative definition of the expression 'bundh' and such a definition could not be tested in the crucible of constitutionality. But does the absence of a definition deprive the citizen of*

a right to approach this court to seek relief against the bundh if he is able to establish before the court that his fundamental rights are curtailed or destroyed by the calling of and the holding of a bundh? When Art. 19(1) of the Constitution guarantees to a citizen the fundamental rights referred to therein and when Art. 21 confers a right on any person - not necessarily a citizen - not to be deprived of his life or personal liberty except according to procedure established by law, would it be proper for the court to throw up its hands on despair on the ground that in the absence of any law curtailing such rights, it cannot test the constitutionality of the action? We think not. When properly understood, the calling of a bundh entails the restriction of the free movement of the citizen and his right to carry on his avocation and if the legislature does not make any law either prohibiting it or curtailing it or regulating it, we think that it is the duty of the court to step in to protect the rights of the citizen so as to ensure that the freedom

available to him are not curtailed by any person or any political organization. The way in this respect to the courts has been shown by the Supreme Court in Bandhua Mukti Morcha v. Union of lndia (AIR 1984 SC 802).

13. It is argued on behalf of the respondents that a bundh could be peaceful or violent and even if the court were to act, it could act only to curtail violent bundhs and not peaceful bundhs. It is contended that the court cannot presume or generalize that the calling of a bundh always entails, actual violence or the threat of violence in not participating in or acquiescing in the bundh. The decision in Kameshwar Prasad v. State of Bihar (AIR 1962 SC 1166) is referred to in that context. This theoretical aspects expounded by counsel for the respondents does not appeal to us especially since as understood in our country and certainly in our State, the calling for a bundh is clearly different from a call for a general strike or a hartal. We have already noticed that a call for a bundh holds out a warning to the

citizen that if he were to go out for his work or to open his shop, he would be prevented and his attempt to take his vehicle on to the road will also be dealt with. It is true that theoretically it is for the State to control any possible violence or to ensure that a bundh is not accompanied by violence. But our present set up, the reluctance and sometimes the political subservience of the law enforcing agencies and the absence of political will exhibited by those in power at the relevant time, has really led to a situation where there is no effective attempt made by the law enforcing agencies either to prevent violence or to ensure that those citizens who do not want to participate in the bundh are given the opportunity to exercise their right to work, their right to trade or their right to study. We cannot also ignore the increasing frequency in the calling, holding and enforcing of the bundhs in the State and the destruction of public and private property. In the face of this reality, we think that when we consider the impact

of a bundh on the freedom of a citizen, we are not merely theorising but are only taking note of what happens around us when a bundh is called and a citizen attempts either to defy it or seeks to ignore it. We are not in a position to agree with counsel for the respondents that there are no sufficient allegations either in O.P. 7551 of 1994 or in O.P. 12469 of 1995 which would enable us to come to such a conclusion. In fact, the uncontroverted allegations in O.P. No.12469 of 1995 are specific and are also supported by some news paper clippings which though could not be relied on as primary material, could be taken note of as supporting material for the allegations in the Original Petition.

17. No political party or organization can claim that it is entitled to paralyse the industry and commerce in the entire State or Nation and is entitled to prevent the citizens not in sympathy with its view point, from exercising their fundamental rights or from performing their duties for their own benefit

or for the benefit of the State or the Nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it. The claim for relief by the petitioners in these Original Petitions will have to be considered in this background.

18. The contention that no relief can be granted against the political parties in these proceedings under Art. 226 of the Constitution cannot be accepted in its entirety. As indicated already, this court has ample jurisdiction to grant a declaratory relief to the petitioners in the presence of the political party respondents. This is all the more so since the case of the petitioners is based on their fundamental rights guaranteed by the Constitution. The State has not taken any steps to control or regulate the bundhs. The stand adopted by the Advocate General is that the Court cannot compel the State or the Legislature to issue orders or make law in that regard.

As we find that organized bodies or Associations of registered political parties, by their act of calling and holding bundhs, trample upon the rights of the citizens of the country protected by the Constitution, we are of the view that this court has sufficient jurisdiction to declare that the calling of a 'bundh' and the holding of it, is unconstitutional especially since, it is undoubted, that the holding of 'bundhs' are not in the interests of the Nation, but tend to retard the progress of the Nation by leading to national loss of production. We cannot also ignore the destruction of public and private property when a bundh is enforced by the political parties or other organizations. We are inclined to the view that the political parties and the organizations which call for such bundhs and enforce them are really liable to compensate the Government, the public and the private citizen for the loss suffered by them for such destruction. The State cannot shirk its responsibility of taking steps to recoup and

> *of recouping the loss from the sponsors and organizers of such bundhs. We think, that these aspects justify our intervention under Art. 226 of the Constitution. In view of our discussion above, we allow these Original Petitions to the extent of declaring that the calling for a bundh by any association, organization or political party and the enforcing of that call by it, is illegal and unconstitutional. We direct the State and its officials, including the law enforcement agencies, to do all that is necessary to give effect to this declaration."*

The Full Bench thus declared that calling of Bundh and conducting of it is unconstitutional which is not in the interest of nation and tend to retard the progress of the nation. The matter was taken to the Supreme Court by the Communist Party of India (M) and the Apex Court vide its judgment reported in **Communist Party of India (M) v. Bharat Kumar** (1997 (2) KLT 1007 (SC) had referred the judgment of this Court. The following

was laid down by the Apex Court in paragraph 3:

> *"3. On a perusal of the impugned judgment of the Court, referring to which learned counsel for the appellant pointed out certain portions, particularly in paras 13 and 18 including the operative part in support of their submissions, we find that the judgment does not call for any interference. We are satisfied that the distinction drawn by the High Court between a "Bandh" and a call for general strike or "Hartal" is well made out with reference to the effect of a "Bandh" on the fundamental rights of other citizens. There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "Bandh" which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may*

> *also add that the reasoning given by the High Court, particularly those in paragraphs 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement. We may also observe that the High Court has drawn a very appropriate distinction between a "Bandh" on the hand and a call for general strike or "Hartal" on the other. We are in agreement with he view taken by the Court."*

The Apex Court has approved the judgment of this Court by which judgment a distinction was drawn between Bundh and Hartal, i.e., general strike. The Full Bench noted in paragraph 13 of the judgment that calling for a Bundh is entirely different from calling for a general Strike or Hartal. Again in paragraph 14, the Full Bench laid down the following:

> *"...It may be true that the political and organizers may have a right to call for non-co-operation or to call for a general strike as a form of protest against what they believe*

to be either an erroneous policy or exploitation....”

As noted above, the above distinction has been approved by the Apex Court in **Communist Party of India (M)'s case** (supra).

47. The right guaranteed under Arts.19(1)(a) and 19(1)(b) of the Constitution India entitled every citizen to express his views in public and assemble without arms. Article 19(1)(c) also gives fundamental rights to citizens to form Associations or Unions. It has been held by the Supreme Court that the freedom of thought and expression guaranteed by Art.19(1)(a) are basic to a democratic form of Government which proceeds on the principle that the problems of the Government can be solved by the free exchange of thoughts and by public discussion as has been laid down in paragraph 75 by the Supreme Court in **Express Newspapers pvt. Ltd. & Others v. Union of India and Others** ([1986] 1 SCC

133) as quoted above.

48. A Constitution Bench of the Apex Court in **Kameshwar Prasad v. State of Bihar** (AIR 1962 SC 1166) had occasion to consider the ambit and scope of Arts.19(1)(a) and (b). Before the Apex Court, the validity of Rule 4-A introduced into the Bihar Government Servants' Conduct Rules, 1986 was under challenge. Rule 4-A which came for consideration is to the following effect:

> "*4-A. - Demonstrations and strikes.- No Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service.*"

The Apex Court in the above context examined whether demonstration is covered by Art.19(1)(a) or (b) of the Constitution. The Apex Court laid down that demonstration is a means of communication and so long it is demonstration which is the form of speech and

expression, the same is protected by Art.19(1)(a) or (b). However, it was laid down in the same judgment that when demonstration becomes disorderly and violent, the same shall not be within Art.19(1)(a) or (b). Following was laid down in paragraph 13.

> *"13. The first question that falls to be considered is whether the right to make a "demonstration" is covered by either or both of the two freedoms guaranteed by Art. 19 (1)(a) and 19(1)(b). A "demonstration'" is defined in the Concise Oxford Dictionary as "an outward exhibition of feeling, as an exhibition of opinion on political or other question especially a public meeting or procession". In Webster it is defined as "a public exhibition by a party, sect or society . . . . as by a parade or mass-meeting'. Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's*

ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has however to be recognised that the argument before us is confined to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Art. 19(1)(a) or 19 (1)(b). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Art. 19(1)(a) and 19 (1)(b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone-throwing by a

> *crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Art. 19(1)(a) or (b). If can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances."*

The Apex Court, however laid down that there is no fundamental right to resort to strike and the rule was only partly struck down to the extent it prohibited "any form of demonstration". The following was laid down in paragraph 20:

> *"20. We would therefore allow the appeal in part and grant the appellants a declaration that R.4-A in the form in which it now stands prohibiting "any form of demonstration" is violative of the appellants' rights under Art.19(1)(a) and (b) and should therefore be struck down. It is only necessary to add that the rule, in so far as it prohibits a strike, cannot be struck down since there is no fundamental right to resort*

to strike."

A Full Bench of this Court in **George Kurian v. State of Kerala** (2004 [2] KLT 758 (FB) also has reiterated that forced Hartal and general Strike are illegal and unconstitutional. The Apex Court in **James Martin v. State of Kerala** (2004 [1] KLT 513) had laid down that in the name of hartal or bandh or strike no person has any right to cause inconvenience to any other person or to cause in any manner a threat or apprehension of risk to life, liberty, property. The Apex Court further observed that such cases are to be controlled with iron hands. Following was laid down in paragraph 19:

> *"19. Before we part with the case it needs to be noted that in the name of hartal or bandh or strike no person has any right to cause inconvenience to any other person or to cause in any manner a threat or apprehension of risk to life, liberty, property of any citizen or destruction of life and property, and the least any Government or public property. It is high time that the*

authorities concerned take serious note of this requirement while dealing with those who destroy public property in the name of strike, hartal or bandh. Those who at times may have even genuine demands to make should not loose sight of the overall situation eluding control and reaching unmanageable bounds endangering life, liberty and property of citizens and public, enabling anti-social forces to gain control resulting in all around destruction with counter productive results at the expense of public order and public peace. No person has any right to destroy another's property in the guise of bandh or hartal or strike, irrespective of the proclaimed reasonableness of the cause or the question whether there is or was any legal sanction for the same. The case at hand is one which led to the destruction of property and loss of lives, because of irresponsible and illegal acts of some in the name of bandh or hartal or strike. Unless those who organize can be confident of enforcing effective control over any possible turn of events, they should think

twice to hazard themselves into such risk prone ventures endangering public peace and public order. The question whether bandh or hartal or strike has any legal sanctity is of little consequence in such matters. All the more so when the days are such where even law-enforcing authorities/those in power also precipitate to gain political advantage at the risk and cost of their opponents. Unless such acts are controlled with iron hands, innocent citizens are bound to suffer and they shall be the victims of the highhanded acts of some fanatics with queer notions of democracy and freedom of speech or association. That provides for no license to take law into their own hands. Any soft or lenient approach for such offenders would be an affront to rule of law and challenge to public order and peace."

49. The Apex Court again in **Ex.Capt. Harish Uppal v. Union of India and Another** ([2003] 2 SCC 45) (a Constitution Bench) while dealing with strike by

Advocates has laid down the following in paragraphs 31 and 35.

> *"31. It must immediately be mentioned that one understands and sympathises with the Bar wanting to vent their grievances. But as has been pointed out there are other methods e.g. giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any colour armbands, peaceful protest marches outside and away from court premises, going on dharnas or relay fasts etc. More importantly in many instances legal remedies are always available. A lawyer being part and parcel of the legal system is instrumental in upholding the rule of law. A person cast with the legal and moral obligation of upholding law can hardly be heard to say that he will take the law in his own hands. It is therefore time that self-restraint be exercised.*
>
> *35. In conclusion, it is held that lawyers have no right to go on strike or give*

a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any colour armbands, peaceful protest marches outside and away from court premises, going on dharnas or relay fasts etc. It is held that lawyers holding vakalats on behalf of their clients cannot refuse to attend courts in pursuance of a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or

the Bench are at stake, courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. It is being clarified that it will be for the court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before advocates decide to absent themselves from court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all courts to go on with matters on their boards even in the absence of lawyers. In other words, courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a vakalat of a client, abstains from attending court due to a strike call, he shall be personally liable to pay costs which shall be in addition to damages which he might

have to pay his client for loss suffered by him."

The Constitution Bench in the above case was examining the right of lawyers as officers of the Court who has filed Vakalath on behalf of his client to appear in Court has no right to go for strike except in rarest of rare cases which may involve dignity, integrity and independence of the Bar and judiciary. The Apex Court in the above Constitution Bench decision laid down that Strike in any field is a weapon which does more harm than any justice and the sufferer is the Society, i.e., public at large. From the above discussion it is clear that, protest, demonstration, speeches falls within the right freedom of speech of expression under Art.19(1)(a). Any restriction on calling for a protest, non-co-operation and Hartal can be imposed only by law framed within the meaning of Art.19(2) of the Constitution of India.

50. Learned counsel for the petitioners could not point out or place before us any law under Art.19(2) on the basis of which call for protest, Hartal/Strike can be totally banned by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India. We however, hasten to add that as laid down by the Constitution Bench of the Apex Court in ***Kameshwar Prasad's case*** (supra) as soon as the demonstration/Hartal becomes disorderly and violent it is not right under Art.19(1)(a) or (b) and on any such act/offence the law shall takes its own course and the guilty be punished.

51. A Full Bench of this Court in **Peoples Council for Social Justice v. State of Kerala** (1997 [2] KLT 301 [FB]) has laid down that a right to conduct demonstration on highways without causing obstruction to others is a fundamental right.

Issue No.III: <u>Regulation/Restriction on call for</u>

Hartal/Strike

52. The next issue to be considered is as to whether the call for Hartal/Strike can be regulated/restricted by the State. Learned counsel for the petitioners have submitted that all call for Hartal/Strike be routed through the District Administration and political parties and organizations who are giving the call should be directed to give prior notice to the Administration, the details of the organizers and should also deposit some amount as security for payment of compensation caused for destruction or damage to property and life. It is submitted that unless the call for strike is not regulated, the State cannot have any effective check on the frequent calls made by various political parties and organizations.

53. Regulation and check on the political parties and organizations in calling Hartal/Strike is a laudable

object. It serves the interest of Administration as well as the interest of the general public, if details of organizations, their office bearers are known who are giving a call for Hartal/Strike. The Government Pleader has brought on record before us, the details of Hartal and Strike called for in different years including various acts of obstruction to property and violence which took place during the course of conduct of Hartal. In W.P(C) No.2183 of 2008, petitioners have given details of the Hartal conducted during the year 2007. In W.P(C) No.34345 of 2007 details of Hartal held during 25.10.2007 to 3.11.2007 have been given. Certain details regarding monetary loss caused on account of Hartal have also been given. In the record of W.P(C) No.34345 of 2007 certain more materials were brought in the form of letter dated 11.07.2013 containing various photographs sent by a senior citizen. Details regarding act of violence with photographs have been brought on

record. News item issued by the Press Trust of India dated July 13, 2013 has also been brought on record. Photographs showing damage to public property and causing death of a person have also been brought on record. The above details depict a very pathetic and sorry state of affairs. The events happened in carrying out hartal by the so called organizations. It is in the fitness of things that some restriction and regulations be framed for finding out the responsible persons who give the call and prosecute the Hartal and indulge in the act of vandalism.

54. Learned counsel for the petitioners have also brought to the notice of the court that a draft Bill by name “an act for fair negation, salutary regulation and special legitimation, in public interest, of hartals and validation of workers right to strike bill” was provided by the Law Commission of the State and a report was submitted. It is useful to extract the Bill for ready

reference which is to the following effect:

"A

BILL

in order to prohibit and largely to regulate the conduct of hartals, and expressly to affirm the workers' right to strike in our Socialist Republic.

Be it enacted in the 59th Year of the Republic of India as follows:-

1. Short title, application and commencement.-(1) This Act may be called the Act For Fair negation, Salutary Regulation and Special Legitimation, in Public Interest, of Hartals and Validation of Workers' Right to Strike Bill--

(2) It applies to whole of the State of Kerala;

(3) It will come into force on such date as may be notified by the Government of Kerala in the Gazette.

2. Definition.-In this Act, unless the context otherwise requires:-

(a) 'Hartal'

Hartal, by whatever nomenclature expressed or vogue-word used, means and includes any form of forced cessation of activity or diversion of business or occupation in its widest comprehension, such cessation being at the instance of any other person or organization, to create public pressure, social tension, economic intimidation or apprehension of violence to advance a cause or campaign sponsored by the organizers of the hartal:

Provided that Hartal, under this Act, shall not include any strike by workers or organized by any trade union or professional body which otherwise complies with the provisions of the Industrial Disputes Act, The Trade Union Act and other law governing trade union activity and workers' rights and functions:

Provided further that the right of workers to go on strike is confined to the purpose of advancing a worker issue, agitational demand, alleged grievance, social welfare dispute, trade union problem,

without interfering with the freedom of any other person's trade or business undertaking or other lawful activity, other extraneous or non-trade union violation shall not be eligible for immunity under this Act.

3. Control of Hartals.-(a) On and after the commencement of this Act, no person, group or organization shall have a right to call or conduct any hartal except in the manner permitted by this Act.

(b) No person shall orgnize, or abet the conduct of, a hartal for any person whatever without ten days public notice promulgated adequately through the media and to the fair knowledge of public likely to be affected by the proposed hartal.

4. Hartals to be conducted only subject to conditions.- (1) (a) before 6 A.M or after 6 P.M. or thwart the movement of any person, agency, business or instrumentality by use of force or threat thereof or other means by which freedom of action of another is in any manner forbidden or obstructed.

(b) Directly or indirectly deter, hamper or disable the normal functioning of any public institutions or utility services including any centre or organization, education, charitable, pro bono or otherwise giving relief to a human being or compassionate succour to any living creature.

(2) No trade, business or undertaking, no transport vehicle or facility shall be closed or stopped totally or partially out of apprehension of or actual use of violence caused or threatened by operation of any hartal or strike by the organizers or sympathizers thereof. The State shall in every reasonable manner forbid or prevent such behaviour or conduct adversely affecting the fundamental rights of members of the public.

5. Hartals to be prohibited by the Government.—Hartals, when they cause stoppage of business or activity essential for the life of the community, shall be effectively

prohibited by the State Government directly or through other delegated authority even though 10 days notice has been given.

6. Police shall render all assistance needed to exercise legal rights.- The State police and other law and order authorities of the State shall, on request by any person, help him to exercise his lawful rights during the hartal hours if any one prevents such exercise using or threatening force for such purpose.

7. Offences and Punishments.- It shall be an offence punishable with imprisonment upto 6 months if any one is prevented by any other, on the ground of a hartal, from visiting a hospital or hotel or educational institution or fuel delivery station or transport process. Free access in such cases shall be provided by the police and other state agencies. Failure to help any person in such need shall be a dereliction of duty by the State agency punishable with fine upto Rs.10,000/-.

8. Abetment of Hartal and

consequence.- If the Government or any administrative officer under the Government in any manner connives at or abets hartals which are an offence as defined in this Act the affected person may move the court having jurisdiction for ordering compensation under Section 9.

Constitution of Compensatory Fund and payment of compensation.- (1) A fund shall be constituted by the Government for the purpose of paying damages to persons who are affected by any such hartal conducted in spite of the prohibition, if so ordered by judicial process.

10. Government shall frame Rules for effectively implementing the provisions of this Act.

Statement of Objects and Reasons

India has been passing through developmental decades after winning Independence and liberating itself from imperialist inhibitions holding up national progress. Kerala with its caste lunacy and

religious divisiveness is unable to advance notwithstanding its educational status and socialistic ethos. Unless the entire Kerala people work hard with a developmental dimension and vision a better tomorrow may remain dream. Unfortunately, we have too many holidays in the name of plurality of religions. This situation is aggressively aggravated by hartals and bandhs which keep the community lazy doing no work and keeping society in stagnancy. Therefore hartals are a hindrance to human advance and deserve to be regulated and even prohibited although the right to strike by workers may still remain. It is significant to note that there has been considerable expression of adverse opinion by the leading media and vehicles of social justice in support of the prohibition of hartals. It is in this background the Bill has been drafted."

The above bill was drafted in the year 2008. We however are informed that no legislation has yet been enacted by the State covering all the aspects. It is for

the Legislature to take into consideration other relevant aspects which can be brought in the legislation for regulating this exercise of calling and conducting of Hartal. In fact all Hartals which are called alleging to be only a peaceful Hartal turns out into forced Hartal affecting normal life of the citizens and the menace is to be contained and controlled in the interest of the Society and Nation. Regulation by legislation is the requirement of the day. We are aware that it is for the legislature to consider and enact law and this Court in exercise of Art.226 cannot issue any direction in that regard. A comprehensive legislation with regard to finding out mechanism for determination of claims regarding loss suffered by public and private property during Hartal is also the need of the day. A Division Bench of this court in W.P(C) No.29734 of 2008 - **The Proper Channel v. The Managing Director, KSRTC**, have already emphasized the need for a proper

legislation in this regard. The following observations made in paragraph 12 are relevant and it is as follows:

> ".....It might also be true that, taking into account the might of the organization that calls for such hartals, the public at large may not be in a position to initiate appropriate action against the organization calling and holding such 'hartals'. It is therefore necessary that the Government should step in and provide a simple and easy method to any person including statutory Corporations like KSRTC or a private individual to claim compensation for any loss they may suffer on account of such 'forced hartals'. Appropriate legislation should be enacted granting suo motu powers to a competent authority to call for claims, assessment of compensation, recovery, etc. Unless such measures are taken, the menace of 'forced hartals' cannot be curbed."

55. We thus are of the considered opinion that an effective regulation/restriction on the call and conduct of

Hartal is urgently required which is a need of the day. In the legislation to be framed by the State, the State should also consider the inclusion of a provision for prior notice of minimum three days before proceeding for any Hartal, details regarding office bearers of party or organizations who are proceeding with Hartal, territorial area of the proposed Hartal and the details of the personnel belonging to the political parties and organizations who are going to lead the protest and demonstration, requirement of deposit of security amount, if any, mechanism for determination of compensation and damages for loss of life and property, both public and private, provision for liability of organizers. These are a few amongst many other facts to be considered by the legislature to bring an effective legislation and activate the law for enforcement of the machinery to achieve the objects. We answer the issue accordingly.

<u>Issue IV:</u> Measure for protection for life and property on day of hartal.

<u>Issue V</u>: Measures for prosecution of guilty and mechanism for claiming damages/compensation.

56. Since Issue Nos.IV and V are inter-connected, they are taken together. Two Full Benches of this Court, i.e.,in ***Bharath Kumar's case*** (supra) and George ***Kurian's case*** (supra) have addressed on the above issues. In ***Bharath Kumar's case*** (supra) the Full Bench declared calling of bandh as illegal and unconstitutional. After the judgment in ***Bharath Kumar's case*** (supra), a Division Bench of this Court in Kerala ***Vyapari Vyavasayi Ekopana Samithi v. State of Kerala*** (2000(2) KLT 430) had again occasion to consider various aspects of destruction of public and private properties causing loss to society in the name of calling hartal. The Division Bench issued various directions. Directions 2 and 3 were subsequently set aside by the Apex Court in ***Indian***

National Congress(I) v. Institute of Social Welfare (2002(2) KLT 548(SC)). It is useful to note the directions of the Division Bench apart from directions 3 and 4, which are to the following effect:

> *i. We declare that the enforcement of a hartal call by force, intimation, physical or mental and coercion would amount to an unconstitutional act and party or association or organization that calls for a hartal has no right to enforce it by resorting to force or intimidation.*
>
> *ii. We direct the State, Chief Secretary to the State, Director General of Police and all the administrative authorities and police officers in the State to implement strictly the directives issued by the directions given by the Director General of Police dated 4.2.1999 and set out fully in the earlier part of this judgment.*
>
> *xxx xxx xxx*
>
> *iv. We issue a writ of mandamus directing the election commission to consider and dispose of in accordance with*

law, the representation Ext.P9, in O.P.20641 of 1998, after giving all the affected parties an opportunity of being heard.

xxx xxx xxx

v. We direct the State of Kerala, the Chief Secretary to the Government, the Director General of Police and all other officers of the State to take all necessary steps at all necessary times, to give effect to this judgment.

vi. We direct the State, District Collectors, all other officers of the State and Corporations owned or controlled by the State to take immediate and prompt action, for recovery of damages in cases where pursuant to a call for hartal, public property or property belonging to the Corporation is damaged or destroyed, from the preparators of the acts leading to destruction/damage and those who have issued the call for hartal.

57. The State Government, after the aforesaid judgment, addressed various issues raised by this Court

and the Apex Court and had issued Government order dated 17.12.2003, issuing various directions to the Government Departments, district administration and Police administration. Although directions were issued by the State Government on 17.12.2003, the directions were not completely and faithfully followed by the district administration and Police administration. The matter was again taken up by a Full Bench of this Court in ***George Kurian's case*** (supra). The Full Bench again reiterated its earlier pronouncement in ***Bharat Kumar's case*** (supra) and Kerala ***Vyapari Vyavasayi Ekopana Samithi*** (supra) as affirmed by the Apex Court. The Full Bench in ***George Kurian's*** case (supra) again issued various directions in paragraph 13, which are extracted below:

> *"13. Already forced hartals and general strikes were declared to be illegal and unconstitutional by the Division Bench and approved by the Apex Court and they are*

equated to bandh and bandh like situations. But whatever name it is called, whether general strike, hartal or any other name, nobody can create a bandh like situation or obstruct the fundamental rights of others. The directions issued by the division Bench and Full Bench as approved by the Supreme Court shall be strictly adhered to. Apart from the directions issued by the Full Bench in Bharath Kumar's Case and Division Bench quoted in paragraph 9 of this judgment as modified by the Hon'ble Apex Court, we issue the following directions also:

(1) Whenever a hartal or a general strike is called, the government should take adequate measures to see that normal life of the citizens is not pralysed. That is to be done not by declaring holidays or postponing examinations; but, by giving effective protection to those who are not participating in such hartals or strikes. Government should be able to deal with the situation with strong hands. Considering the past experience,

if the Government is feeling that they are unable to give adequate protection, it should request the Centre for deputing Army or para-military forces so that there should not be any constitutional breakdown and violation of fundamental rights of the citizens;

(2) The District Administration should be given sufficient direction to avail para-military force as provided under Chapter X of the Code of Criminal Procedure to maintain public services if law and order problem arises during the hartal or general strike by unlawful assembly of hartal or strike supporters;

(3) In cases of damage to public property, action should be taken to recover the damages from the persons who actually cause damages and also from the political parties, organizers and persons who give actual call for such hartal or general strikes. In view of the happenings in the past, they cannot say that they did not visualize such a

situation which was created by anti-social elements and directions issued in this regard in paragraph 18 of Bharat Kumar's case which is affirmed by the Supreme Court shall be followed strictly and if no proper action is taken, it should be realized from the defaulting officers and stern action should be taken against such officers;

(4) Effective action should be taken under the Prevention of Damages to Public Property Act, 1984 and circular dated 17.12.2003 (produced as Ext.R1(d) in W.P.(C)No.20078 of 2003) shall be implemented strictly;

(5) Those who call for hartals or strikes by whatever reason should make it clear in their call that nobody will be compelled to participate in the hartals or strikes, that traffic will not be obstructed and those who are willing can go for work and that fundamental rights of others to move about will not be affected. They should also instruct their supporters to

see that no coercion or force is used for compelling others to participate in the strike or hartal;

(6) With regard to the injuries and damages caused to the private persons and their properties, government should adequately compensate them immediately as Government has failed to fulfill its constitutional obligation to protect lives and properties of the citizens and the Government should take steps to recover the same from the persons who caused such damages or injuries and also from the persons and political parties or organizations who called for such hartals or general strikes. Criminal cases also should be taken against the offenders as well as the abettors to the offence. Such criminal cases registered should be pursued with enthusiasm and it should not be withdrawn merely on political pressure and investigation should be conducted fairly not with a purpose of

filing a subsequent refer report as undetected;

(7) Government should see that an atmosphere is created so that citizens can move about on the roads freely without fear and vehicular traffic is not obstructed and public transport can ply without any hindrance;

(8) Damages caused to the public or private properties etc. and recovery steps initiated should be published by the Government. Circular dated 17.12.2003 issued by the Government regarding recovery of damages should be implemented fully;

(9) Government should also take appropriate action against the District Administration and Police authorities if effective steps are not taken by them against the persons who use force or who are trying to impose their will on others to deprive the fundamental rights of majority of the citizens in the guise of hartals and general strikes."

58. Hartal, forced hartal, general strike and bandh are not issues confined to the State of Kerala only. Large scale destruction of public property in the wake of protest claiming reservation was seen in the States of Punjab, Hariyana, Rajasthan and Uthar Pradesh. The Supreme Court had taken suo motu notice regarding various instances, where large scale destruction of private and public properties in the name of agitation/bandh/hartal was done and an order was passed on 5.6.2007 (reported in ***Destruction of Public & Properties in Re*** [(2007)2 SCC (Crl.) 351]). While initiating suo motu proceedings, the Apex Court also noticed that prima facie it appears that no action was taken to the offenders, who were responsible for the destruction of properties. In the said proceedings the Apex Court constituted two Committees to look into all aspects of the matter. One of the Committees was headed by retired Supreme Court Judge, Justice

K.T.Thomas (K.T.Thomas Committee). Another Committee was headed by Mr.F.S.Nariman, a senior member of the legal profession (Nariman Committee). Both the Committees went through all the aspects of the matter and submitted its reports to the Apex Court. The report submitted by K.T.Thomas Committee, which is relevant for the present case, is to be noted in detail. The recommendations of the Committee have been reproduced by the Apex Court in its judgment reported in ***Destruction of Public and Private Properties, in Re v. State of Andhra Pradesh and others*** [(2009)5 SCC 212]. In paragraphs 6, 7, 8, 9 and 10 of the judgment the following was stated:

> ***"6.*** *The recommendations of the Justice Thomas Committee have been made on the basis of the following conclusions after taking into consideration the materials.*
>
> ***7.*** *"According to this Committee the prosecution should be required to prove, first that public property has been damaged in a*

direct action called by an organisation and that the accused also participated in such direct action. From that stage the burden can be shifted to the accused to prove his innocence. Hence we are of the view that in situations where prosecution succeeds in proving that public property has been damaged in direct actions in which the accused also participated, the court should be given the power to draw a presumption that the accused is guilty of destroying public property and that it is open to the accused to rebut such presumption. The PDPP Act may be amended to contain provisions to that effect."

8. *"Next we considered how far the leaders of the organisations can also be caught and brought to trial, when public property is damaged in the direct actions called at the behest of such organisations. Destruction of public property has become so rampant during such direct actions called by organisations. In almost all such cases the top leaders of such organisations who really*

instigate such direct actions will keep themselves in the background and only the ordinary or common members or grass root level followers of the organisation would directly participate in such direct actions and they alone would be vulnerable to prosecution proceedings. In many such cases, the leaders would really be the main offenders being the abettors of the crime. If they are not caught in the dragnet and allowed to be immune from prosecution proceedings, such direct actions would continue unabated, if not further escalated, and will remain a constant or recurring affair. Of course, it is normally difficult to prove abetment of the offence with the help of direct evidence. This flaw can be remedied to a great extent by making an additional provision in PDPP Act to the effect that specified categories of leaders of the organisation which make the call for direct actions resulting in damage to public property, shall be deemed to be guilty of abetment of the offence. At the same time,

no innocent person, in spite of his being a leader of the organisation shall be made to suffer for the actions done by others. This requires the inclusion of a safeguard to protect such innocent leaders."

9. *"After considering various aspects to this question we decided to recommend that prosecution should be required to prove (i) that those accused were the leaders or office-bearers of the organisation which called out for the direct actions and (ii) that public property has been damaged in or during or in the aftermath of such direct actions. At that stage of trial it should be open to the court to draw a presumption against such persons who are arraigned in the case that they have abetted the commission of offence. However, the accused in such case shall not be liable to conviction if he proves that (i) he was in no way connected with the action called by his political party or that (ii) he has taken all reasonable measures to prevent causing damage to public property in the direct action called by his organisation."*

10. *"The Committee considered other means of adducing evidence for averting unmerited acquittals in trials involving offences under PDPP Act. We felt that one of the areas to be tapped is evidence through videography in addition to contemporaneous material that may be available through the media, such as electronic media. With the amendments brought in the Evidence Act, through Act 21 of 2000 permitting evidence collected through electronic devices as admissible in evidence, we wish to recommend the following:*

(i) If the officer in charge of a police station or other law enforcing agency is of opinion that any direct action, either declared or undeclared has the potential of causing destruction or damage to public property, he shall avail himself of the services of video operators. For this purpose each police station shall be empowered to maintain a panel of local video operators who could be made

available at short notices.

(ii) The police officer who has the responsibility to act on the information that a direct action is imminent and if he has reason to apprehend that such direct action has the potential of causing destruction of public property, he shall immediately avail himself of the services of the videographer to accompany him or any other police officer deputed by him to the site or any other place wherefrom video shooting can conveniently be arranged concentrating on the person/persons indulging in any acts of violence or other acts causing destruction or damage to any property.

(iii) No sooner than the direct action subsides, the police officer concerned shall authenticate the video by producing the videographer before the Sub-Divisional or Executive Magistrate who shall record his statement regarding what he did. The original tapes or CD or other material capable of displaying the

recorded evidence shall be produced before the said Magistrate. It is open to the Magistrate to entrust such CD/material to the custody of the police officer or any other person to be produced in court at the appropriate stage or as and when called for.

The Committee felt that the offenders arrested for damaging public property shall be subjected to a still more stringent provision for securing bail. The discretion of the court in granting bail to such persons should be restricted to cases where the court feels that there are reasonable grounds to presume that he is not guilty of the offence. This is in tune with Section 437 of the Code of Criminal Procedure, 1973 and certain other modern criminal law statutes. So we recommend that Section 5 may be amended for carrying out the above restriction.

Thus we are of the view that discretion to reduce the minimum sentence on condition of recording special reasons need not be diluted. But, instead of 'reasons' the court

should record 'special reasons' to reduce the minimum sentence prescribed.

However, we felt that apart from the penalty of imprisonment the court should be empowered to impose a fine which is equivalent to the market value of the property damaged on the day of the incident. In default of payment of fine, the offender shall undergo imprisonment for a further period which shall be sufficient enough to deter him from opting in favour of the alternative imprisonment."

59. The Apex Court accepted the report of K.T.Thomas Committee and issued certain directions in paragraph 12. Paragraphs 11, 12 and 16 of the judgment read as under:

"11. *The recommendations of the Justice Thomas Committee according to us are wholesome and need to be accepted.*

12. *To effectuate the modalities for preventive action and adding teeth to the enquiry/investigation, the following*

guidelines are to be observed:

As soon as there is a demonstration organised:

(I) The organiser shall meet the police to review and revise the route to be taken and to lay down conditions for a peaceful march or protest;

(II) All weapons, including knives, lathis and the like shall be prohibited;

(III) An undertaking is to be provided by the organisers to ensure a peaceful march with marshals at each relevant junction;

(IV) The police and the State Government shall ensure videography of such protests to the maximum extent possible;

(V) The person-in-charge to supervise the demonstration shall be SP (if the situation is confined to the district) and the highest police officer in the State, where the situation stretches beyond one district;

(VI) In the event that demonstrations turn violent, the officer-in-charge shall ensure that the events are videographed through private operators and also request such further information from the media and others on the incidents in question;

(VII) The police shall immediately inform the State Government with reports on the events, including damage, if any, caused by the police; and

(VIII) The State Government shall prepare a report on the police reports and other information that may be available to it and shall file a petition including its report in the High Court or the Supreme Court as the case may be for the Court in question to take suo motu action.

Xx xx xx

16. *The recommendations of Justice K.T. Thomas Committee and Mr F.S. Nariman Committee above which have the approval of this Court shall immediately become operative. They shall be operative as guidelines*."

60. It is relevant to note that an Act, namely, Prevention of Damage to Public Property Act, 1984 has already been enacted by the Parliament, where causing damage to the public property has been declared to be an offence punishable with imprisonment. 'Public property' has been defined in Section 2(b) of the said

Act. Sub-clauses (iii) and (iv)of Section 2(b), which are relevant, are quoted below:

> *"2(b) "public property" means any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of-*
>
> *xx xx xx*
>
> *(iii) any local authority; or*
>
> *(iv) any corporation established by, or under a Central, Provincial or State Act."*

61. The Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 has been enacted by the State Legislature to provide for protection of public ways for unobstructed movement by the public and for imposition of reasonable restrictions on the rights of any section of the public to assemble and collectively move thereon and to regulate procession through public ways and for matters connected therewith or incidental thereto. Legislation

has come up as a restriction envisaged under Article 19 of the Constitution of India on the exercise of Fundamental Rights guaranteed under Article 19(1)(a) and 19(1)(c). The The Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 declares certain acts and offences and also provides for punishment for offence. Section 5 provides for certain measures to regulate and restrict the Fundamental Rights guaranteed under Article 19(1)(a) and 19(1)(c).

62. Section 79 of the Kerala Police Act, 2011 also provides for regulation of public assemblies, which is another statutory restriction on the Fundamental Rights of the citizens guaranteed under Article 19 of the Constitution.

63. The enactment of Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 is a step towards imposing some reasonable restrictions on the Fundamental Rights. It is relevant to note that

the question as to whether Sections 5(1)(c), 5(1)(a) and 5(1)(d) are unconstitutional came up for consideration before the Division Bench of this Court in ***Basil Attipetty v. State of Kerala*** (2012(2) KLT 143). Section 5(1)(c) of the Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011 has been held to be unconstitutional by the Division Bench, whereas constitutional validity of Section 5(1)(a) and 5(1)(d) have been upheld. The legislation is only an indication that as and when there is a will the appropriate legislation is enacted for even restricting the Fundamental Rights on the grounds as enumerated in Article 19(2) to 19(6) of the Constitution. The Legislature can very well also consider enacting of appropriate legislation for appropriate regulation and restriction of right of political parties and organizations to give call for strike/hartal as well as in conducting strike/hartal. The incidents and events as highlighted by the petitioners in

these Writ Petitions clearly indicate that so far the menace of destruction of public and private property and harm injury to the person of the citizens could not be achieved in spite of various directions of this Court and the guidelines issued by the State Government. The need and necessity of appropriate legislation is, thus, clearly felt and has been canvassed by learned counsel for the petitioners. It is for the State Government and the State Legislature to look into the matter and in this regard no directions are required from the Court.

64. The submission, which has been pressed repeatedly by learned counsel for the petitioners is that since in spite of directions issued by two Full Benches of this Court in ***Bharath Kumar's case*** (supra) and ***George Kurian's case*** (supra) as well as the judgment of the Apex Court, the menace of injury to person and property of individuals and the Government has not abetted.

65. It is also relevant to note that the Apex Court in paragraph 19, as extracted above, in ***James Martin's case*** (supra) has observed that unless such acts are controlled with iron hands, innocent citizens are bound to suffer.

66. The learned Special Government Pleader Smt.Girija Gopal has placed before us details of various cases registered in different districts of the State of Kerala pertaining to hartals/bandhs/strikes. Several cases have been registered under different Sections of Indian Penal Code. It is noticeable that although large scale destruction of public and private properties has occurred during the bandhs/strikes, but there are very few cases registered under the said Act. No details are on record about the status of the said prosecution. Large number of cases have also been registered in the year 2013, details of which have been placed before us. It has also been stated on behalf of the State

Government that a direction has been issued to Government Departments and Police authorities to assess the damage caused to public property and sue for recovery of damages. The mechanism of recovery of damages/compensation by filing suit either by the Government/Government Departments or individuals is not giving any salutary result. Large number of persons, who suffered physically and materially are not approaching the Civil Court for redressal of their grievances on account of delay, which is occurred in deciding such cases. This is another reason for the miscreants to continue with their illegal activities and acts of damage and harm to individuals and Government property.

67. We have already observed above that unless comprehensive legislation covering all aspects of hartals/general strikes, including its restrictions and regulations as well as mechanism for obtaining

compensation for damages done directly, as action of hartal and general strike is not enacted, the State shall not be able to effectively check the menace. We have already referred to State Law Commission Report, 2008, where draft of Bill has already been sent by the Law Commission to the Government. We have not been informed as to what steps have been taken in reference to the Bill, if any. It is high time that the State considers enacting appropriate legislation covering all aspects of the matter, since it has miserably failed in checking and controlling the menace. We are aware that this Court cannot exercise the writ jurisdiction to issue any direction to the Legislature to enact a law. But, need of appropriate legislation has already been felt by the Law Commission, which has also sent a report along with the draft Bill and there are observations of this court in earlier judgments emphasising about the need for appropriate legislation. Thus, it is for the State to

consider and address the issue, so as to provide an immediate and far reaching solution and relief to the people of the State.

68. We also observe that in the legislation, which may be proposed a mechanism for lodging claim for damage to private and public property with designated authority having necessary power to enquire a claim and decide may be included. There have already been directions issued by a Division Bench of this Court and Full Bench to videograph the agitations and forceful hartals by the police authorities, which may be both deterrent as well as useful in identifying the culprits and proving the charge both for prosecution of an offence as well as recovery of compensation.

60. Electronic evidence now is fully advisable by the amendment made in 2000 in the Indian Evidence Act. We are, however, of the considered opinion that the State has to enforce directions issued by the Full

Bench of this Court in ***George Kurian's case*** (supra) as well as the guidelines issued by the Supreme Court in ***Destruction of Public and Private Properties, in Re's case*** (supra), wherein the Supreme Court has approved the report submitted by the K.T.Thomas Committee and issued directions. The State should revise its various directions issued from time to time to contain a comprehensive and effective direction for tackling the forceful hartals/demonstrations/agitations in the State of Kerala. There having been direction by the Supreme court in ***Destruction of Public and Private Properties, in Re's case*** (supra) and there has been two enactments, namely, Kerala Police Act, 2011 and Kerala Public Ways (Restriction of Assemblies and Processions) Act, 2011, earlier directions need to be revisited and comprehensive directions be issued to the district administration, Police administration and all Departments of the Government, including different

organisations and political parties through an appropriate authority.

Issue No.VI: Whether call of hartal/strike violates the Prevention of Insults to National Honour Act, 1971:

70. It has been submitted by the petitioner that hartal/strike having been declared as unconstitutional by this Court and the Apex Court, even giving a call of hartal/strike by any political party or organisation violates the provisions of the Prevention of Insults to National Honour Act, 1971. For considering the above submission, it is necessary to look into the provisions of the 1971 Act. Section 2 of the Act deals with insult to Indian National Flag and Constitution of India. Present is the case where violation of the Act is confined to allegations of insult to Constitution of India. Section 2 of the Act is quoted as below:

"2. Insult to Indian National Flag and

Constitution of India.—*Whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise shows disrespect to or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.*

Explanation 1.—Comments expressing disapprobation or criticism of the Constitution or of the Indian National Flag or of any measures of the Government with a view to obtain an amendment of the Constitution of India or an alteration of the Indian National Flag by lawful means do not constitute an offence under this section.

Explanation 2.—The expression "Indian National Flag" includes any picture, painting, drawing or photograph, or other visible representation of the Indian National Flag, or of any part or parts thereof, made of any substance or represented on any substance.

Explanation 3.—The expression "public place" means any place intended for use by, or accessible to, the public and includes any public conveyance.

Explanation 4.—The disrespect to the Indian National Flag means and includes—

(a) a gross affront or indignity offered to the Indian National Flag; or

(b) dipping the Indian National Flag in salute to any person or thing; or

(c) flying the Indian National Flag at half-mast except on occasions on which the Indian National Flag is flown at half-mast on public buildings in accordance with the instructions issued by the Government; or

(d) using the Indian National Flag as a drapery in any form whatsoever except in State funerals or armed forces or other para-military forces funerals; or

(e) using the Indian National Flag,—

(i) as a portion of costume, uniform or accessory of any description which is worn below the waist of any person; or

(ii) by embroidering or printing it on cushions, handkerchiefs, napkins, undergarments or any dress material; or]

(f) putting any kind of inscription upon the Indian National Flag; or

(g) using the Indian National Flag as a receptacle for receiving, delivering or carrying anything except flower petals before the Indian National Flag is unfurled as part of celebrations on special occasions including the Republic Day or the Independence day; or

(h) using the Indian National Flag as covering for a statute or a monument or a speaker's desk or a speaker's platform; or

(i) allowing the Indian National Flag to touch the ground or the floor or trail in water intentionally; or

(j) draping the Indian National Flag over the hood, top and sides or back or on a vehicle, train, boat or an aircraft or any other similar subject; or

(k) using the Indian National Flag as a covering for a building; or

(l) intentionally displaying the Indian National Flag with the "saffron" down.

71. Section 2 of the Act enumerates an offence, which is punishable with imprisonment for a term, which may extend to three years, or with fine, or with both. For coming within the definition of Section 2, the ingredients of the offence have to be found and proved. A mere call for hartal/general strike cannot be held to be an offence within the meaning of Section 2. The offence under Section 2 may be found to have been committed in

carrying out the said hartal/strike. To find out as to whether the act of any person is an offence within the meaning of Section 2, other ingredients of offence has to be there, which need to be proved. We have already observed in preceding paragraphs that Article 19(1)(a) of the Constitution also gives right to freedom of speech and expression to every citizen. Demonstration is also one form of speech and expression and unless the demonstration becomes violent, the same is within the constitutional right. Whether the constitutional rights have been exceeded leading the act to offence is the question of fact, which has to be examined and gone into with regard to each individual acts.

72. In view of the foregoing discussion, we are of the considered opinion that the mere call for hartal/strike does not result in the commission of an offence within the meaning of the Prevention of Insults to National Honour Act, 1971. However, in carrying out

hartal/strike, an offence has to be found out by looking into the particular actions of an individual which fulfills the ingredients of offence under Section 2. Thus, to find out an offence, the actual act of hartal/strike in each case has to be examined on its own facts. The Issue No.VI is decided accordingly.

Issue No.VII- Whether calling and carrying out hartal/strike be declared offence punishable under Section 503 IPC?:

73. The submission, which has been pressed by learned counsel for the petitioners is that calling a hartal/strike as well as carrying out hartal/strike is an offence within the meaning of Section 503 IPC and this Court may declare it to be an offence for the persons calling and carrying out hartal be booked under Section 503 IPC. Section 503 IPC provides as follows:

> *"503. Criminal intimidation.- Whoever threatens another with any injury to his person, reputation or property, or to the*

person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

74. According to Section 503 IPC, Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. The definition of

'criminal intimidation' is wide enough and can improvise in its various acts, including threats issued by a person belonging to a political party or an organisation to any person. To find out whether an offence under Section 503 IPC is committed or not, particular acts and events have to be looked into whether an offence is made out by calling a strike or hartal or carrying out a strike or hartal by a political party or an organisation has to be examined from set of facts and events in each case. There cannot be any generalisation of offence as submitted by learned counsel for the petitioners. Even calling for hartal or strike which contains threat and intimidation may amount to an offence under Section 503 IPC. Similarly, call given for observing non co-operation and sympathise with the organiser may not amount to offence under Section 503 IPC.

75. We are, thus, of the considered opinion that for finding out whether an offence under Section 503 IPC

has been committed or not, an individual action and attending circumstances have to be looked into and there cannot be any generalisation of act of calling hartal/strike or carrying out hartal/strike. Whether an offence has been committed or not in particular case of calling or carrying out hartal/strike depends on the facts of each case. Issue No.VII is decided accordingly.

RELIEFS:

76. Now we come to the reliefs to which the petitioners are found to be entitled to be given in these eight Writ Petitions. In each Writ Petitions different reliefs have been claimed as noted above.

77. In W.P.Nos.32529/2007, 21455/2012 and 2183/ 2008 the principal relief claimed was that the press and media be prohibited from publishing/ broadcasting and telecasting any news for call of hartal/strike. We have already held that in view of the constitutional provision and statutory provisions regulating the subject as on

today, no such restriction can be imposed by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. The said relief is, thus, refused.

78. In some of the Writ Petitions the main prayer was to prohibit the political parties and organisations from proceeding with the call for observing hartal on a particular day. The dates for which prayer was made for prohibiting hartal have already been over, so the said relief has become infructuous.

79. In W.P(C).No.30778 of 2005 the petitioner has also claimed direction to the 7th and 13th respondents, who had called for hartal on 9.11.2004 and 15.11.2004, to deposit an amount of ₹10,00,000/- each as compensation for its illegal action of calling hartal. Compensation can be claimed for damages/destructions of public or private properties or any loss suffered by individuals. It is open to the petitioner to raise the claim in accordance with law by approaching the Civil Court

for appropriate measures, if so advised. The political parties or organizations calling for hartal can be directed to deposit any amount for compensation provided there is some statutory provision for such deposit. In the alternative, this Court in exercise of is extraordinary jurisdiction under Article 226 of the Constitution may deem it fit and proper to direct for such deposit. Any political party or organization can always be directed to pay compensation by competent Civil Court or this Court exercising jurisdiction under Article 226 of the Constitution. But, in the facts of the present case, more so, when the alleged strikes were called about ten years ago, we do not think it appropriate to consider the above relief in these proceedings.

80. In some other Writ Petitions various directions have been sought. We have already noticed the above prayers.

In view of the foregoing discussions, we dispose all the Writ Petitions in the following manner:

i. The prayer to prohibit press and media from publishing/broadcasting/telecasting news for call of hartal/strike is refused.

ii. The prayer made for total banning of calls for hartal/strike is also refused.

iii. The State is directed to revisit its earlier directions issued to the district administration and Police administration, including Government order dated 17.12.2003 and issue comprehensive directions for compliance of the directions issued by the Full Bench of this Court in ***Bharath Kumar's case*** (supra) and ***George Kurian's case*** (supra) as well as the directions and guidelines issued by the Supreme Court in

Destruction of Public and Private Properties, in Re v. State of Andhra Pradesh and others [(2009)5 SCC 212] and direct the district administration, Police administration and all Government Departments to strictly comply with the said directions.

iv. The State Government shall monitor all events/incidents of hartal and strike henceforth calling reports from District Magistrate and Police Commissioner from each District and issue necessary directions and monitor the same. The State Government may also consider framing of comprehensive legislation covering all aspects of the matter with due consideration of the State Law Reforms Commission Report, 2008 by

which a Bill, in order to prohibit and regulate the conduct of hartal, was framed by Law Reforms Commission as noted above.

v. The State Government shall also take effective steps regarding providing of all assistance for finalisation of prosecution relating to cases registered during hartal and strike as well as the suit filed for compensation of private and public property. The directions to be issued by the State shall also include the directions to all Police authorities and District authorities to necessarily report and to take necessary steps for registration of cases pertaining to injury to life or damage to property and also claims for compensation for damages. The District

authorities may be directed to send periodical reports to the State, so that the criminal cases and claims may be effectively monitored.

The parties shall bear their own cost.

Let a copy of this judgment be sent to the Chief Secretary to the State to take necessary steps.

ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.

A.M.SHAFFIQUE,
JUDGE.

A.K.JAYASANKARAN NAMBIAR,
JUDGE.

vsv/vgs