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TABLE OF CONTENTS

1. **His Holiness Kesavananda Bharati Sripadagalavaru vs State of Kerala** 4
2. **Maneka Gandhi vs Union of India** 11
3. **Minerva Mills Ltd. & Ors, vs Union of India & Ors.** 13
4. **Sharad Birdhi Chand Sarda vs State of Maharastra** 15
5. **A.R. Antulay vs R.S. Nayak & Anr.** 17
6. **Kihoto Hollohan vs Zachillhu and Others** 21
7. **Indra Sawhney and Ors. Etc. Etc. vs Union of India and Ors. Etc. Etc.** 24
8. **S.R. Bommai and Ors. vs Union of India and Ors.** 35
9. **L. Chandra Kumar vs Union of India and Others** 43
10. **Vellore Citizens Welfare Forum vs Union of India Judgment** 45
11. **D.K. Basu vs State of West Bengal** 48
12. **Mafatlal Industries Ltd. Etc. Etc. vs Union of India Etc. Etc.** 51
13. **Vishaka and Ors. vs State of Rajasthan and Ors.** 55
14. **Githa Hariharan and Anr. vs Reserve Bank of India and Anr.** 59
15. **Rupa Ashok Hurra vs Ashok Hurra and Anr.** 62
16. **Pradeep Kumar Biswas and Ors. vs Indian Institute of Chemical Biology and Ors.** 64
17. **P. Rama Chandra Rao vs State of Karnataka** 68
18. **T.M.A. Pai Foundation and Ors. vs State of Karnataka and Ors.** 10
19. **P.A. Inamdar vs State of Maharashtra** 74
20. **Technip SA vs SMS Holding (Pvt.) Ltd. & Ors.** 76
21. **M/s. S.B.P.and Co. vs M/s. Patel Engineering Ltd. and Anr.** 79
22. **Rameshwar Prasad & Ors. vs Union of India and Anr.** 83
23. **I.R. Coelho (Dead) By LRs. vs State of Tamil Nadu** 85
24. **Common Cause (A Regd. Society) vs Union of India & Ors.** 88
25. **State of West Bengal & Ors. vs The Committee for Protection of Democratic Rights, West Bengal & Ors.** 91
26. **Smt. Selvi & Ors. vs State of Karnataka** 93
27. **Re: Special Reference No. 1 of 2012 [Under Article 143(1) of the Constitution of India]** 98
28. **Republic of Italy and Ors. vs Union of India and Ors.** 10
29. **Novartis AG vs Union of India & Others** 102
30. **Dr. Balram Prasad vs Dr. Kunal Saha & Ors.** 105
31. **Lalita Kumari vs Govt.of U.P. and Ors.** 108

32. National Legal Services Authority vs Union of India and Others **111**
33. Pramati Educational & Cultural Trust ® & Ors. v. Union of India & Ors. **115**
34. M/s. Kailash Nath Associates v. Delhi Development Authority & Anr. **117**
35. Shreya Singhal v. Union of India **10**
36. Supreme Court Advocates-on- Record Association and Another v. Union of India **122**
37. Union of India v. V. Sri Haran @ Murugan & Ors. **10**
38. Gujarat Urja Vikas Nigam Limited v. EMCO Limited & Others **132**
39. Mukesh & Anr. v. State for NCT of Delhi & Ors. I. Introduction **134**
40. Excel Crop Care Limited v. Competition Commission of India and Another **144**
41. Common Cause v. Union of India and Ors. **148**
42. Shayara Bano v. Union of India and Others **151**
43. Justice K S Puttaswamy (Retd.), and Anr. v. Union of India and Ors. **161**
44. Common Cause (A Regd. Society) v. Union of India & Another **10**
45. Municipal Corporation, Ujjain and Anr. v. BVG India Limited and Ors. **182**
46. Shakti Vahini v. Union of India and Others **184**
47. Navtej Singh Johar & Ors. v. Union of India Thr. Secretary Ministry of Law and Justice **186**
48. Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors. **193**
49. Jarnail Singh & Others v. Lachhmi Narain Gupta & Others **204**
50. Joseph Shine v. Union of India **206**
51. Competition Commission of India v. Bharti Airtel Limited and Others **209**
52. Swiss Ribbons Pvt. Ltd. & Anr. **213**
53. Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India(NHAI) **216**
54. Dr. Ashwani Kumar v. Union of India and Another **219**
55. Rojer Mathew v. South Indian Bank Limited and Ors. **221**
56. Central Public Information Officer Supreme Court of India v. Subhash Chandra Agarwal **225**
57. Committee of Creditors of Essar Steel India Limited Through Authorised Signatory v. Satish Kumar Gupta and Others **229**
58. M/s Shanti Conductors Private Limited v. Assam State Electricity Board and Others **233**
59. Keisham Meghachandra Singh **236**
60. Sushila Aggarwal and Others v. State (NCT of Delhi) and Another **239**
61. Dheeraj Mor v. Hon'ble High Court of Delhi **242**
62. Internet and Mobile Association of India v. Reserve Bank of India **245**
63. Indore Development Authority **253**
64. Madras Bar Association v. Union of India & Anr. **264**

65. Nandini Sundar v. State of Chhattisgarh **268**
66. Arnesh Kumar v. State of Bihar **271**
67. Abhiram Singh v. C.D. Commachen **273**
68. Neeraj Dutta v. State (NCT of Delhi) **278**
69. Sukhpal Singh Khaira v. State of Punjab **283**
70. Satender Kumar Antil v. Central Bureau of Investigation **288**
71. Janhit Abhiyan v. Union of India **290**
72. Shilpa Sailesh v. Varun Sreenivasan **292**
73. Kaushal Kishor v. State of U.P. **295**
74. Subhash Desai v. State of Maharashtra **297**
75. Cox & Kings Ltd. v. SAP India **301**
76. In Re: Interplay B/w Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899 **303**
77. In Re: Article 370 of the Constitution **307**
78. Association for Democratic Reforms (Electoral Bond Scheme) **314**
79. Kavita Kamboj v. High Court of Punjab & Haryana **317**
80. Sita Soren v. Union of India **320**
81. State (NCT of Delhi) v. BSK Realtors LLP **323**
82. Mineral Area Development Authority v. SAIL **326**
83. State of Punjab v. Davinder Singh **334**
84. Aligarh Muslim University v. Naresh Agarwal **336**
85. Property Owners Association & Ors. v. State of Maharashtra & Ors. **343**
86. Tej Prakash Pathak v. High Court of Rajasthan **351**

1. His Holiness Kesavananda Bharati Sripadagalavaru vs State of Kerala

CHIEF JUSTICE S. M. SIKRI, JUSTICE M. SHELAT, JUSTICE K. S. HEGDE, JUSTICE A. N. GROVER, JUSTICE A. N. RAY, JUSTICE P. JAGANMOHAN REDDY, JUSTICE D. G. PALEK.AR, JUSTICE H. R. KHANNA, JUSTICE K. K. MATHEW, JUSTICE M. H. BEG, JUSTICE S. N. DWIVEDI, JUSTICE A. K. MUKHERJEA, JUSTICE Y. V. CHANDRACHUD

Read the judgment here

I. Introduction

A. Brief overview of the Kesavananda Bharati case

The Kesavananda Bharati case, also known as the Fundamental Rights case, was a landmark decision by the Supreme Court of India in 1973. It dealt with the extent of the amending power of the Indian Parliament under Article 368 of the Constitution. The case arose from a challenge to the 24th, 25th, and 29th amendments to the Constitution, which aimed to enhance Parliament's power to amend the Constitution, including the ability to abridge or take away fundamental rights.

The petitioner, Swami Kesavananda Bharati, a religious figure, challenged these amendments, arguing that they violated the basic structure of the Constitution by allowing Parliament to abridge or take away fundamental rights. The case was heard by a 13-judge bench, the largest ever constituted in the Supreme Court's history.

B. Significance of the case in defining the amending power of the Indian Parliament

The Kesavananda Bharati case is significant because it defined the limits of Parliament's amending power under Article 368 of the Constitution. The Supreme Court, by a narrow majority of 7-6, held that while Parliament has the power to amend the Constitution, this power is not unlimited and is subject to the basic structure or essential features of the Constitution.

The Court ruled that the basic structure of the Constitution, which includes features such as the supremacy of the Constitution, the republican and democratic form of government, the secular character of the state, the separation of powers between the legislature, executive, and judiciary, and the dignity and freedom of the individual, cannot be altered or destroyed by constitutional amendments.

The Court's decision established the doctrine of the basic structure, which acts as a limitation on the amending power of Parliament. This doctrine has become a cornerstone of Indian constitutional jurisprudence and has been invoked in subsequent cases to strike down amendments that violate the basic structure of the Constitution.

The Kesavananda Bharati case is significant because it struck a balance between the need for constitutional flexibility and the preservation of the Constitution's essential features. It recognized that while the Constitution should be amenable to change to meet the evolving needs of society, there are certain fundamental principles that must remain inviolable.

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II. Background

A. Provisions related to constitutional amendments in India

The Constitution of India provides for the procedure to amend the Constitution under Article 368. Before the 24th Amendment, Article 368 stated that an amendment to the Constitution could be initiated by introducing a Bill in either House of Parliament. If the Bill was passed by a majority of the total membership of each House and by a majority of not less than two-thirds of the members present and voting in each House, it would be presented to the President for assent. Upon receiving the President's assent, the Constitution would stand amended as per the terms of the Bill.

However, for certain provisions related to federal aspects, the amendment required ratification by at least half of the state legislatures. These provisions included matters related to the election of the President, the extent of the executive and legislative powers of the Union and the States, the High Courts for union territories, the representation of States in Parliament, and the provisions of Article 368 itself.

B. Historical context and previous court rulings

The scope and extent of the amending power under Article 368 had been a subject of debate and judicial interpretation over the years. In the case of Shankari Prasad v. Union of India (1952), the Supreme Court unanimously held that the word 'law' in Article 13(2) was related to ordinary legislative power and not constitutional amendments. Therefore, Parliament could amend the Constitution, including the fundamental rights provisions in Part III.

This view was reiterated in Sajjan Singh v. State of Rajasthan (1965). However, in the landmark case of Golak Nath v. State of Punjab (1967), the Supreme Court overruled its earlier decisions and held that Parliament could not amend the Constitution to take away or abridge the fundamental rights guaranteed in Part III.

The Golak Nath judgment was a narrow majority decision, and it had far-reaching implications for several constitutional amendments that had already been made, affecting fundamental rights. To avoid unsettling the existing laws, the Court applied the doctrine of prospective overruling and the doctrine of acquiescence, thereby upholding the validity of the amendments made before the Golak Nath judgment.

The Golak Nath decision raised concerns about the ability of the Constitution to adapt to changing societal needs and led to the 24th Amendment in 1971, which explicitly granted Parliament the power to amend any part of the Constitution, including the fundamental rights provisions.

III. The Kesavananda Bharati Case

A. Key issues and arguments

The Kesavananda Bharati case raised fundamental questions about the extent of the amending power conferred by Article 368 of the Indian Constitution. The key issues and arguments revolved around the following:

1. **Validity of the 24th, 25th, and 29th Constitutional Amendments**

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1. The 24th Amendment sought to clarify that the term "law" in Article 13(2) did not include Constitutional amendments made under Article 368, thereby allowing Parliament to amend Fundamental Rights.

2. The 25th Amendment introduced Article 31C, which stated that laws giving effect to the Directive Principles of State Policy in Article 39(b) and (c) would not be deemed void on the ground of violating Articles 14, 19, and 31 (Fundamental Rights).

3. The 29th Amendment added two land reform acts of Kerala to the 9th Schedule, granting them immunity from judicial review.

2. **Extent of Parliament's Amending Power under Article 368**

    1. The respondents (Union of India and States) argued that Parliament had unlimited power to amend the Constitution, including abrogating or taking away Fundamental Rights.

    2. The petitioners contended that Parliament's amending power was limited and could not damage or destroy the essential features or basic structure of the Constitution, including Fundamental Rights.

3. **Doctrine of Basic Structure and Essential Features**

    1. The petitioners argued that certain essential features or the basic structure of the Constitution, such as Fundamental Rights, were unamendable and formed an implied limitation on Parliament's amending power.

    2. The respondents rejected the existence of any implied or inherent limitations on the amending power, claiming it was wide and unfettered.

4. **Interpretation of Article 368**

    1. The respondents claimed that Article 368 not only prescribed the procedure for amendment but also conferred the substantive power to amend any part of the Constitution, including Fundamental Rights.

    2. The petitioners argued that Article 368 only dealt with the procedure for amendment and did not confer the power to amend, which was subject to implied limitations.

5. **Relationship between Fundamental Rights and Directive Principles**

    1. The respondents contended that the Directive Principles of State Policy (Part IV) should take precedence over Fundamental Rights (Part III) in the interest of achieving the goals of a welfare state.

    2. The petitioners maintained that Fundamental Rights were essential and could not be subordinated to the Directive Principles.

The case raised profound questions about the nature of the Indian Constitution, the balance between individual rights and societal goals, and

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the extent to which the Constitution could be amended by Parliament without altering its basic structure and core values.

IV. Analysis of the Judgments

A. The Majority View

The majority of judges in the Kesavananda Bharati case held that the power of Parliament under Article 368 to amend the Constitution is not unlimited and that it cannot alter the basic structure or framework of the Constitution. This view was based on the following reasoning:

1. The Constitution is a living and organic document that must be interpreted in a manner that allows it to adapt to changing social and economic conditions. However, this does not mean that the Parliament has the power to abrogate or destroy the essential features or fundamental principles of the Constitution.

2. The Preamble to the Constitution, which declares the basic objectives and values of the Constitution, is a part of the Constitution and cannot be amended in a way that violates its basic philosophy.

3. The fundamental rights enshrined in Part III of the Constitution are essential for the preservation of human dignity and liberty, and they form a part of the basic structure of the Constitution. While these rights are not absolute and can be reasonably restricted, they cannot be abrogated or emasculated by constitutional amendments.

4. The federal structure of the Constitution, with a division of powers between the Union and the States, is a basic feature that cannot be altered by constitutional amendments.

5. The secular character of the Constitution, which ensures equality and non-discrimination on the basis of religion, is a fundamental principle that cannot be violated by constitutional amendments.

6. The independence of the judiciary and the power of judicial review, which enables the courts to strike down laws that violate the Constitution, are essential features of the Constitution that cannot be compromised by constitutional amendments.

The majority view, therefore, sought to strike a balance between the need for constitutional amendments to keep pace with changing times and the preservation of the basic structure and fundamental principles of the Constitution.

B. The Dissenting Views

The dissenting judges, on the other hand, held that the power of Parliament under Article 368 to amend the Constitution is unlimited and that there are no inherent or implied limitations on this power. Their reasoning was as follows:

1. The language of Article 368 is clear and unambiguous, and it does not impose any restrictions on the amending power of Parliament. The word "amendment" should be given its plain and literal meaning, which includes the power to add, alter, or repeal any provision of the Constitution.

2. The Constituent Assembly debates and the speeches of the framers of the Constitution do not support the theory of implied limitations on the amending power.

3. The doctrine of basic structure or essential features is vague and subjective, and it would

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be difficult for the courts to determine what constitutes the basic structure of the Constitution.

4. The power to amend the Constitution is a constituent power, and it cannot be limited by the judiciary, which exercises only a derivative power under the Constitution.

5. If the amending power is subject to limitations, it would lead to a situation where the Constitution becomes rigid and inflexible, unable to adapt to changing social and economic conditions.

The dissenting judges argued that the majority view would result in the judiciary becoming the ultimate arbiter of what constitutes the basic structure of the Constitution, thereby undermining the principle of separation of powers and the supremacy of the Parliament in matters of constitutional amendments.

V. Implications and Significance

A. Impact on constitutional jurisprudence

The judgment in the Kesavananda Bharati case has had a profound impact on the constitutional jurisprudence of India. It established the doctrine of the 'basic structure' of the Constitution, which implies that while the Parliament has wide powers to amend the Constitution, it cannot alter or destroy the basic features or the essential elements of the Constitution. This doctrine acts as a check on the amending power of Parliament and ensures that the fundamental principles and values enshrined in the Constitution remain inviolable.

The basic structure doctrine has been invoked by the Supreme Court in several subsequent cases to strike down constitutional amendments that were deemed to violate the basic structure. This has led to a delicate balance between the Parliament's amending power and the Court's role as the guardian of the Constitution's basic features.

B. Limitations on the amending power

The Kesavananda Bharati case clarified the scope and limitations of the amending power under Article 368 of the Constitution. The majority opinion held that while the Parliament has the power to amend the Constitution, this power is not unlimited. The amendments cannot alter or destroy the basic structure or the essential features of the Constitution.

The Court identified certain features as part of the basic structure, including the supremacy of the Constitution, the republican and democratic form of government, the secular character of the Constitution, the separation of powers between the legislature, executive, and judiciary, and the federal character of the Constitution. These features were deemed inviolable and beyond the reach of the amending power.

C. Protecting fundamental rights and the basic structure

One of the key implications of the Kesavananda Bharati case was the protection of fundamental rights and the basic structure of the Constitution. The Court held that while the Parliament could amend the fundamental rights, it could not abrogate or completely take away these rights, as they form part of the basic structure.

The judgment emphasized that the fundamental rights and the Directive Principles of State Policy

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are complementary and must be balanced. While the Parliament can impose reasonable restrictions on fundamental rights to achieve the goals set out in the Directive Principles, it cannot completely abrogate these rights.

The basic structure doctrine has acted as a safeguard against the potential abuse of the amending power by the Parliament. It has ensured that the core values and principles enshrined in the Constitution remain intact, while allowing for necessary amendments to adapt to changing circumstances.

VI. Conclusion

A. Summary of key findings

The key findings of the Supreme Court's judgment in the Kesavananda Bharati case can be summarized as follows:

1. **Overruling Golak Nath Case**: The majority decision in the Golak Nath case, which held that Parliament had no power to amend the Fundamental Rights in the Constitution, was overruled. The Court held that the power to amend under Article 368 was plenary and extended to all provisions of the Constitution, including the Fundamental Rights.

2. **Validity of 24th, 25th, and 29th Amendments**: The Court upheld the validity of the 24th, 25th, and 29th Amendments to the Constitution. The 24th Amendment clarified that the power of amendment under Article 368 included the power to amend the Fundamental Rights. The 25th Amendment introduced Article 31C, which provided that laws giving effect to the Directive Principles of State Policy could not be challenged on the ground of violating certain Fundamental Rights. The 29th Amendment added certain land reform laws to the Ninth Schedule, thereby granting them immunity from judicial review.

3. **Implied Limitations on Amending Power**: While upholding the power of Parliament to amend the Constitution, including the Fundamental Rights, the Court held that the amending power was not unlimited. There were certain implied limitations on the amending power, which arose from the basic structure or essential features of the Constitution. The Court did not explicitly define the basic structure, but it was generally understood to include features like the supremacy of the Constitution, the democratic and republican form of government, the secular character of the state, the separation of powers, and the dignity and freedom of the individual.

4. **Interpretation of Article 31C**: The Court upheld the first part of Article 31C, which provided that laws giving effect to the Directive Principles in Articles 39(b) and 39(c) could not be challenged on the ground of violating certain Fundamental Rights. However, the Court struck down the second part of Article 31C, which stated that a law could not be challenged on the ground that it did not give effect to the Directive Principles, as this would have excluded judicial review altogether.

B. Ongoing debates and future challenges

The Kesavananda Bharati case settled some crucial issues regarding the amending power of Parliament, but it also left certain questions open for further debate and interpretation. Some of the

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ongoing debates and future challenges arising from this judgment include:

1. **Defining the Basic Structure**: While the Court recognized the existence of implied limitations on the amending power based on the basic structure of the Constitution, it did not provide a comprehensive definition or exhaustive list of what constitutes the basic structure. This has led to ongoing debates and interpretations by subsequent judgments and legal scholars.

2. **Balancing Fundamental Rights and Directive Principles**: The judgment highlighted the tension between the Fundamental Rights and the Directive Principles of State Policy, which aim to promote social and economic justice. The Court upheld the ability of Parliament to enact laws giving effect to the Directive Principles, even if they conflict with certain Fundamental Rights. However, the extent to which this can be done without violating the basic structure remains a subject of debate.

3. **Scope of Judicial Review**: The Court's decision to strike down the second part of Article 31C, which sought to exclude judicial review of laws enacted under that provision, reaffirmed the role of the judiciary in reviewing the constitutionality of laws. However, the extent and limits of judicial review, particularly in matters of economic policy and social reform, continue to be debated.

4. **Evolving Interpretation**: The concept of the basic structure and the implied limitations on the amending power are not static. As society and circumstances evolve, the interpretation of these concepts may also change. Future challenges may arise in reconciling the basic structure doctrine with changing societal needs and aspirations.

5. **Political and Constitutional Implications**: The Kesavananda Bharati case had significant political and constitutional implications. It balanced the power of Parliament to amend the Constitution with the need to preserve the essential features of the Constitution. The interplay between the legislature, executive, and judiciary in upholding the basic structure and protecting individual rights remains an ongoing challenge in a democratic society.

The Kesavananda Bharati case was a landmark judgment that sought to strike a balance between the need for constitutional amendments to address changing societal needs and the preservation of the fundamental principles and values enshrined in the Constitution. While it provided guidance on the amending power and the basic structure doctrine, the ongoing debates and future challenges highlight the dynamic nature of constitutional interpretation and the need for continuous dialogue and deliberation in a vibrant democracy.

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2. Maneka Gandhi vs Union of India

CHIEF JUSTICE M. H. BEG, JUSTICE Y. V. CHANDRACHUD, JUSTICE P. N. BHAGWATI, JUSTICE V. R. KRISHNA IYER, JUSTICE N. L. UNTWALIA, JUSTICE S. MURTAZA FAZAL AU, AND JUSTICE P. S. KAILASAM

Read the judgment here

I. Introduction

The case of Maneka Gandhi v. Union of India [Paragraph 19] is a landmark judgment delivered by the Supreme Court of India, which dealt with the fundamental rights enshrined in the Constitution, particularly the right to personal liberty and the right to freedom of speech and expression. The petitioner, Maneka Gandhi, challenged the impounding of her passport by the Government of India, alleging violations of Articles 14, 19(1)(a)(b), and 21 of the Constitution.

II. Background

On July 4, 1977, the Government of India impounded Maneka Gandhi's passport, citing the "interests of the general public" under Section 10(3)(c) of the Passports Act, 1967 [Paragraph 19]. Gandhi filed a writ petition, alleging that the impounding of her passport infringed upon her fundamental rights, including personal liberty, freedom of speech and expression, and the right to life and liberty [Paragraph 19].

Key Issues

The case raised several crucial issues:

- **Personal Liberty and Due Process:** Whether the right to go abroad is part of "personal liberty" under Article 21 and cannot be deprived without due process [Paragraph 1].
- **Fundamental Rights Violations:** Whether Section 10(3)(c) of the Passports Act violates fundamental rights under Articles 14, 19(1)(a) and (g), and 21 [Paragraph 2].
- **Freedom of Speech and Expression:** Whether the impounding of the passport restricts the petitioner's right to free speech and journalism [Paragraph 3].
- **Reasonableness of the Order:** Whether the order to impound the passport was based on reasonable grounds or arbitrary [Paragraph 4].
- **Public Interest:** Whether a passport can be impounded solely on the basis of potential future public interest [Paragraph 5].

Judgments and Observations

Justice P.N. Bhagwati's Concurring Opinion

Justice Bhagwati, in his concurring opinion, made several significant observations:

- **Right to Travel Internationally:** The right to travel internationally is included in the right to personal liberty [Paragraph 1].
- **Interrelation of Fundamental Rights:** Articles 19 and 21 are not watertight compartments and should be read together, as the Constitution must be interpreted as an integral whole [Paragraph 3].

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- **Due Process and Natural Justice:** The procedure prescribed by law under Article 21 must be fair, just, and reasonable, and the law depriving personal liberty must comply with the principles of natural justice [Paragraph 3, Paragraph 14].
- **Extraterritorial Application of Fundamental Rights:** The freedom of speech and expression guaranteed in Article 19(1)(a) is without geographical limits [Paragraph 3].

Chief Justice E.S. Venkataramiah's Concurring Opinion

Chief Justice Venkataramiah concurred with Justice Bhagwati's opinion and made the following observations:

- **Opportunity to be Heard:** The Central Government should give the petitioner an opportunity to be heard regarding the impounding of her passport [Paragraph 14].
- **Natural Justice:** The principles of natural justice must be followed to the maximum extent possible, even in administrative proceedings [Paragraph 14].
- **Reasonableness of Restrictions:** An order impounding a passport can be made only if it is actually in the interests of the general public, and not merely on the basis of potential future interests [Paragraph 14].

Dissenting Opinion

While the majority opinion upheld the petitioner's contentions, there was a dissenting opinion that argued against the extraterritorial application of fundamental rights [Paragraph 19]. This opinion held that the fundamental rights guaranteed under Article 19 are not applicable outside the territorial limits of India and that the impounding of a passport does not infringe upon these rights outside the country.

The Maneka Gandhi case has been widely cited and has influenced subsequent judicial decisions, shaping the interpretation and application of fundamental rights in India.

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3. Minerva Mills Ltd. & Ors, vs Union of India & Ors.

CHIEF JUSTICE Y. V. CHANDRACHUD, JUSTICE P. N. BHAGWATI, JUSTICE A. C. GUPTA, JUSTICE N. L. UNTWALIA, JUSTICE P. S. KAILASAM

Read the judgment here

I. Introduction

The Minerva Mills Ltd. case involves the constitutional validity of certain provisions of the Sick Textile Undertakings Act, the Constitution, and the Nationalisation Act. The central issue is whether sections 4 and 55 of the Constitution (42nd Amendment) Act, 1976, transgress the limitations on the amending power of Parliament as laid down in the landmark Kesavananda Bharati case. [Paragraph 1]

II. Kesavananda Bharati Case and the Basic Structure Doctrine

In the Kesavananda Bharati case, the Supreme Court held that although Article 368 gives Parliament the power to amend the Constitution, this power cannot be exercised in a manner that damages the basic features or destroys the basic structure of the Constitution. [Paragraph 2]

The majority view, as summarized by nine judges, was that "Article 368 does not enable Parliament to alter the basic structure or framework of the Constitution." [Paragraph 38]

Petitioners' Challenge

The petitioners in the Minerva Mills case challenge the constitutional validity of sections 4 and 55 of the 42nd Amendment Act, 1976, based on the ratio of the majority judgment in Kesavananda Bharati. [Paragraph 2]

III. Conflict between Fundamental Rights and Directive Principles

The case revolves around the conflict between Fundamental Rights and Directive Principles of State Policy, particularly in light of the amendment to Article 31C, which subordinates Fundamental Rights to laws passed to effectuate Directive Principles. [Paragraph 5]

IV. Significance of Fundamental Rights and Directive Principles

The passage emphasizes the significance of both Fundamental Rights and Directive Principles in the governance of the country. Fundamental Rights are considered essential for the proper functioning of a democracy, while Directive Principles aim to make the Indian masses free from poverty and destitution. [Paragraphs 32, 38]

Amendment to Article 31C

The amendment to Article 31C gives primacy to Directive Principles over Fundamental Rights in case of conflict between them. This amendment is being questioned for potentially undermining the basic structure of the Constitution. [Paragraph 38]

V. Interplay between Fundamental Rights and Directive Principles

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The court must examine each law to determine if it is enacted for the purpose of giving effect to Directive Principles. The State's obligation to secure the Directive Principles determines whether a law will be protected under Article 31C. The court must decide if there is a real and substantial connection between a law and a Directive Principle, and must only protect provisions of the law that are necessary for giving effect to the Directive Principles. Specific Directive Principles in Articles 39 to 51 limit which laws can be protected under the amended Article 31C. [Paragraph 38]

VI. Judicial Review and the Basic Structure Doctrine

The power of judicial review, as conferred on the judiciary by Articles 32 and 226 of the Constitution, is a cardinal principle of the Indian Constitution. It gives the judiciary the task of upholding constitutional values and enforcing constitutional limitations. This power is an integral part of the constitutional system and cannot be taken away without affecting the basic structure of the Constitution. [Paragraph 38]

The validity of any law made by the Legislature must be liable to be called into question on the grounds laid down by the Constitution. The power to review any amendment made in the Constitution is also necessary to protect the basic structure of the Constitution. [Paragraph 38]

VII. Conclusion

The passage discusses the conflict between Directive Principles and Fundamental Rights in the Indian Constitution, particularly in light of the amendment to Article 31C. It argues that the amendment does not violate the basic structure of the Constitution, as it is within the power of the Parliament to amend Article 31C. However, the court must carefully examine each law to determine if it is enacted for the purpose of giving effect to Directive Principles and protect only those provisions that are necessary for this purpose. The power of judicial review is a cardinal principle of the Constitution and is necessary to uphold the basic structure doctrine.

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4. Sharad Birdhi Chand Sarda vs State of Maharastra

JUSTICE S. MURTAZA FAZAL ALI, JUSTICE A. VARADARAJAN AND JUSTICE SABYASACHI MUKHARJI

Read the judgment here

I. Introduction

This case revolves around the alleged murder of Manju by poisoning, for which her husband (the appellant) and two others were initially charged. The appellant was convicted by the trial court and sentenced to death, while the other two accused were acquitted by the High Court. The appellant challenged his conviction and sentence in the Supreme Court.

II. Principles of Circumstantial Evidence

The Supreme Court reiterated the well-established principles governing cases based on circumstantial evidence, as laid down in the landmark case of *Hanumant v. The State of M.P.* [1]

1. **The circumstances should be fully established:** The circumstances from which the conclusion of guilt is to be drawn should be fully established by the prosecution. [Paragraph 1]
2. **The facts should be conclusive:** The facts so established should be consistent only with the hypothesis of guilt and should exclude every other reasonable hypothesis except that of guilt. [Paragraph 2]
3. **The circumstances should be conclusive:** The circumstances should be conclusive and lead to only one irresistible inference of guilt. [Paragraph 3]
4. **Exclude all other hypotheses:** The chain of evidence must be so complete as to exclude all other reasonable hypotheses except that of guilt. [Paragraph 4]
5. **No reasonable doubt:** The chain of evidence must be complete, with no reasonable doubt of the accused's guilt. This is the "panchsheel" (five principles) of proof in cases based on circumstantial evidence. [Paragraph 5]

III. Benefit of Doubt

The Court emphasized that when two views are possible, one leading to the guilt of the accused and the other to his innocence, the benefit of doubt should go to the accused, entitling him to acquittal. [Paragraph 3]

IV. Evaluation of Evidence

Prosecution's Case

The Court examined the prosecution's case and found that it failed to establish several crucial links in the chain of circumstantial evidence:

1. **Cause of Death:** The possibility of cyanide in water or glass, or mechanical suffocation as the cause of death, was not conclusively

[1] [Paragraph 5]

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proven by the doctor's opinion, as per the High Court's findings. [Paragraph 2]

2. **Possession of Poison:** The prosecution miserably failed to prove that the appellant was in possession of the poison, either by direct or circumstantial evidence. [Paragraph 6(iii)]

3. **Opportunity to Administer Poison:** The circumstances surrounding the administration of poison were not conclusive, and certain factors were not considered during the trial. [Paragraph 5]

Deceased's Suicidal Tendencies

The Court found that the letters written by the deceased, Manju, pointed to a clear possibility and tendency for her to commit suicide due to desperation and frustration arising from her marital life. [Paragraph 6]

1. **Marital Problems:** The letters revealed Manju's loneliness, desolation, and feeling of being treated as a mere chattel in her marital home. [Paragraph 6]

2. **Psychological Analysis:** The Court referred to the analysis of suicide by Robert J. Kastenbaum, which supported the conclusion that Manju, being a sensitive and sentimental woman with a constant conflict between her mind and body, may have committed suicide due to the circumstances that came into existence. [Paragraph 6]

3. **Scholarly Support:** The Court cited the work of K. Hinchliffe, Douglas Hooper, and F. John Roberts in "The Melancholy Marriage," which found that marital problems contribute to attempted suicides and that ruptured personal relationships play a major part in the clinical picture of suicide cases. [Paragraph 6]

Witnesses' Reliability

The Court also questioned the reliability of the witnesses' evidence, citing several inconsistencies and contradictions with the content of Manju's letters. [Paragraph 6]

V. Conclusion

Based on the evaluation of the evidence, the Court concluded that the prosecution had failed to fulfill the essential requirements of a criminal case resting purely on circumstantial evidence. [Paragraph 6(i)]

The Court held that the High Court had erred in relying on decisions that were either inapplicable or did not support its view, and had committed a fundamental error of law by attempting to reinforce the prosecution's case with a false defense or plea to supply the lacuna. [Paragraph 6(iv), (vi)]

Ultimately, the Court found that two views were possible in the present case, and the question of a false defense did not arise. [Paragraph 6(x)]

Considering the benefit of doubt, the Court acquitted the appellant, overturning his conviction and death sentence. [Paragraph 3]

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5. A.R. Antulay vs R.S. Nayak & Anr.

JUSTICE SABYASACHI MUKHARJI, JUSTICE RANGANATH MISRA, JUSTICE G.L. OZA, JUSTICE B.C. RAY, JUSTICE S. NATARAJAN, JUSTICE M.N. VENKATACHALIAH AND JUSTICE S. RANGANATHAN

Read the judgment here

I. Introduction

This case revolves around the appeal filed by a former Chief Minister of Maharashtra, Abdul Rehman Antulay, challenging the legality of the trial proceedings against him. The appeal raises questions about the finality of judicial proceedings and whether a different bench of the Supreme Court can undo earlier pronouncements. The key issue is whether there has been a gross miscarriage of justice that warrants granting relief to the appellant. [Paragraph 8]

II. Background

Abdul Rehman Antulay, the appellant, was the Chief Minister of Maharashtra. On January 12, 1982, he resigned due to adverse findings in a court proceeding. On August 9, 1982, with the Governor's sanction, Ramdas Srinivas Nayak, the respondent, took action against Antulay. [Paragraph 28]

Antulay was charged with offenses in the Court of a Special Judge in Bombay in 1982. The Special Judge took cognizance of the offenses, and the case was later transferred to another Special Judge, who discharged Antulay in 1983. However, this decision was challenged, and the trial continued before multiple judges. The Supreme Court set aside the view of the Special Judge and directed the trial to be held by a judge of the Bombay High Court. Consequently, the case was transferred to the High Court, and the trial progressed despite some resistance from Antulay. [Paragraph 28]

III. Appellant's Contentions

The appellant, through his counsel Shri P.P. Rao, raised several arguments challenging the validity of the trial proceedings:

1. **Lack of Jurisdiction**: The appellant contended that the Supreme Court's direction for the trial to be conducted by a High Court judge was illegal and lacked jurisdiction, as the offenses could only be tried by a Special Judge appointed under the Criminal Law Amendment Act, 1952. [Paragraph 3(i)]

2. **Violation of Natural Justice**: The appellant argued that the direction related to an issue not before the Court, and no arguments were addressed on this matter. The appellant was not given an opportunity to make submissions, violating the principles of natural justice and the appellant's fundamental rights. [Paragraph 3(ii), (iii)]

3. **Deprivation of Fundamental Rights**: The appellant contended that the direction violated their fundamental rights, including the right to equality (Article 14) and the right to a fair trial (Article 21). [Paragraph 3(iii)]

4. **Lack of Appellate Rights**: The appellant argued that the transfer of the case to the High Court deprived them of the right to appeal, as the right of appeal is confirmed only in cases

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decided by the High Court in its Letters Patent jurisdiction. [Paragraph 8]

5. **Per Incuriam Decision**: The appellant claimed that the impugned direction was issued per incuriam, ignoring statutory provisions and binding precedents. [Paragraph 8]

6. **Mistake by the Court**: The appellant asserted that the direction for transfer was a clear mistake by the Court, and the appellant should not suffer due to the Court's error. [Paragraph 8]

IV. Respondent's Arguments

The respondent, represented by Shri Ram Jethmalani, argued against a different bench exerting appellate jurisdiction over an earlier five-judge bench decision. [Paragraph 7]

V. Jurisdiction and Transfer of Cases

The judgment extensively discusses the jurisdiction of courts and the power to transfer cases, particularly concerning the Criminal Law Amendment Act, 1952, and the Code of Criminal Procedure.

Criminal Law Amendment Act, 1952

The 1952 Act aimed to prevent corruption and bribery cases from bogging down ordinary criminal courts by earmarking existing sessions judges to try these offenses exclusively. The focus was on the types of offenses and the nature of offenders, rather than the qualifications of judges. [Paragraph 7]

Section 6 of the Act specified the offenses that could be tried by Special Judges appointed under the Act, while Section 7 provided for the exclusive jurisdiction of Special Judges to try these offenses. [Paragraph 14]

Code of Criminal Procedure

Section 407 of the Code of Criminal Procedure allowed for the transfer of cases pending before a Special Judge to another criminal court of equal or superior jurisdiction subordinate to a High Court, but not to the High Court itself. [Paragraph 6, 10]

Section 406 of the Code empowered the Supreme Court to transfer cases from one State to another or from one subordinate court to another subordinate court. [Paragraph 16]

Supreme Court's Power to Transfer Cases

The Supreme Court's power to transfer cases in criminal matters can be found in Article 139A of the Constitution or Section 406 of the Code of Criminal Procedure. [Paragraph 5]

However, the appellant argued that Section 407 cannot be used to transfer a case from a Special Judge to the High Court, as only persons appointed as Special Judges by the State Government can try such cases. [Paragraph 6]

The respondent contended that the Supreme Court, as an appellate court, has co-equal jurisdiction to exercise the power of transfer. [Paragraph 15]

VI. Violation of Fundamental Rights

The appellant argued that the direction issued by the Supreme Court violated their fundamental rights under Articles 14 (right to equality) and 21

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(right to life and personal liberty) of the Constitution.

Article 14 (Right to Equality)

The appellant contended that the transfer of the case to the High Court discriminated against them and violated the right to equality before the law. However, the Court held that the argument based on Article 14 was untenable, as the decision to allow such transfers had been finalized, and the idea that a trial by a High Court judge may not be fair was not valid. [Paragraph 19]

Article 21 (Right to Life and Personal Liberty)

The appellant argued that the direction deprived them of the right to a fair trial, as they were being tried by a court with no jurisdiction, violating Article 21 of the Constitution. [Paragraph 19]

However, the Court held that the allegation of infringement of Article 21 was unfounded, as the accused still had the right to appeal to the Supreme Court. [Paragraph 24]

VII. Natural Justice and Opportunity to be Heard

The appellant's argument that the direction issued by the Court violated natural justice seemed valid, as there was no discussion of the trial venue being shifted to the High Court, and the direction was made without consulting the parties' counsels. This disregard for the fundamental rules of natural justice was highlighted by Lord Diplock in a similar case. [Paragraph 25]

However, the respondent argued that the appellant did not protest when the trial was transferred to the High Court, which was actually beneficial to them. [Paragraph 26]

VIII. Finality of Judicial Proceedings

The judgment extensively discusses the finality of judicial proceedings and the principles governing the review or recall of court orders.

Finality of Judgments

The Court emphasized the importance of finality in judicial proceedings, stating that the law declared should be certain and final, and that reversing a decision of a higher court should only be done in exceptional circumstances. [Paragraph 49]

Review of Judgments

The appellant contended that the present appeal could be treated as an application for review under Article 137 of the Constitution. However, the Court held that the delay in filing the review application was inexplicable and rejected the plea for a review. [Paragraph 29, 35]

Quashing of Orders

The appellant's counsel argued that a judicial order can be quashed if it breaches natural justice or fundamental rights, relying on the decision in Prem Chand Garg v. Excise Commissioner. However, the Court held that the direction dated 16.2.1984 should not be quashed based on the grounds put forward by the appellant. [Paragraph 36, 42]

Inherent Powers of the Court

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The appellant's counsel relied on the maxim "actus curiae neminem gravabit" (an act of the court shall prejudice no one) to argue that the Court has the duty to correct its own mistakes. While one judge believed that the Court cannot exercise inherent powers to correct an injustice caused by an earlier order, another judge held that the Court does have the power to recall or modify an earlier order if there is something fundamentally wrong with it, deriving this power from Article 142 of the Constitution or the inherent powers of the Court. [Paragraph 48]

IX. Judgment and Conclusion

After considering the arguments from both sides, the Court dismissed the appeal, holding that the appellant's rights had not been violated and that the direction issued by the Supreme Court was not manifestly incorrect or patently without jurisdiction. [Paragraph 51]

The Court emphasized the importance of upholding public purity and investigating legal and criminal allegations in accordance with the law, while also stating that any wrongs done to the accused should be remedied without causing further harm to public confidence in the administration of justice. [Paragraph 13]

The Court set aside the impugned directions, finding them to be in violation of Constitutional rights and principles of natural justice. [Paragraph 13]

Ultimately, the Court held that as long as Section 7 of the Criminal Law Amendment Act, 1952, is in effect, no court, including the Supreme Court, can act against it. The Court did not possess the power to transfer the proceedings from the Special Judge to the High Court. [Paragraph 14, 15]

The judgment underscores the principles of finality in judicial proceedings, the importance of adhering to statutory provisions and constitutional rights, and the need to balance the administration of justice with the rights of the accused.

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6. Kihoto Hollohan vs Zachillhu and Others

JUSTICE LAUT MOHAN SHARMA, JUSTICE M.N. VENKATACHALIAH, JUSTICE J.S. VERMA, JUSTICE K. JAYACHANDRA REDDY AND JUSTICE S.C. AGRAWAL

Read the judgment here

I. Introduction

The judgment pertains to the constitutional validity of the Constitution (Fifty-Second Amendment) Act, 1985, which introduced the Tenth Schedule to the Constitution of India. The Tenth Schedule, also known as the Anti-Defection Law, was enacted to combat the evil of political defections, which had become a matter of national concern. The judgment addresses various constitutional issues raised regarding the Tenth Schedule and its provisions.

II. Background

The judgment arose from a Transfer Petition (No. 40 of 1991) seeking the transfer of a Writ Petition (Rule No. 2421/90) from the High Court of Guwahati to the Supreme Court. The Writ Petition challenged the constitutional validity of the Constitution (Fifty-Second Amendment) Act, 1985. Several other related petitions, appeals, and matters were also heard together. [Paragraph 1]

III. Key Issues

The key issues addressed in the judgment were:

1. The constitutional validity of the Tenth Schedule, particularly Paragraph 7, which sought to exclude the jurisdiction of courts in matters related to the disqualification of members of Parliament or State Legislatures.
2. The applicability of the proviso to Article 368(2) of the Constitution, which requires ratification by at least half of the State Legislatures for certain amendments.
3. The impact of the Tenth Schedule on the basic features of the Constitution, such as parliamentary democracy, freedom of speech, and the rule of law.
4. The role of the Speaker or Chairman in adjudicating disputes related to disqualification of members and the potential for bias.
5. The interpretation of certain provisions of the Tenth Schedule, such as the meaning of "any direction" in Paragraph 2(1)(b) and the distinction between "defection" and "split" in Paragraph 3.

IV. Contentions and Arguments

The petitioners argued that the Tenth Schedule violated fundamental principles of parliamentary democracy, such as freedom of speech, dissent, and conscience. They contended that punishing elected representatives for crossing the floor negated democratic principles. [Paragraph 14, 15]

The respondents argued that the Tenth Schedule created a non-justiciable constitutional area dealing with complex political issues and that the exclusion of this area was constitutionally preserved. They claimed that the subject matter was not amenable to judicial power and that the Legislature was entitled to deal with it exclusively. [Paragraph 9]

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The petitioners also argued that the distinction between "defection" and "split" in the Tenth Schedule was illogical. [Paragraph 21]

V. Findings and Conclusions

Validity of the Tenth Schedule

The Supreme Court upheld the constitutional validity of the Tenth Schedule, except for Paragraph 7, which was declared invalid. [Paragraph 11]

Paragraph 7 and Exclusion of Judicial Review

The Court held that Paragraph 7 of the Tenth Schedule, which sought to exclude the jurisdiction of courts in matters related to the disqualification of members, was unconstitutional. The Court reasoned that the finality clause in Paragraph 6(1) did not exclude the jurisdiction of the High Courts and the Supreme Court. [Paragraph 7, 33, 35]

The Court stated that the power of the Supreme Court could not be excluded by parliamentary legislation, and the exclusion of judicial review would be destructive of a basic feature of the Constitution. [Paragraph 35]

Applicability of the Proviso to Article 368(2)

The Court held that the Constitution (Fifty-Second Amendment) Act, 1985, was unconstitutional because it was not ratified by the required number of State Legislatures before being presented to the President for his assent, as mandated by the proviso to Article 368(2) of the Constitution. [Paragraph 3, 4, 29, 30]

The Court rejected the argument that the proviso to Article 368(2) excluded the doctrine of severability, which would have allowed the valid parts of the amendment to be upheld while striking down the invalid parts. [Paragraph 29]

Basic Features of the Constitution

The Court acknowledged that democracy and free and fair elections were essential features of the Constitution, and an independent adjudicatory machinery for resolving disputes related to members of the House was necessary. [Paragraph 8]

However, the Court rejected the argument that the investiture of determinative jurisdiction in the Speaker or Chairman to adjudicate disputes under the Tenth Schedule was violative of a basic feature of the Constitution. The Court emphasized the high status and impartiality of the office of the Speaker in a parliamentary democracy. [Paragraph 45, 46, 47]

Interpretation of Provisions

Regarding the interpretation of "any direction" in Paragraph 2(1)(b) of the Tenth Schedule, the Court stated that the disqualification imposed by this paragraph must be construed in a manner that does not unduly impinge on the freedom of speech of a member and prevents political defections motivated by the lure of office. [Paragraph 49]

The Court upheld the validity of the provisions distinguishing between "defection" and "split" in Paragraph 3 of the Tenth Schedule. [Paragraph 21]

VI. Operative Order

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The Court allowed the Transfer Petition (No. 40 of 1991) and withdrew the Writ Petition (No. 17 of 1991) for the purpose of deciding the constitutional issues and declaring the law on the matter. The factual controversies raised in the Writ Petition were remitted to the High Court of Guwahati for disposal in accordance with the principles declared by the majority. [Paragraph 11, 52]

The Court declared the entire Constitution (Fifty-Second Amendment) Act, 1985, unconstitutional, except for Paragraph 7 of the Tenth Schedule, which was struck down. All decisions made under the Tenth Schedule were declared null and void. [Paragraph 9, 10]

In-text citations: [Paragraph 1], [Paragraph 7], [Paragraph 9], [Paragraph 14, 15], [Paragraph 21], [Paragraph 3, 4, 29, 30], [Paragraph 8], [Paragraph 45, 46, 47], [Paragraph 49], [Paragraph 11, 52], [Paragraph 9, 10]

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7. Indra Sawhney and Ors. Etc. Etc. vs Union of India and Ors. Etc. Etc.

CHIEF JUSTICE M.H. KANIA, JUSTICE M.N.VENKATACHALIAH, JUSTICE S. RATNAVEL PANDIAN, JUSTICE DR. T.K. THOMMEN, JUSTICE A.M. AHMADI, JUSTICE KULDIP SINGH, JUSTICE P.B. SAWANT, JUSTICE R.M.SAHAI AND JUSTICE B.P. JEEVAN REDDY

Read the judgment here

I. Introduction

A. Background on the Indian Constitution and its provisions for reservations

The Indian Constitution, drafted by the Constituent Assembly after India's independence, aimed to secure justice, liberty, equality, and fraternity for all citizens. The framers were aware of the historic injustices and inequities afflicting Indian society, particularly the caste system's oppressive nature and the resulting social, educational, and economic backwardness of certain communities.

To address these issues, the Constitution incorporated provisions for affirmative action and reservations (quotas) for historically disadvantaged groups. Article 15(4) and Article 16(4) allowed the State to make special provisions for the advancement of socially and educationally backward classes of citizens (SEBCs) and their representation in educational institutions and public employment, respectively.

The Constitution did not define the criteria for identifying SEBCs, leaving it to the State to determine which groups qualified as "backward classes." However, it was clear that the intent was to uplift communities that had suffered discrimination and were underrepresented in education and public services.

B. Brief overview of the Indra Sawhney case and its significance

The Indra Sawhney case, decided by a nine-judge bench of the Supreme Court in 1992, is a landmark judgment that laid down authoritative guidelines on the implementation of reservations under Article 16(4).

The case arose from the Central Government's decision in 1990 to implement the recommendations of the Second Backward Classes Commission (Mandal Commission), which had identified SEBCs and recommended 27% reservation for them in civil services and public sector undertakings. This was in addition to the existing 22.5% reservation for Scheduled Castes and Scheduled Tribes.

The Indra Sawhney judgment addressed several crucial questions, including the criteria for identifying SEBCs, the permissible extent of reservations, the validity of reservations in promotions, and the scope of judicial review in such matters. The Court's rulings provided a comprehensive framework for the constitutional application of reservations, seeking to balance the principles of equality and social justice.

The judgment's significance lies in its attempt to reconcile the competing claims of different sections of society and lay down guidelines for the fair and judicious implementation of reservations, ensuring they remain within the constitutional boundaries

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while fulfilling their intended purpose of uplifting historically disadvantaged communities.

II. Historical Context and Constitutional Debates

A. Debates in the Constituent Assembly on Article 16 (draft Article 10)

The debates in the Constituent Assembly on draft Article 10 (which later became Article 16) provide valuable context for understanding the intent behind the provisions related to equality of opportunity in public employment. Several key points emerged from these debates:

1. **Inclusion of the term "backward"**: The Drafting Committee, chaired by Dr. B.R. Ambedkar, deliberately inserted the word "backward" before "class of citizens" in draft Article 10(3) (corresponding to Article 16(4)). This was done to clarify that the reservation of appointments or posts was intended for communities that were socially and educationally backward and not adequately represented in state services.

2. **Concerns about the term "backward"**: Some members of the Constituent Assembly, particularly those representing Scheduled Castes and Scheduled Tribes, expressed apprehension that the term "backward" was too vague and could be exploited by groups other than the truly disadvantaged communities.

3. **Rationale for using "backward"**: K.M. Munshi, a member of the Drafting Committee, explained that the term "backward" was chosen as the best possible generic term to refer to classes of people who were so backward that they required special protection in state services. He clarified that the term did not matter whether they were called "untouchables" or "touchables," belonging to this community or that, as long as they were a class of people who were backward and required special protection.

4. **Balancing efficiency and representation**: The debates reflected a desire to strike a balance between achieving the highest efficiency in state services and ensuring adequate representation of backward classes in these services. The reservation of appointments or posts for backward classes was seen as a means to extend the opportunity to serve the country to all communities, including the backward ones.

5. **Minority of seats**: Dr. Ambedkar emphasized that the seats to be reserved for backward classes should be confined to a minority of seats to ensure that the principle of equality of opportunity was not entirely undermined.

These debates highlight the intent behind Article 16(4) to provide a mechanism for the inclusion of socially and educationally backward classes in state services while maintaining a balance with the principle of equality of opportunity enshrined in Article 16(1).

B. Early Supreme Court decisions on Articles 16 and 15

The early Supreme Court decisions on Articles 16 and 15 played a crucial role in shaping the interpretation and application of these provisions. Two significant cases from this period are:

1. **State of Madras v. Smt. Champakam Dorairajan (1951)**: In this case, the Supreme Court struck down a government order that

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apportioned seats in medical and engineering colleges based on caste and religion. The court held that such classification violated Articles 15(1) and 29(2) of the Constitution, as Article 15 did not contain a provision corresponding to Article 16(4) at that time.

2. **Venkataraman v. State of Madras (1951)**: This case, decided on the same day as Champakam Dorairajan, dealt with a similar government order that reserved posts in public services based on caste and religion. The court upheld the reservation for Harijans (Scheduled Castes) and Backward Hindus but struck down the reservation for other communities, as it violated Articles 16(1) and 16(2).

These early decisions established that while caste-based classification was permissible for reservations under Article 16(4) for backward classes, it was impermissible under Article 15 in the absence of a provision similar to Article 16(4).

C. The First Amendment to the Constitution and the addition of Article 15(4)

In response to the Champakam Dorairajan decision, the Parliament enacted the First Amendment to the Constitution in 1951, introducing Article 15(4). This amendment allowed the State to make "any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

During the parliamentary debates on this amendment, Dr. B.R. Ambedkar, the then Law Minister, clarified that the term "backward classes" referred to a "collection of certain castes." He stated that the amendment was necessary to bring Articles 15 and 29 in line with Articles 16(4), 46, and 340, allowing reservations for backward classes in educational institutions, just as it was permitted in public services.

The addition of Article 15(4) through the First Amendment was a significant development, as it provided a constitutional basis for reservations in educational institutions for socially and educationally backward classes, similar to the provision for reservations in public services under Article 16(4).

These historical debates and early Supreme Court decisions laid the foundation for the interpretation and application of Articles 16 and 15, particularly concerning the identification and reservation for backward classes in public services and educational institutions.

III. The Mandal Commission and its Report

A. Establishment and mandate of the Mandal Commission

The Second Backward Classes Commission, popularly known as the Mandal Commission, was established by the President of India on January 1, 1979, under Article 340 of the Constitution. The Commission was chaired by B.P. Mandal and was tasked with the following terms of reference:

1. To determine the criteria for defining the socially and educationally backward classes.
2. To recommend steps to be taken for the advancement of the socially and educationally backward classes.
3. To examine the desirability of providing reservations in appointments or posts for such

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backward classes under the Union or any State, if they are not adequately represented.

4. To present a report to the President, setting out the facts and making appropriate recommendations.

The Commission was empowered to obtain necessary information from the Central and State Governments, as well as other authorities, organizations, and individuals. It was also authorized to hold sittings and appoint sub-committees as deemed necessary.

B. Criteria and methodology adopted by the Commission

The Mandal Commission adopted a comprehensive approach to identify the socially and educationally backward classes (SEBCs). It conducted an extensive socio-educational field survey across the country, involving sociologists, research organizations, and specialized agencies. The Commission also issued questionnaires to Central and State Governments, as well as the general public, and collected evidence through public hearings.

The Commission evolved 11 indicators or criteria for determining social and educational backwardness, grouped under three broad heads: social, educational, and economic. These indicators included factors such as social perception, dependence on manual labor, early marriage, female work participation, school dropout rates, literacy levels, family assets, housing conditions, and access to drinking water.

The Commission applied a multiple approach, considering various sources such as the socio-educational field survey, Census reports (particularly the 1961 Census for identifying tribal communities), personal knowledge gained through extensive touring, and lists of OBCs notified by various State Governments.

C. Criticisms and controversies surrounding the Commission's report

The Mandal Commission's report and recommendations faced several criticisms and controversies:

1. **Caste-based identification**: The Commission was criticized for relying solely on the caste system as the basis for identifying backward classes, perpetuating caste divisions and contradicting the constitutional goal of a casteless society.

2. **Inadequate survey**: Some argued that the socio-educational field survey conducted by the Commission was cursory and inadequate, covering only a small fraction of the population.

3. **Reliance on outdated data**: The Commission's use of the 1931 caste-wise Census data was criticized as outdated and irrelevant for identifying backwardness in the present context.

4. **Over-inclusion and under-inclusion**: Concerns were raised about certain castes or communities being wrongly included or excluded from the list of OBCs, leading to potential errors in identification.

5. **Lack of objective criteria**: Critics argued that the criteria and methodology adopted by the Commission lacked objectivity and scientific rigor, leading to arbitrary and subjective identification of backward classes.

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6. **Perpetuation of caste divisions**: There were apprehensions that the implementation of the Commission's recommendations would revitalize caste divisions, leading to social tensions and conflicts.

7. **Efficiency concerns**: Some argued that the proposed reservations for OBCs would compromise the efficiency of administration and promote mediocrity over merit.

Despite these criticisms, the Mandal Commission's report formed the basis for the Office Memorandums issued by the Government of India in 1990 and 1991, providing for reservations for SEBCs in central government services.

IV. Key Issues and Arguments in the Case

A. Meaning of 'backward class of citizens' under Article 16(4)

The meaning and scope of the term 'backward class of citizens' under Article 16(4) of the Constitution was a crucial issue in this case. The key arguments and observations were:

- The expression 'backward class' is not defined in the Constitution. The Court held that it is much wider than the 'socially and educationally backward classes' referred to in Article 15(4) and Article 340. It includes Scheduled Castes, Scheduled Tribes, and other backward classes.

- A caste can be and quite often is a social class in India. If a caste is socially backward, it would be a backward class for the purposes of Article 16(4). Among non-Hindus, there are several occupational groups, sects, and denominations which are socially backward and represent backward social collectives under Article 16(4).

- The Court rejected the argument that the backward classes contemplated by Article 16(4) should be situated similarly to the Scheduled Castes/Scheduled Tribes. Backwardness is a relative term and must be judged by the general level of advancement of the entire population.

- Identification of backward classes can be done with reference to castes among and along with other occupational groups, classes, and sections of people. The central idea should be to consider all available groups in society.

B. Identification of backward classes: caste-based or other criteria?

The Court examined whether caste alone can be the basis for identifying backward classes or if other criteria should also be considered:

- The Court held that neither the Constitution nor the law prescribes the procedure or method for identifying backward classes. This must be left to the authority appointed for the task.

- While caste cannot be the sole or dominant criterion, it is a relevant factor for determining social backwardness, especially among Hindus. The Court observed that in the Indian context, caste is the primary index of social backwardness.

- The Court approved the use of other criteria like traditional occupation, poverty, place of residence, lack of education, etc., in addition to caste, for identifying backward classes.

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- It was permissible for the government to identify backward classes based on occupation-cum-income without reference to caste, if advised to do so.

C. Permissibility of reservations in promotions

The Court examined whether Article 16(4) permits reservations in promotions for backward classes:

- The majority view was that Article 16(4) does not permit reservations in the matter of promotions. Reservations under this provision are confined to initial appointments only.
- However, the Court directed that this ruling would operate prospectively and not affect promotions already made. Existing reservations in promotions were allowed to continue for five years to enable revision of relevant rules.
- The Court clarified that it would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in promotions without compromising efficiency.

D. The 50% ceiling on reservations

The Court considered the extent to which reservations can be made under Article 16(4):

- The Court held that the reservations contemplated in Article 16(4) should not exceed 50% of the appointments or posts in a cadre or service under the State.
- While 50% was to be the rule, the Court recognized that in far-flung and remote areas, a relaxation of this strict rule may become imperative due to the conditions peculiar to those areas.
- The 50% rule was to be applied to each year's vacancies and not to the total strength of the cadre or service.
- The Court overruled the decision in Devadasan v. Union of India to the extent it was inconsistent with the 50% ceiling.

The Court's judgment provided authoritative guidance on these crucial issues related to reservations for backward classes under Article 16(4) of the Constitution.

V. The Supreme Court's Judgment

A. Composition of the larger Constitutional Bench

A nine-judge Constitutional Bench of the Supreme Court was constituted to hear and decide on the issues related to reservations for backward classes in government services. The Bench was headed by Chief Justice M.H. Kania and comprised of Justices M.N. Venkatachaliah, S. Ratnavel Pandian, T.K. Thommen, A.M. Ahmadi, Kuldip Singh, P.B. Sawant, R.M. Sahai, and B.P. Jeevan Reddy.

B. Major holdings and rationale

The Supreme Court delivered a comprehensive judgment addressing various aspects of reservations for backward classes under Article 16(4) of the Constitution. The major holdings and rationale are as follows:

1. **Article 16(4) is not an exception to Article 16(1)**: Article 16(4) is an instance of classification and does not create an exception to the principle of equality enshrined in Article 16(1). It permits reasonable classification for ensuring adequate

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representation of backward classes in public services.

2. **Identification of Backward Classes**: The Court held that caste could be a relevant factor in identifying backward classes, but economic criteria alone cannot be the sole basis. The identification of backward classes should be based on social, educational, and economic backwardness.

3. **Creamy Layer Exclusion**: The Court directed the government to exclude the "creamy layer" (socially advanced persons/sections) from the list of Other Backward Classes (OBCs) to ensure that the benefits of reservation reach the truly deserving.

4. **50% Ceiling on Reservations**: The Court upheld the 50% ceiling on reservations as a general rule but allowed for exceptional circumstances where this limit could be relaxed in remote and far-flung areas with specific justification.

5. **Reservations in Promotions**: The Court held that Article 16(4) does not permit reservations in promotions, but this ruling would have prospective effect and not affect promotions already made. The government was given five years to revise the relevant rules.

6. **Anti-Merit Argument**: The Court rejected the argument that reservations are anti-meritorious, stating that the rule of reservation cannot be called anti-meritorious, but there may be certain services and posts where it may not be advisable to apply reservations.

7. **Permanent Body for Inclusion/Exclusion**: The Court directed the government to create a permanent body, in the nature of a Commission or Tribunal, to examine complaints of over-inclusion or under-inclusion of groups in the OBC list and to advise the government on such matters.

C. Directions to the Government on implementation

The Supreme Court issued the following directions to the Government of India and State Governments regarding the implementation of reservations:

1. Constitute a permanent body within four months to entertain, examine, and recommend requests for inclusion and complaints of over-inclusion or under-inclusion in the OBC lists.

2. Specify the criteria for excluding the "creamy layer" from the OBC lists within four months.

3. Implement the unamended Office Memorandum dated August 13, 1990, providing 27% reservation for OBCs in central government services.

4. Create a permanent machinery, either a Commission or Committee, within a reasonable time to examine requests for inclusion or exclusion of any caste, community, or group in the OBC list and to advise the government on such matters.

The Court clarified that its directions and conclusions should not be construed as an endorsement or rejection of the Mandal Commission Report's recommendations. The Court refrained from scrutinizing the adequacy of the exercise done by the Mandal Commission, leaving it to the newly constituted permanent body to examine such complaints.

VI. Analysis and Impact

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A. Significance of the judgment in interpreting Constitutional provisions

The Indra Sawhney judgment is a landmark decision that has significantly impacted the interpretation and implementation of constitutional provisions related to reservations and affirmative action in India. The judgment provided a comprehensive analysis of Articles 16(4), 16(1), and other relevant provisions, clarifying their scope and limitations.

One of the key aspects of the judgment was the interpretation of the term "backward class of citizens" under Article 16(4). The Court held that caste alone cannot be the sole criterion for identifying backward classes, and social, educational, and economic backwardness must be considered. This interpretation aimed to ensure that reservations benefit the truly disadvantaged sections of society, irrespective of their caste or community.

The judgment also addressed the extent of reservations permissible under the Constitution. While the Court did not lay down a rigid 50% cap on reservations, it emphasized that reservations should be limited to a minority of seats or positions to maintain the principle of equality of opportunity enshrined in Article 16(1).

Furthermore, the Court clarified that reservations in promotions are constitutionally impermissible, as once individuals from backward classes enter the service, they should be treated equally with others, and further reservations would perpetuate inequality.

B. Implications for reservation policies and affirmative action

The Indra Sawhney judgment has had far-reaching implications for reservation policies and affirmative action programs in India. It has provided a framework for identifying backward classes and determining the extent of reservations, ensuring that such measures are narrowly tailored and address the specific issues of social and educational backwardness.

The judgment has also prompted the establishment of permanent bodies or commissions at the central and state levels to periodically review and recommend the inclusion or exclusion of groups from the list of backward classes. This mechanism aims to ensure that reservations remain relevant and targeted towards the intended beneficiaries.

Additionally, the judgment has led to the adoption of the "creamy layer" concept, which excludes economically advanced sections from availing reservations, even if they belong to a backward class. This approach aims to ensure that the benefits of reservations reach the most deserving and underprivileged sections of society.

However, the implementation of the judgment has faced challenges, as different states have adopted varying approaches to identifying backward classes and determining the extent of reservations. This has led to ongoing debates and legal challenges regarding the interpretation and application of the judgment's principles.

C. Ongoing debates and challenges in implementing the judgment

Despite the Indra Sawhney judgment's attempt to provide clarity on the issue of reservations, several debates and challenges persist in its implementation:

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1. **Identification of backward classes**: The criteria for identifying backward classes remain a contentious issue, with debates surrounding the weightage given to caste, economic status, and other factors. Different states have adopted varying approaches, leading to inconsistencies and legal challenges.

2. **Extent of reservations**: While the judgment emphasized limiting reservations to a minority of seats or positions, the precise percentage remains a subject of debate. Some argue for a strict 50% cap, while others advocate for flexibility based on the specific circumstances and the degree of backwardness.

3. **Reservation in promotions**: The judgment's prohibition on reservations in promotions has faced opposition from certain quarters, who argue that it perpetuates the existing disparities and hinders the representation of backward classes in higher echelons of employment.

4. **Intersectionality of backwardness**: There are ongoing discussions on how to address the intersectionality of backwardness, where individuals or groups face multiple forms of disadvantage based on factors such as gender, disability, or geographical location, in addition to caste or economic status.

5. **Periodic review and updation**: Ensuring regular and effective review of the lists of backward classes and the extent of reservations remains a challenge, as it requires continuous monitoring and adaptation to changing social and economic conditions.

Despite these challenges, the Indra Sawhney judgment remains a significant milestone in the pursuit of social justice and equality in India. Its principles continue to guide policymakers, courts, and civil society in shaping and implementing affirmative action measures that aim to uplift the disadvantaged sections of society while maintaining the delicate balance between equality and equity.

VII. Conclusion

A. Summary of the key takeaways

The Supreme Court's judgment in the Indra Sawhney case is a landmark decision that provides clarity on the scope and implementation of reservations for backward classes under Article 16(4) of the Constitution. The key takeaways from the judgment are:

1. Article 16(4) is not an exception to Article 16(1) but an instance of classification permitted under Article 16(1). It allows for reasonable classification and reservation for backward classes in public employment.

2. The expression "backward class of citizens" in Article 16(4) cannot be determined solely based on economic criteria. Caste can be a relevant factor in identifying social and educational backwardness, but it should not be the sole criterion.

3. The identification of backward classes should be based on a combination of social, educational, and economic factors, and the "means test" can be applied to exclude the creamy layer from the benefits of reservation.

4. The backward classes can be further categorized into backward and more backward categories for the purpose of equitable distribution of reservations.

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5. The total reservations under Article 16(4) should not exceed 50% of the available positions, except in extraordinary circumstances. This 50% rule is a rule of caution and not an inflexible rule.

6. Article 16(4) does not permit reservations in the matter of promotions, but the government can extend concessions and relaxations to the reserved categories in promotions without compromising efficiency.

7. The government should establish a permanent body to examine requests for inclusion or exclusion of groups from the list of backward classes, and its advice should ordinarily be binding.

B. Relevance of the judgment in contemporary India

The Indra Sawhney judgment remains highly relevant in contemporary India, where the issue of reservations for backward classes continues to be a contentious and politically charged topic. The judgment provides a balanced approach, recognizing the need for affirmative action while also setting reasonable limits to ensure that the principles of equality and merit are not completely disregarded.

The judgment's emphasis on a comprehensive and periodic review of the lists of backward classes is crucial in ensuring that the benefits of reservation reach the truly deserving sections of society. It also highlights the importance of transparency and accountability in the identification process, which can help address concerns of over-inclusion or under-inclusion.

Furthermore, the judgment's recognition of the persistent social and educational backwardness of certain communities, even after decades of independence, underscores the need for continued efforts to uplift these sections and provide them with equal opportunities.

C. Future prospects and the way forward

While the Indra Sawhney judgment provides a robust framework for the implementation of reservations, there are still challenges that need to be addressed in the future:

1. Ensuring effective implementation: The judgment's directives, such as the establishment of permanent bodies to review the lists of backward classes, need to be implemented in letter and spirit by the central and state governments.

2. Periodic review and updation: The lists of backward classes should be periodically reviewed and updated to reflect the changing socio-economic realities and to ensure that the benefits reach the most deserving sections.

3. Addressing concerns of over-inclusion and under-inclusion: The permanent bodies should address genuine concerns of over-inclusion or under-inclusion of certain communities in the lists of backward classes, based on objective criteria and data.

4. Promoting social mobility: While reservations are a necessary measure, efforts should also be made to promote social mobility and upliftment of backward classes through targeted educational and economic initiatives, enabling them to compete on equal footing in the long run.

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5. Building consensus: The issue of reservations often leads to polarization and social tensions. Efforts should be made to build consensus among various stakeholders through dialogue, awareness campaigns, and a better understanding of the rationale behind affirmative action.

The Indra Sawhney judgment provides a solid foundation for addressing the complex issue of reservations for backward classes. However, its effective implementation and periodic review, coupled with efforts to promote social mobility and consensus-building, will be crucial in ensuring that the constitutional goals of equality and social justice are achieved in a harmonious and sustainable manner.

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8. S.R. Bommai and Ors. vs Union of India and Ors.

JUSTICE S. RATNAVEL PANDIAN, JUSTICE A.M. AHMADI, JUSTICE KULDIP SINGH, J.S. VERMA, JUSTICE P.B. SAWANT, JUSTICE K. RAMASWAMY, JUSTICE S.C. AGRAWAL, JUSTICE YOGESHWAR DAYAL AND JUSTICE B.P. JEEVAN REDDY

Read the judgment here

I. Introduction

A. Brief background on the case (S.R. Bommai v. Union of India)

The case of S.R. Bommai v. Union of India is a landmark decision by the Supreme Court of India, dealing with the scope and limits of the President's power to dismiss a State Government under Article 356 of the Constitution. The case arose from the dismissal of several State Governments by the Union Government in 1989 and 1992, including the Governments of Karnataka, Meghalaya, Nagaland, Madhya Pradesh, Himachal Pradesh, and Rajasthan.

The petitioners, including S.R. Bommai, the former Chief Minister of Karnataka, challenged the validity of the Presidential Proclamations issued under Article 356, which led to the dismissal of their respective State Governments and the imposition of President's Rule.

B. Importance of the case in the context of Indian federalism and Centre-State relations

The case of S.R. Bommai v. Union of India is of immense significance in the context of Indian federalism and Centre-State relations. It addresses the delicate balance of power between the Union and the States, and the circumstances under which the Union can intervene in the affairs of a State.

The case highlights the importance of preserving the federal structure of the Constitution, which is a basic feature of the Indian polity. It emphasizes the need to maintain the autonomy and independence of the States within their respective spheres, while also recognizing the Union's responsibility to ensure that the State Governments function in accordance with the provisions of the Constitution.

The judgment in this case has far-reaching implications for the interpretation and application of Article 356, which has been a contentious issue in Centre-State relations. It seeks to strike a balance between the Union's power to intervene in exceptional circumstances and the need to protect the democratic principles and federal structure enshrined in the Constitution.

Overall, the case of S.R. Bommai v. Union of India is a landmark decision that has shaped the understanding of Indian federalism and the dynamics of Centre-State relations, providing guidance on the appropriate use of the President's power under Article 356 and the principles of judicial review in such matters.

II. Understanding Article 356 of the Indian Constitution

A. Provisions of Article 356

Article 356 of the Indian Constitution deals with the failure of constitutional machinery in a state. It empowers the President to issue a proclamation, if satisfied that a situation has arisen where the

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government of a state cannot be carried on in accordance with the provisions of the Constitution. Upon issuing such a proclamation, the President can assume to himself all or any of the functions of the state government and all or any of the powers vested in the Governor. The President can also declare that the powers of the state legislature shall be exercisable by or under the authority of Parliament.

The key provisions of Article 356 are:

1. The President can issue a proclamation on receipt of a report from the Governor of the state or based on other information available to him.

2. The proclamation must be approved by both Houses of Parliament within two months. If approved, the proclamation can remain in force for six months. It can be extended further by six months at a time, but not beyond three years.

3. The President can make incidental and consequential provisions as appear necessary to give effect to the proclamation, including suspending the operation of any provision of the Constitution relating to any body or authority in the state.

4. The President cannot assume to himself any of the powers vested in the High Court or suspend the provisions relating to High Courts.

B. Historical context and the intent behind Article 356

The provisions related to the failure of constitutional machinery in states have their origins in the Government of India Act, 1935. Sections 93 and 45 of this Act allowed the Governor-General and Governors to take over the administration of provinces if they were satisfied that the governance could not be carried on in accordance with the Act.

During the framing of the Indian Constitution, the Constituent Assembly debated the need for such a provision. The intent was to ensure that the Union could intervene in case of a breakdown of the constitutional machinery in a state, as a measure to protect and preserve the Constitution. However, it was also recognized that this power should be used sparingly and as a last resort.

C. Debates in the Constituent Assembly on Article 356

The draft Articles 277-A and 278 (corresponding to the present Articles 355 and 356) were discussed in the Constituent Assembly on August 3, 1949. Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, explained the rationale behind these provisions:

"It is agreed that our Constitution, notwithstanding the many provisions which are contained in it, whereby the Centre has been given powers to override the Provinces, none-the-less is a Federal Constitution and when we say that Constitution is a Federal Constitution, it means this, that the provinces are as sovereign in their field which is left to them by the Constitution as the Centre is in the field which is assigned to it."

He further stated that the intervention of the Centre should not be seen as a "wanton invasion" but as an obligation imposed by the Constitution to maintain it in the states. The hope was that these provisions would remain a "dead letter" and would be used only in exceptional circumstances.

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During the debates, some members expressed concerns about the potential misuse of this power. Dr. Ambedkar acknowledged these concerns and stated that the President would issue a clear warning to the errant state before taking action under this Article. He also mentioned that the President could order fresh elections, allowing the people to settle matters, before resorting to the use of this Article.

The debates in the Constituent Assembly highlight the delicate balance that the framers sought to achieve between preserving the federal structure and ensuring the maintenance of the Constitution in the states. While recognizing the need for such a provision, they hoped it would be used sparingly and as a measure of last resort.

III. Scope and Limitations of Judicial Review of Article 356

A. Divergent views among the judges

The judges on the constitutional bench expressed divergent views regarding the scope and limitations of judicial review of the President's proclamation under Article 356. Some key viewpoints are as follows:

- Chief Justice Beg held that the Court cannot question the President's satisfaction due to Articles 365(5) and 74(2). The Court can only decide based on facts admitted or placed by the President. However, the Court can interfere if the power is used in a grossly perverse or unreasonable manner, or for an extraneous purpose.
- Justice Chandrachud opined that judicial scrutiny is available to see if the reasons bear a rational nexus with the proposed action. The Court cannot sit in judgment over the President's satisfaction or consider if another view is possible.
- Justice Bhagwati held that the Court cannot probe deeper into the reasons beyond what is disclosed. The Court cannot inquire if there were other reasons.
- Justice Gupta stated that the Court's scrutiny is limited to examining if the exercise of power is mala fide, based on extraneous grounds, or if there is no satisfaction at all.
- Justice Fazal Ali emphasized that the Court lacks resources to assess political needs, feelings, or aspirations that may necessitate a particular action.

B. Justiciability and the 'political question' doctrine

The Court grappled with the issue of justiciability, i.e., whether the President's satisfaction under Article 356 is amenable to judicial review or falls under the 'political question' doctrine, which restricts judicial intervention in certain political matters.

Some key observations:

- The expression 'or otherwise' in Article 356 indicates a wide range of materials, including imponderables and inferences, which may be considered by the President. Such subjective satisfaction lacks judicially manageable standards, making the controversy non-justiciable.
- Only cases permitting objective standards for determining the failure of constitutional machinery are justiciable. The remaining cases involving significant subjective

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satisfaction are subject to political scrutiny and correction.

- The Court cannot interdict the President's power under Article 356 unless it is shown to be mala fide. Sufficient caution must be exercised, and a strong prima facie case must be made before calling upon the executive to answer.

C. Separation of powers and the role of the judiciary

The Court acknowledged the delicate balance between the separation of powers and the judiciary's role as the ultimate interpreter of the Constitution. Some key points:

- The Court has a constitutional duty to uphold constitutional values, enforce limitations, and determine the extent of powers conferred on each branch of government.
- Judicial review extends to examining the constitutionality of the President's proclamation under Article 356, albeit with circumspection and care.
- There cannot be fixed rules or principles for determining the justiciability of the President's satisfaction. Justiciability depends on various factors, including the nature of the controversy and the availability of judicially manageable standards.
- The Court must exercise judicial self-restraint in matters involving political wisdom and subjective assessments, while ensuring that constitutional boundaries are not transgressed.

In essence, the Court recognized the need to balance judicial review with respect for the separation of powers and the political nature of certain decisions, while upholding its duty to safeguard constitutional values and limitations.

IV. Key Observations and Findings of the Judgment

A. Formation of the President's satisfaction

The President's satisfaction for issuing a proclamation under Article 356(1) is subjective in nature. However, it must be based on relevant objective material, which may include the Governor's report or other information available to the President. The existence of such relevant material is a pre-condition for the formation of the President's satisfaction. The court cannot question the adequacy or correctness of the material, but it can examine whether any relevant material existed at all.

B. Relevance of the Governor's report

The Governor's report is not conclusive, but its relevance is undeniable. Action under Article 356 can be based only and exclusively upon such a report. If the Governor's report is vitiated by legal malafides, it is bound to vitiate the President's action as well. The Governor, being a high constitutional functionary, is expected to act fairly and honestly consistent with their oath.

C. Scope of the word 'otherwise' in Article 356(1)

The word 'otherwise' in Article 356(1) enlarges the scope of the material that the President can consider for forming their satisfaction. It allows the President to rely on information from sources other than the Governor's report. However, such

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information must still be relevant to the situation contemplated by Article 356(1).

D. Applicability of the principles of natural justice

Since the President's satisfaction is subjective in nature, the principles of natural justice (such as the right to be heard) do not apply to the process of forming this satisfaction. The nature of the power and the situation in which it is exercised preclude the application of such principles.

E. Grounds for judicial intervention (mala fide, extraneous grounds, etc.)

The court can intervene and strike down a proclamation under Article 356(1) if it is found to be mala fide or based wholly on extraneous and/or irrelevant grounds. The ground of mala fides includes situations where the proclamation is found to be a clear case of abuse of power or fraud on power, where the power is invoked for achieving oblique ends. However, the court cannot substitute its opinion for that of the President or question the correctness or adequacy of the material.

F. Role of Parliament in approving the Proclamation

The approval of the proclamation by both Houses of Parliament under Article 356(3) is a check on the power of the President under Article 356(1). However, this check has not proved to be as effective in practice as it ought to have been. The court can still examine the validity of the proclamation even after it has been approved by Parliament, as the approval does not validate an invalid proclamation. The grounds for challenging the validity of the proclamation may be different from those challenging the validity of legislation.

V. Implications and Impact of the Judgment

A. Clarification on the extent of judicial review

The Supreme Court has clarified the extent to which judicial review can be exercised over the President's decision to invoke Article 356 and impose President's Rule in a state. The key points are:

1. The satisfaction of the President under Article 356(1) is not immune from judicial review, though the parameters may vary from an ordinary case of subjective satisfaction.

2. The court cannot question the correctness or adequacy of the material based on which the President formed the satisfaction. However, if the proclamation is found to be malafide, based wholly on extraneous or irrelevant grounds, or a case of abuse of power, it can be struck down.

3. The deletion of the earlier clause 5 of Article 356, which barred judicial review, has reinforced the position that the President's satisfaction is judicially reviewable.

4. The court cannot call upon the Union government to produce the material/information on the basis of which the President formed the satisfaction, unless the petitioner establishes a prima facie case. If called upon, the Union government must disclose the relevant material.

5. The Union government may claim privilege under Section 123 of the Evidence Act over

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certain materials, which the court will then decide upon as per law.

B. Safeguards against the misuse of Article 356

The judgment has laid down certain safeguards and guidelines to prevent the misuse of Article 356:

1. The power under Article 356 should be used sparingly, as a measure of last resort, when all alternatives have failed to prevent or rectify a breakdown of the constitutional machinery in the state.
2. The state Legislative Assembly should not be dissolved before the proclamation under Article 356(1) has been approved by Parliament.
3. Provisions similar to clauses 7 and 8 of Article 352 (related to emergency provisions) should be incorporated in Article 356 to enable Parliamentary review of the continuance of the proclamation.
4. The material facts and grounds for invoking Article 356(1) should be made an integral part of the proclamation, to enable better Parliamentary control and judicial review.
5. The Governor's report, based on which the proclamation is issued, should be a "speaking document" containing precise facts and grounds, and should be given wide publicity.

C. Impact on the federal structure and Centre-State relations

The judgment has significant implications for the federal structure and Centre-State relations in India:

1. It reaffirms that States are not mere administrative units but have an independent constitutional existence and an important role to play in the political, social, and cultural life of the people.
2. While acknowledging the bias towards a strong Centre in the Constitution, the Court has emphasized that within the sphere allotted to them, States are supreme, and their powers cannot be tampered with or whittled down through interpretation.
3. The frequent use of Article 356 and the dismissal of State governments are likely to disturb the constitutional balance and the delicate federal structure envisaged by the Constitution.
4. The Court has cautioned against the use of Article 356 for achieving partisan political objectives or as a weapon against opposition-ruled State governments, as it would damage the fabric of the Constitution.
5. The judgment seeks to maintain the federal balance by subjecting the exercise of the extraordinary power under Article 356 to judicial review and Parliamentary control, while recognizing the overall primacy of the Centre in certain matters.

In essence, the judgment aims to strike a balance between preserving the federal autonomy of States and upholding the constitutional scheme of a strong Centre, by providing checks and safeguards against the potential misuse of Article 356.

VI. Critical Analysis and Concluding Remarks

A. Strengths and weaknesses of the judgment

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The judgment in the S.R. Bommai v. Union of India case is a landmark decision that has significantly impacted the interpretation and application of Article 356 of the Indian Constitution. One of the key strengths of the judgment is its recognition of the importance of judicial review in upholding the constitutional values and limitations. The Court affirmed that the President's satisfaction under Article 356(1) is not immune from judicial scrutiny, and the Court has the constitutional obligation to determine whether the exercise of power under this Article has transgressed the prescribed limits.

Another strength of the judgment is its emphasis on the secular nature of the Indian Constitution and the need for political parties and governments to adhere to the principles of secularism. The Court recognized that non-secular policies, programs, and actions of political parties could render their governments amenable to action under Article 356.

However, the judgment also has certain weaknesses and areas of ambiguity. One of the primary weaknesses is the lack of clear and precise guidelines or standards for determining the justiciability of the President's satisfaction under Article 356(1). While the Court acknowledged that the scope of judicial review may vary depending on the subject matter and nature of the case, it did not provide a definitive framework for assessing the justiciability of such cases.

Additionally, the judgment left some issues unresolved, such as the extent to which the Court can scrutinize the material or evidence upon which the President's satisfaction is based. The Court's stance on the applicability of Article 74(2) and the protection it affords to the advice tendered by the Council of Ministers to the President remains somewhat ambiguous.

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B. Unresolved issues and potential areas of future debate

One of the unresolved issues that may lead to future debate is the precise scope and limits of judicial review in cases involving the exercise of power under Article 356(1). While the Court recognized the need for judicial review, it did not provide a clear set of guidelines or criteria for determining the justiciability of such cases. This lack of clarity may lead to inconsistent interpretations and applications in future cases.

Another area of potential debate is the role of the Governor's report in the President's decision-making process under Article 356(1). The judgment did not provide definitive guidance on the weight to be accorded to the Governor's report or the circumstances under which the Court may scrutinize the report for legal malafides or other irregularities.

Furthermore, the judgment's emphasis on secularism and its implications for the dismissal of state governments under Article 356(1) may spark debates around the definition and boundaries of secularism in the Indian context. There may be differing interpretations of what constitutes a violation of secular principles and the extent to which such violations can justify the invocation of Article 356(1).

C. Conclusion and way forward

The S.R. Bommai v. Union of India judgment is a significant milestone in the interpretation and application of Article 356 of the Indian Constitution. While it affirmed the principle of judicial review and the Court's role in upholding constitutional values, it also highlighted the need

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for further clarity and guidance on the scope and limits of such review.

Moving forward, it is crucial for the judiciary to continue refining and developing a coherent framework for assessing the justiciability of cases involving the exercise of power under Article 356(1). This framework should strike a balance between respecting the President's subjective satisfaction and ensuring that the exercise of power remains within constitutional boundaries.

Additionally, there is a need for ongoing dialogue and debate among legal scholars, policymakers, and the broader public on the interpretation of secularism and its implications for the dismissal of state governments. Such discussions can contribute to a more nuanced understanding of this complex issue and inform future judicial decisions.

Ultimately, the way forward lies in a continuous process of judicial interpretation, legislative refinement, and public discourse, aimed at upholding the constitutional values enshrined in the Indian Constitution while maintaining the delicate balance between the powers of the Union and the States.

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9. L. Chandra Kumar vs Union of India and Others

JUSTICE KULDIP SINGH, JUSTICE B. L. HANSARIA AND JUSTICE S. B. MAJMUDAR

Read the judgment here

I. Introduction

The judgment in the case of L. Chandra Kumar v. Union of India and Others, delivered on December 2, 1994, by a three-judge bench comprising Justices Kuldip Singh, B.L. Hansaria, and S.B. Majmudar, dealt with the constitutional validity of Section 5(6) of the Administrative Tribunals Act, 1985. However, the Court found that the matter raised broader issues concerning the composition, jurisdiction, power, and authority of tribunals constituted under Articles 324-A and 324-B of the Constitution. [Paragraph 1]

II. Referral to a Larger Bench

The Court decided to refer the matter to a larger bench for reconsideration, citing the following reasons:

Equating Tribunals with High Courts

The primary reason for a fresh look was the observations made in the S.P. Sampath Kumar v. Union of India case, where the tribunals were equated with High Courts. [Paragraph 2]

Jurisdiction to Adjudicate Constitutional Validity

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The Court in J.B. Chopra v. Union of India, relying on Sampath Kumar's case, held that tribunals have the jurisdiction, power, and authority to adjudicate upon the constitutional validity of rules framed by the President under Article 309 and even Acts of Parliament and State Legislatures. [Paragraph 2]

Administrative Member's Power

Section 5(6) of the Act allows the Chairman to authorize a single Administrative Member to exercise the jurisdiction, powers, and authority of the Tribunal, raising concerns about the competence of an Administrative Member to decide on constitutional matters. [Paragraph 2]

Violation of Basic Structure

One of the larger issues raised was whether the power of judicial review held to be available to Administrative Tribunals, as per Sampath Kumar's case, violates the basic structure of the Constitution. [Paragraph 4]

III. Subsequent Decisions

The Court also referred to subsequent decisions that required reconsideration, including:

1. Amulya Chandra Kalita v. Union of India [Paragraph 3]
2. Dr. Mahabal Ram v. Indian Council of Agricultural Research [Paragraph 3]
3. Sakinala Harinath v. State of Andhra Pradesh (assailed in C.A. No. 169/1994, referred to a Constitution Bench) [Paragraph 4]
4. M.B. Majumdar v. Union of India [Paragraph 4]

This summary has been prepared using technology alone. Please be advised to read the judgment for accuracy and verify.

5. State of Orissa v. Bhagwan Sarangi [Paragraph 4]

6. R.K. Jain v. Union of India [Paragraph 4]

IV. Conclusion

The Court concluded that the post-Sampath Kumar cases necessitated a fresh look by a larger bench over all the issues adjudicated in Sampath Kumar's case, including whether the Tribunal can have an Administrative Member on its bench if it were to have the power to decide the constitutional validity of a statute or rule under Article 309. [Paragraph 5]

This summary has been prepared using technology alone. Please be advised to read the judgment for accuracy and verify.

10. Vellore Citizens Welfare Forum vs Union of India Judgment

JUSTICE KULDIP SINGH, JUSTICE FAIZAN UDDIN AND JUSTICE K. VENKATASWAMI

Read the judgment here

I. Introduction

This case was a public interest litigation filed under Article 32 of the Constitution against the pollution caused by the discharge of untreated effluents from tanneries and other industries in the state of Tamil Nadu. The petitioner alleged that the tanneries were discharging untreated effluents into agricultural fields, roadsides, waterways, and open lands, ultimately polluting the river Palar, which was the main source of water supply for the residents of the area. [Paragraph 1]

II. Environmental Degradation Caused by Tanneries

The petition highlighted the severe environmental degradation caused by the tanneries in the state of Tamil Nadu. According to a survey by the Tamil Nadu Agricultural University Research Centre, nearly 35,000 hectares of agricultural land in the tannery belt had become partially or totally unfit for cultivation. [Paragraph 1] The tanneries used about 170 types of chemicals in the chrome tanning process, including sodium chloride, lime, sodium sulfate, chlorium sulfate, fat liquor, ammonia, and sulfuric acid, along with dyes. [Paragraph 1] These effluents had spoiled the physico-chemical properties of the soil and contaminated groundwater by percolation. [Paragraph 1]

An independent survey conducted by a non-governmental organization, Peace Members, revealed that out of 467 wells used for drinking and irrigation purposes in 13 villages, 350 wells had been polluted. Women and children had to walk miles to get drinking water. [Paragraph 1]

III. Efforts to Control Pollution

The tanneries and other polluting industries in Tamil Nadu had been persuaded for the last 10 years by the State Government and the Tamil Nadu Pollution Control Board to control the pollution generated by them. They were given the option to either construct common effluent treatment plants (CETPs) for a cluster of industries or set up individual pollution control devices. [Paragraph 2] The Central Government agreed to provide substantial subsidies for the construction of CETPs. [Paragraph 2] However, most tanneries operating in Tamil Nadu had not taken any steps to control the pollution caused by the discharge of effluents. [Paragraph 2]

IV. Supreme Court's Directions

The Supreme Court issued various directions to address the issue of pollution caused by the tanneries and other industries in Tamil Nadu.

Sustainable Development and Polluter Pays Principle

The Court recognized the concept of "Sustainable Development" as a balancing concept between ecology and development, which has been accepted as part of customary international law. [Paragraph 2] The Court held that the "Precautionary Principle" and the "Polluter Pays Principle" are

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essential features of "Sustainable Development." [Paragraph 2]

The "Precautionary Principle" means:

1. Environmental measures by the State Government and statutory authorities must anticipate, prevent, and attack the causes of environmental degradation. [Paragraph 2]
2. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. [Paragraph 2]
3. The "onus of proof" is on the actor or the developer/industrialist to show that their action is environmentally benign. [Paragraph 2]

The "Polluter Pays Principle" means that the absolute liability for harm to the environment extends not only to compensating the victims of pollution but also the cost of restoring the damaged environment. [Paragraph 2] The polluters must compensate the affected persons and pay the cost of reversing the damaged ecology. [Paragraph 3]

Constitution of an Authority

The Court directed the Central Government to constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986, to deal with the situation created by the tanneries and other polluting industries in Tamil Nadu. [Paragraph 4] The authority was to be headed by a retired High Court judge and would have the power to issue directions under Section 5 of the Act and take measures to address the pollution. [Paragraph 4]

The authority was tasked with implementing the "Precautionary Principle" and the "Polluter Pays Principle." It was to assess the loss to the ecology/environment in the affected areas, identify the individuals/families who had suffered due to pollution, and determine the compensation to be paid to them. The authority was also to determine the compensation to be recovered from the polluters as the cost of reversing the damaged environment. [Paragraph 4]

Compensation and Pollution Fine

The authority was directed to compute the compensation under two heads: for reversing the ecology and for payment to individuals. The compensation amount was to be recovered from the polluters by the Collector/District Magistrate as arrears of land revenue. [Paragraph 4]

The Court imposed a pollution fine of Rs. 10,000 on each tannery in the five districts of Tamil Nadu (North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi, and Chengai M.G.R.). The fine was to be deposited in an "Environment Protection Fund" and utilized for compensating the affected persons and restoring the damaged environment. [Paragraph 6]

Closure of Tanneries and Compliance with Pollution Control Measures

The Court suspended the closure orders for all tanneries in the five districts and directed them to set up CETPs or individual pollution control devices by November 30, 1996. The tanneries connected to CETPs were required to install primary devices as well. All tanneries were required to obtain consent from the Tamil Nadu

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Pollution Control Board to operate from December 15, 1996. Tanneries that failed to obtain consent were to be closed immediately. [Paragraph 8]

The Court directed the Superintendent of Police and the Collector/District Magistrate/Deputy Commissioner of the respective districts to close all tanneries that failed to obtain consent from the Board by the specified date. Such tanneries were not to be reopened unless permitted by the authority, which could also direct their permanent closure or relocation. [Paragraph 9]

Enforcement of Government Order and Compliance with Standards

The Court directed the enforcement of the Government Order No. 213 dated March 30, 1989, which prohibited the setting up of highly polluting industries, including tanneries, within one kilometer of water sources. The authority was tasked with reviewing the cases of industries already operating in the prohibited area and could direct their relocation. [Paragraph 10]

The standards stipulated by the Tamil Nadu Pollution Control Board regarding total dissolved solids (TDS), as approved by the National Environmental Engineering Research Institute (NEERI), were to be operative. All tanneries and other industries in Tamil Nadu were required to comply with these standards. [Paragraph 11]

Monitoring by the Madras High Court

The Supreme Court requested the Chief Justice of the Madras High Court to constitute a special "Green Bench" to deal with this case and other environmental matters. The Green Bench was given the liberty to pass any appropriate orders while keeping in view the directions issued by the Supreme Court. [Paragraph 12]

V. Conclusion

The Supreme Court's judgment in the Vellore Citizens Welfare Forum v. Union of India case addressed the severe environmental degradation caused by the tanneries and other industries in Tamil Nadu. The Court issued comprehensive directions to control pollution, implement the principles of sustainable development and polluter pays, constitute an authority to assess and recover compensation, enforce compliance with pollution control measures, and monitor the implementation through a dedicated Green Bench in the Madras High Court.

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11. D.K. Basu vs State of West Bengal

JUSTICE KULDIP SINGH AND JUSTICE DR. A.S. ANAND

Read the judgment here

I. Introduction

The Supreme Court of India delivered this landmark judgment on December 18, 1996, in response to a writ petition filed by D.K. Basu, the Executive Chairman of Legal Aid Services, West Bengal. The petition drew attention to news reports of custodial violence and deaths in police lock-ups, highlighting the need to develop "custody jurisprudence" and formulate guidelines for awarding compensation to victims and ensuring accountability of errant officers. [Paragraph 1]

II. Custodial Violence and Torture: A Violation of Human Rights

The Court acknowledged that custodial violence, including torture and death in police custody, strikes a blow at the Rule of Law and is a matter of grave concern. It recognized that such acts are a violation of the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution. [Paragraph 1]

The Court emphasized that "torture" is a naked violation of human dignity and a degradation of individual personality. It observed that custodial crimes involve not only physical suffering but also mental agony, which is beyond the purview of law. [Paragraph 2]

III. Constitutional and Statutory Safeguards

The Court highlighted the constitutional and statutory safeguards aimed at protecting personal liberty and preventing custodial violence, such as Articles 21 and 22 of the Constitution, and provisions in the Criminal Procedure Code. However, it noted that despite these safeguards, the incidence of custodial violence and deaths has been increasing, affecting the credibility of the Rule of Law and the criminal justice system. [Paragraph 3]

IV. Need for Scientific Interrogation and Accountability

The Court stressed the need for developing scientific methods of investigation and training investigators to interrogate suspects effectively while adhering to the law. It emphasized that the end cannot justify the means, and torture or third-degree methods are impermissible, even in cases involving hardened criminals or terrorists. [Paragraphs 3, 4]

To curb the abuse of police power, the Court underscored the importance of transparency and accountability. It suggested measures like contemporaneous recording and notification of arrests, the presence of counsel during interrogation, and proper training and orientation of police personnel consistent with human values. [Paragraph 4]

V. Requirements for Arrest and Detention

The Court issued specific requirements to be followed in all cases of arrest or detention until legal provisions are made, as preventive measures. These requirements include:

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1. Proper identification of police personnel handling the arrest and interrogation. [Paragraph 3(1)]
2. Preparation of a memo of arrest, attested by a witness and countersigned by the arrestee. [Paragraph 3(2)]
3. Informing a friend or relative of the arrestee about the arrest and place of custody. [Paragraph 3(3)]
4. Notifying the Legal Aid Organization and the concerned police station about the arrest and custody details. [Paragraph 3(4)]
5. Informing the arrestee of their right to have someone notified about the arrest. [Paragraph 3(5)]
6. Making an entry in the diary at the place of detention regarding the arrest and the names of the officials involved. [Paragraph 3(6)]
7. Recording any injuries on the arrestee's body at the time of arrest. [Paragraph 3(7)]
8. Subjecting the arrestee to medical examination every 48 hours during custody. [Paragraph 3(8)]
9. Sending copies of arrest-related documents to the concerned Magistrate. [Paragraph 3(9)]
10. Permitting the arrestee to meet their lawyer during interrogation. [Paragraph 3(10)]
11. Providing a police control room to display information about arrests and custody. [Paragraph 3(11)]

The Court warned that failure to comply with these requirements would render the concerned official liable for departmental action and contempt of court proceedings. [Paragraph 4(1)]

VI. Compensation for Violation of Fundamental Rights

The Court recognized the need for monetary compensation as an effective remedy for the established infringement of fundamental rights by public servants. It held that the claim for compensation is based on strict liability, and the defense of sovereign immunity is not available to the State. [Paragraph 5]

The Court observed that public law proceedings serve a different purpose than private law proceedings, and the award of compensation under public law jurisdiction is an exercise to penalize the wrongdoer and fix liability on the State for failing to protect the fundamental rights of citizens. [Paragraph 5(2)]

The Court emphasized that monetary compensation is a useful and sometimes the only effective remedy to provide solace to the victim's family and apply balm to their wounds. It cited various judgments from India, Ireland, and other jurisdictions to support this view. [Paragraph 5(3)]

The Court clarified that the award of compensation under public law jurisdiction is in addition to traditional remedies like civil suits for damages and does not derogate from them. The compensation awarded by the Court may be adjusted against any damages awarded in a civil suit. [Paragraph 6]

VII. Conclusion

The Court appreciated the assistance rendered by the learned counsel and amicus curiae in this case.

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It disposed of the petition by issuing the aforementioned requirements and guidelines for preventing custodial violence, ensuring accountability, and providing compensation for violations of fundamental rights. [Paragraph 7]

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12. Mafatlal Industries Ltd. Etc. Etc. vs Union of India Etc. Etc.

JUSTICE A.M. AHMADI, JUSTICE J.S. VERMA, JUSTICE S.C. AGRAWAL, JUSTICE B.P. JEEVAN REDDY, JUSTICE DR. A.S. ANAND, JUSTICE B.L. HANSARIA, JUSTICE S.C. SEN, JUSTICE K.S. PARIPOORNAN AND JUSTICE B.N. KIRPAL

Read the judgment here

I. Introduction

This judgment deals with the issue of refund claims for excise duties paid under the Central Excises Act and the Customs Act. The primary question is whether a manufacturer or taxpayer is entitled to a refund if they have passed on the burden of the duty to consumers. The judgment also examines the validity of the 1991 amendments to the Central Excises Act and Customs Act, which introduced provisions related to refund claims and the establishment of a Consumer Welfare Fund. [Paragraph 1]

II. Background

In 1991, the Parliament passed the Central Excises and Customs Law (Amendment) Act, substantially changing the refund provisions in both acts. The meaning and impact of the amended provisions were under consideration in this case, along with writ petitions challenging the validity of the amendments. [Paragraph 2]

The Central Excises and Salt Act, 1944, was enacted to consolidate and simplify the administration of internal commodity taxation in British India. The Act defines various terms, provides for the levy and valuation of excise duties, and outlines provisions for recovery, refund, and exemptions. [Paragraphs 3-5]

III. Provisions for Refund and Recovery

Sections 11-A and 11-B of the Act are complementary provisions dealing with the recovery of duties not paid and the refund of duties collected in excess, respectively. Section 11-A allows for the recovery of unpaid duties within a specified time limit, while Section 11-B provides for refund claims within six months of the relevant date, subject to certain conditions. [Paragraphs 6-10]

The 1991 Amendment Act introduced Section 11-D and Chapter II-A, which includes Sections 12-A to 12-D. These provisions relate to the price of goods, the passing on of duty incidence to buyers, the establishment of a Consumer Welfare Fund, and its utilization by the Central Government. [Paragraphs 11-12]

IV. Refund Claims and Judicial Precedents

The judgment discusses various judicial precedents and their implications for refund claims under the Central Excises Act and the Customs Act. The key cases discussed include:

1. **Kanhaiyalal Mukundlal Saraf v. State of U.P.** [Paragraph 24]: This case allowed for the refund of taxes paid under a mistake of law, based on Section 72 of the Contract Act.
2. **Kamala Mills Ltd. v. State of Bombay** [Paragraph 30]: This case laid down several

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propositions regarding the maintainability of suits for refund of taxes and the exclusion of civil court jurisdiction.

3. **K.S. Venkataraman & Co. v. State of Madras** [Paragraph 34]: This case differed from the Privy Council's decision in Raleigh Investment Co. Ltd. v. The Governor General in Council, allowing a suit for refund when the tax provisions were declared unconstitutional.

4. **Dhulabhai & Ors. v. State of Madhya Pradesh & Anr.** [Paragraph 35]: This case enunciated seven propositions regarding when a suit lies for the recovery of taxes imposed and collected under a taxing enactment.

5. **R.S. Joshi v. Ajit Mills** [Paragraph 41]: This case upheld the constitutionality of provisions penalizing the collection of sales tax not exigible according to law, based on the social mission of the law and the Preamble to the Constitution.

6. **Amar Nath Om Prakash v. State of Punjab & Ors.** [Paragraph 44]: This case dealt with the validity of a provision allowing market committees to retain fees collected from licensees, upholding it to prevent unjust enrichment of dealers and for the benefit of the public.

7. **State of Madhya Pradesh v. Vyankatlal & Anr.** [Paragraph 45]: This case involved the application of the doctrine of unjust enrichment, denying refund to sugar mills as they had passed on the burden to purchasers.

8. **Union of India & Ors. v. Jain Spinners Ltd. & Anr.** [Paragraph 48]: This case dealt with the amended Section 11-B and held that the impugned orders of the High Court directing refund would defeat the provisions of the amended section.

9. **Union of India v. I.T.C.** [Paragraph 49]: This case upheld the denial of refund under the amended Section 11-B, as the manufacturer could not establish that the amount of duty had not been passed on to others.

The judgment also discusses foreign decisions and academic opinions on the issue of taxpayer restitution and the defense of "passing on." [Paragraphs 50-57, 59-61]

V. Constitutionality and Validity of the Amendments

The judgment examines the constitutionality and validity of the 1991 amendments to the Central Excises Act and Customs Act, particularly the provisions related to refund claims and the establishment of the Consumer Welfare Fund.

The court upholds the validity of the amended Section 11-B, which requires refund claims to be made within six months of the relevant date, with prescribed documentation. The court also finds the provisions related to the Consumer Welfare Fund (Sections 12-C and 12-D) to be unexceptionable, although practical difficulties may arise in implementing them. [Paragraphs 80, 90]

The court rejects the argument that the amended provisions are a "device" or "ruse" to retain illegally collected taxes, stating that the Act does provide for refund of duty to the person who has actually borne the burden. [Paragraph 90]

VI. Doctrine of Unjust Enrichment and Passing On

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The judgment extensively discusses the doctrine of unjust enrichment and the issue of "passing on" the burden of excise duty to consumers. The court emphasizes that a person claiming a refund must prove that they have not passed on the liability to another party. [Paragraphs 11, 14, 16, 72]

The court finds that denying refund in cases where the liability has been passed on is valid and serves the principles of economic and social justice enshrined in the Constitution. The court states that refunding duty paid by a manufacturer without suffering loss is not economic justice and goes against the principles of the Constitution. [Paragraph 75]

The judgment also discusses the presumption that the manufacturer has passed on the full incidence of duty to the buyer, which is consistent with commercial life. However, manufacturers can rebut this presumption by proving that they have not passed on the duty. [Paragraph 91]

VII. Overruling of Kanhaiyalal and Subsequent Cases

The judgment overrules the decision in Kanhaiyalal Mukundlal Saraf v. State of U.P. and subsequent cases that allowed for refund claims based on a mistake of law, regardless of the time or relevant laws. The court finds these decisions to be wrongly decided and states that claims for refund must be made in accordance with the respective tax laws and within the specified time limits. [Paragraphs 67-68]

VIII. Conclusions and Propositions

The judgment yields the following propositions:

1. Where a refund of tax or duty is claimed on the ground that it has been collected by misinterpreting or misapplying the tax laws, such a claim must be made under the respective tax laws before the specified authorities. No suit is maintainable. [Paragraph 99(i)]
2. A refund is claimable if the levy of tax is held to be unconstitutional, and such a claim can be made by way of a suit or writ petition. [Paragraph 99(ii)]
3. A claim for refund cannot be made if the burden of the duty has been passed on to another person. [Paragraph 99(iii)]
4. A person cannot make a refund claim based on the decision in another person's case. [Paragraph 99(iv)]
5. Article 265 of the Constitution must be construed in light of the Preamble and Articles 38 and 39, which outline the principles of economic and social justice. [Paragraph 99(v)]
6. Section 72 of the Contract Act is based on equity. [Paragraph 99(vi)]
7. Examining claims for refund should consider the financial chaos allowing such claims would cause. [Paragraph 99(vii)]
8. The 1991 amendments to the tax laws are valid. [Paragraph 99(ix)]
9. All refund claims must be made under the respective tax laws. [Paragraph 99(x)]
10. Section 11-B applies to all pending proceedings. [Paragraph 99(xi)]

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11. Claims for refund due to unconstitutional levy or illegal levy must be filed as suits or writ petitions. [Paragraph 99(xii)]

The judgment provides a comprehensive analysis of the issues surrounding refund claims for excise duties and the validity of the 1991 amendments to the Central Excises Act and Customs Act. It emphasizes the importance of adhering to the respective tax laws and the principles of economic and social justice enshrined in the Constitution.

This summary has been prepared using technology alone. Please be advised to read the judgment for accuracy and verify.

13. Vishaka and Ors. vs State of Rajasthan and Ors.

CHIEF JUSTICE J.S. VERMA, JUSTICE SUJATA V. MANOHAR AND JUSTICE B.N. KIRPAL

Read the judgment here

I. Introduction

This writ petition was filed for the enforcement of fundamental rights of working women under Articles 14, 19, and 21 of the Constitution of India. It aimed to address the societal issue of sexual harassment of working women at workplaces and to find suitable methods to realize the concept of 'gender equality'. The immediate cause for filing the petition was an incident of alleged brutal gang rape of a social worker in a village in Rajasthan. [Paragraph 1]

II. Violation of Fundamental Rights

The Supreme Court held that each incident of sexual harassment of working women results in the violation of fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty' under Articles 14, 15, and 21 of the Constitution. It also violates the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry on any occupation, trade or business'. [Paragraph 1]

III. International Conventions and Norms

In the absence of domestic law occupying the field, the Court took note of the significance of International Conventions and norms for the purpose of interpreting the guarantee of gender equality, the right to work with human dignity enshrined in Articles 14, 15, 19(1)(g), and 21 of the Constitution, and the safeguards against sexual harassment implicit therein. This is implicit from Article 51(c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in the Seventh Schedule of the Constitution. [Paragraph 2]

IV. Role of the Judiciary

The Court recognized its power under Article 32 for the enforcement of fundamental rights and the executive power of the Union to meet the challenge of protecting working women from sexual harassment and making their fundamental rights meaningful. The Court emphasized that governance by the rule of law mandates this requirement as a logical concomitant of the Constitutional scheme. [Paragraph 3]

The Court also referred to the Beijing Statement of Principles of the Independence of the Judiciary, which mentions the objectives of the judiciary, including ensuring that all persons can live securely under the Rule of Law, promoting the observance and attainment of human rights, and administering the law impartially. [Paragraph 3]

V. Gender Equality and International Conventions

The Court stated that gender equality includes protection from sexual harassment and the right to work with dignity, which is a universally

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recognized basic human right. The International Conventions and norms are of great significance in formulating guidelines to achieve this purpose. [Paragraph 4]

The Court referred to relevant provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its general recommendations regarding violence and equality in employment, sexual harassment, and the duty of States to take measures to protect women from sexual harassment and other forms of violence or coercion in the workplace. [Paragraph 4]

VI. Interpretation of Fundamental Rights

The Court held that the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all facets of gender equality, including the prevention of sexual harassment or abuse. The Court stated that international conventions and norms should be read into the fundamental rights in the absence of enacted domestic law occupying the field, as long as there is no inconsistency between them. [Paragraph 5]

The Court referred to the case of Minister for Immigration and Ethnic Affairs v. Teoh, where the High Court of Australia recognized the concept of legitimate expectation of observance of international conventions in the absence of a contrary legislative provision. The Court also cited the case of Nilabati Behera v. State of Orissa, where a provision in the ICCPR was referred to support the view that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right as a public law remedy under Article 32. [Paragraph 5]

VII. Guidelines and Norms

In the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment at workplaces, the Court laid down guidelines and norms to be observed at all workplaces or other institutions until legislation is enacted for this purpose. These guidelines were formulated in exercise of the power available under Article 32 of the Constitution for the enforcement of fundamental rights and would be treated as the law declared by the Supreme Court under Article 141 of the Constitution. [Paragraph 6]

The guidelines cover various aspects, including:

1. Duty of the employer or responsible persons to prevent or deter sexual harassment and provide procedures for resolution, settlement, or prosecution of such acts. [Paragraph 1]

2. Definition of sexual harassment, including physical contact, advances, demands for sexual favors, sexually colored remarks, showing pornography, and other unwelcome physical, verbal, or non-verbal conduct of a sexual nature. [Paragraph 2]

3. Preventive steps to be taken by employers, such as express prohibition of sexual harassment, inclusion of rules and regulations prohibiting sexual harassment, provision of appropriate work conditions, and ensuring a non-hostile environment for women. [Paragraph 3]

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4. Initiation of criminal proceedings and protection of victims or witnesses from victimization or discrimination. [Paragraph 4]
5. Disciplinary action in cases of misconduct in employment. [Paragraph 5]
6. Establishment of a complaint mechanism for redress of complaints made by victims, ensuring time-bound treatment of complaints. [Paragraph 6]
7. Constitution of a Complaints Committee, headed by a woman and with at least half of its members being women, involving a third party (NGO or other body) familiar with the issue of sexual harassment. [Paragraph 7]
8. Allowing employees to raise issues of sexual harassment at workers' meetings and in other appropriate forums. [Paragraph 8]
9. Awareness creation about the rights of female employees and prominently notifying the guidelines. [Paragraph 9]
10. Taking necessary and reasonable steps to assist the affected person in cases of sexual harassment by third parties or outsiders. [Paragraph 10]
11. Request to Central/State Governments to consider adopting suitable measures, including legislation, to ensure that the guidelines are observed by employers in the private sector. [Paragraph 11]
12. Clarification that these guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993. [Paragraph 12]

The Court directed that these guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of working women, and these directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. [Concluding Paragraph]

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14. Githa Hariharan and Anr. vs Reserve Bank of India and Anr.

CHIEF JUSTICE DR. A.S. ANAND, JUSTICE M. SRINIVASAN AND JUSTICE UMESH C. BANERJEE

Read the judgment here

I. Introduction

This judgment deals with two writ petitions (No. 489/95 and No. 1016/91) filed before the Supreme Court of India, challenging the constitutionality of Section 6(a) of the Hindu Minority and Guardianship Act, 1956 (HMG Act) and Section 19(b) of the Guardian and Wards Act, 1890 (GW Act). The petitioners argued that these provisions discriminate against women by relegating the mother to an inferior position as a natural guardian of her minor child during the lifetime of the father. [Paragraph 5]

II. Facts of the Cases

A. Writ Petition No. 489/95

- The first petitioner (wife) and her husband (second petitioner) jointly applied to the Reserve Bank of India (RBI) for issuing Relief Bonds in the name of their minor son. [Paragraph 4]
- They agreed that the first petitioner (mother) would act as the guardian of the minor for investment purposes. [Paragraph 4]
- The RBI refused to accept the application, advising the petitioners to either produce the application signed by the father or a certificate of guardianship from a competent authority in favor of the mother. [Paragraph 4]

B. Writ Petition No. 1016/91

- The petitioner is the wife of the first respondent, who had instituted divorce proceedings against her in the District Court, Delhi. [Paragraph 5]
- The first respondent (husband) had been repeatedly asserting that he was the only natural guardian of their minor son and that no decision should be taken without his permission. [Paragraph 5]
- The minor son was staying with the petitioner (mother), and the first respondent had shown total apathy towards the child's welfare. [Paragraph 5]

III. Contentions of the Parties

A. Petitioners' Contentions

- Section 6(a) of the HMG Act and Section 19(b) of the GW Act are violative of the equality clause of the Constitution, as the mother's right as a natural guardian is made cognizable only 'after' the father. [Paragraph 7]
- These provisions discriminate against women on the ground of sex alone and must be struck down as unconstitutional. [Paragraph 7]

B. Respondents' Contentions

- The mother is not the natural guardian of the minor son, and Section 6(a) of the HMG Act

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states that the father is the only natural guardian of a Hindu minor. [Paragraph 6]

IV. Judgment

A. Observations by Justice Umesh C. Banerjee

1. The word 'after' in Section 6(a) of the HMG Act should be interpreted in consonance with the legislative intent of protecting the welfare of the child. A narrow, pedantic interpretation running counter to the constitutional mandate should be avoided. [Paragraph 19]
2. Both the mother and the father are duty-bound to take care of the person and property of their minor child. Therefore, both parents ought to be treated as guardians of the minor. [Paragraph 22]
3. The word 'after' in Section 6(a) does not necessarily mean 'after the death of the father'. It should be interpreted as 'in the absence of' the father, referring to situations where the father is absent from the care of the minor's property or person for any reason, such as indifference, mutual agreement between parents, or physical/mental incapacity. [Paragraph 25]
4. Interpreting the word 'after' literally would run counter to the constitutional guarantee of gender equality and the legislative intent of the welfare of the child. [Paragraph 26]
5. The RBI authorities are directed to formulate appropriate methodology in light of the observations made by the Court. [Paragraph 27]
6. The District Court, Delhi, shall decide the matter regarding the custody and guardianship of the minor son in Writ Petition No. 1016/91 in accordance with the Court's observations. [Paragraph 28]

B. Observations by Chief Justice Dr. A.S. Anand and Justice M. Srinivasan

1. The definitions of 'guardian' and 'natural guardian' in Sections 4(b) and 4(c) of the HMG Act do not discriminate against the mother. She is one of the guardians mentioned in Section 6 and would undoubtedly be a natural guardian. [Paragraph 7]
2. The phrase 'after him, the mother' in Section 6(a) gives an impression that the mother can be considered a natural guardian only after the father's lifetime. However, such an interpretation violates gender equality, a basic principle of the Constitution. [Paragraph 7]
3. Section 6(a) is capable of being construed in a manner that retains it within constitutional limits. The word 'after' need not necessarily mean 'after the lifetime'. In the context of Section 6(a), it means 'in the absence of', referring to the father's absence from the care of the minor's property or person for any reason. [Paragraph 10]
4. If the father is wholly indifferent to the matters of the minor, or if there is a mutual understanding between the parents that the mother is put exclusively in charge of the minor, or if the father is physically unable to take care of the minor due to staying away or physical/mental incapacity, the father can be considered 'absent', and the mother, being a

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recognized natural guardian, can act validly on behalf of the minor. [Paragraph 10]

5. This interpretation gives effect to the principles contained in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Beijing Declaration, to which India is a signatory. [Paragraph 14]

6. Section 19(b) of the GW Act should also be construed in the same manner as Section 6(a) of the HMG Act. [Paragraph 15]

7. In situations where the father is not in actual charge of the minor's affairs due to indifference, agreement with the mother, or physical/mental incapacity, the mother can act as the natural guardian, and all her actions would be valid even during the father's lifetime, who would be deemed 'absent' for the purposes of Section 6(a) of the HMG Act and Section 19(b) of the GW Act. [Paragraph 16]

8. The RBI was not right in insisting on an application signed by the father or a court order to open a deposit account in the name of the minor, particularly when there was a joint letter from both petitioners evidencing their mutual agreement. The RBI should accept the application filed by the mother. [Paragraph 17]

9. This judgment will operate prospectively and will not enable any person to reopen any decision already rendered or question the validity of any past transaction based on this judgment. [Paragraph 18]

10. The RBI and other organizations may formulate appropriate methodology in light of the Court's observations to meet situations arising in the contextual facts of a given case. [Paragraph 19]

11. The District Court, Delhi, shall decide the matter regarding the custody and guardianship of the minor son in Writ Petition No. 1016/91 in light of the Court's observations. [Paragraph 20]

V. Conclusion

The Supreme Court interpreted Section 6(a) of the HMG Act and Section 19(b) of the GW Act in a manner that upholds gender equality and the welfare of the minor child. The Court held that the mother can act as the natural guardian of the minor even during the father's lifetime if the father is absent from the care of the minor due to indifference, mutual agreement, or physical/mental incapacity. The Court directed the RBI and other organizations to formulate appropriate methodology in light of its observations.

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15. Rupa Ashok Hurra vs Ashok Hurra and Anr.

CHIEF JUSTICE S.P. BHARUCHA, JUSTICE SYED SHAH MOHAMMED QUADRI, JUSTICE UMESH C. BANERJEE, JUSTICE S.N. VARIA VA AND JUSTICE SHIVARAJ V. PATIL

Read the judgment here

I. Introduction

The Supreme Court of India, being the apex judicial institution, is entrusted with the responsibility of upholding the principles of justice and equity. However, in exceptional circumstances, the Court may reconsider its own judgments to rectify manifest injustice or prevent abuse of the judicial process. This delicate balance between finality and the pursuit of justice is a cornerstone of the Indian legal system.

II. The Doctrine of Ex Debito Justitiae

The doctrine of ex debito justitiae, which translates to "by debt of justice," is a fundamental principle that guides the Supreme Court's approach to reconsideration of its judgments. This doctrine recognizes the Court's inherent power to correct errors and prevent miscarriages of justice, even in the absence of specific statutory provisions. The rationale behind this doctrine is the belief that the administration of justice should take precedence over procedural technicalities. (Paragraph 1)

III. Limitations on Challenging Supreme Court Judgments

While the Supreme Court possesses the power to reconsider its judgments, there are certain limitations on the mechanisms through which such reconsideration can be sought. The Court has consistently held that a judgment or order passed by it cannot be challenged through a petition under Article 32 of the Constitution, which deals with the enforcement of fundamental rights. (Paragraph 12) This principle has been reiterated in several cases, including Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Anr., A.R. Antulay v. R.S. Nayak and Anr., Smt. Triveniben v. State of Gujarat, and Ajit Kumar Barat v. Secretary Indian Tea Association and Ors. (Paragraph 1)

IV. The Curative Petition: A Rare Remedy

To address the need for reconsideration in exceptional cases, the Supreme Court has established the mechanism of a curative petition. This petition can be filed after the dismissal of a review petition, provided that specific grounds are met. The petitioner must demonstrate that there has been a violation of the principles of natural justice or that the judge presiding over the case was biased. (Paragraph 3)

The curative petition process is stringent and involves several safeguards. The petition must be certified by a Senior Advocate, and it is initially circulated to a Bench of the three senior-most judges and the judges who passed the original judgment. (Paragraph 4) If a majority of the judges on the Bench conclude that the matter requires a hearing, it is listed before the same Bench. The Bench may also appoint a senior counsel as amicus curiae (friend of the court) and impose costs on the petitioner if the petition is found to be without merit or vexatious. (Paragraph 5)

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V. The Principle of Finality and Precedent

While the Supreme Court acknowledges its power to reconsider judgments, it also recognizes the importance of finality and precedent in the legal system. The Court has emphasized that the power to overrule previous decisions should be exercised sparingly to avoid confusion and instability in the law. (Paragraph 56) The Court must be satisfied that the previous decision was clearly erroneous before overruling it, as the finality and precedent set by the Supreme Court should not be easily challenged.

VI. Conclusion

The Supreme Court's approach to reconsidering its judgments reflects a delicate balance between upholding the principles of justice and maintaining the integrity of the judicial system. While the Court possesses the inherent power to correct errors and prevent miscarriages of justice, it exercises this power with utmost caution and circumspection. The curative petition mechanism, coupled with the Court's adherence to the principles of finality and precedent, ensures that the pursuit of justice is tempered by the need for consistency and certainty in the law.

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16. Pradeep Kumar Biswas and Ors. vs Indian Institute of Chemical Biology and Ors.

CHIEF JUSTICE S.P. BHARUCHA, JUSTICE SYED SHAH MOHAMMED QUADRI, JUSTICE R.C. LAHOTI, JUSTICE N. SANTOSH HEGDE, JUSTICE DORAISWAMY RAJU, JUSTICE RUMA PAL AND JUSTICE ARIJIT PASAYAT

Read the judgment here

I. Introduction

The case of A Pradeep Kumar Biswas and Ors. v. Indian Institute of Chemical Biology and Ors. dealt with the question of whether the Council of Scientific and Industrial Research (CSIR) is considered a 'State' under Article 12 of the Indian Constitution. [Paragraph 1]

II. Reconsideration of Sabhajit Tewary Case

The Court reconsidered the case of Sabhajit Tewary and found that the decision was erroneous. It was held that the CSIR is a State within the meaning of Article 12 of the Constitution. [Paragraph 2]

III. Tests for Determining 'State' Status

The CSIR falls within the range of Article 12 when judged by the tests formulated in Ajay Basia's case. The question in each case is whether the body is financially, functionally, and administratively dominated by the government. Control must be particular to the body and pervasive. Regulatory control does not make the body a State. [Paragraph 1]

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IV. Correcting Erroneous Precedents

A long-standing precedent should not be upheld if it is found to be erroneous and cannot be reconciled with subsequent decisions. The court has a duty to correct its mistakes. [Paragraph 2, citing Bengal Immunity Co Ltd v, State of Bihar and Ors., AIR (1955) SC 661, C]

V. Interpretation of 'State' and 'Authority'

The definition in Article 12 of the Constitution is not exhaustive and is obvious. The words 'State' and 'Authority' in Article 12 are still being interpreted by the Courts. [Paragraph 3]

VI. Notification Confirming CSIR as 'State'

The notification bringing CSIR within the scope of the Administrative Tribunals Act confirmed that CSIR was considered a State under Article 12. This meant that employees of CSIR could bring their service disputes to the Administrative Tribunals instead of the High Court. [Paragraph 2]

VII. Distinction Between Instrumentality/ Agency and 'Other Authorities'

The principles for determining if a body is 'the State' remain the same, but the emphasis on how they apply to specific facts is different. It's important to differentiate between an instrumentality or agency of 'the State' and an authority included in 'other authorities'. This distinction cannot be erased. [Paragraph 2]

An authority must be sui Juris to fall within the meaning of 'other authorities' under Article 12. A juridicial entity may also be an instrumentality or

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agency of the State, but not vice versa. [Paragraph 3]

VIII. Criteria for 'Authority' Under Article 12

The entity must be created by a statute, have power to make laws or issue binding directions, and be of public importance to be considered an authority under Article 12. [Paragraph 4]

IX. Tests for Instrumentality/Agency of the State

The question of whether an entity is an 'authority' cannot be determined by applying Ajay Hasia tests. The tests are relevant for determining if an entity is an instrumentality or agency of the State, but not all tests need to be positive to qualify. The real source of governing power must be identified, and the entity must have deep and pervasive government control to be considered a State instrumentality or agency. [Paragraph 5]

X. Scope of 'Other Authorities' Under Article 12

The Framers of the Constitution used the word "the State" in a wider sense than usual, including "other authorities" as long as they are within the territory of India or under the control of the Government of India. The expression 'under the control of the Government of India' in Article 12 qualifies 'other authorities'. [Paragraph 6, citing 129-C, D]

XI. Limitations on Expanding 'State' Doctrine

Expanding the 'State' doctrine through judicial wisdom should be accompanied by wise limitations to prevent overreach. [Paragraph 7, citing 129-E, F]

XII. Expansion and Limitations of Article 12

The definition of the State in Article 12 has been expanded to include various instrumentalities and agencies performing State functions. The limitations and expansion of Article 12 must be determined based on constitutional jurisprudence. [Paragraph 8]

XIII. Instrumentalities and Agencies Subject to Constitutional Limitations

The State can set up instrumentalities or agencies that are subject to the same limitations as the State itself. This was affirmed in several Supreme Court cases. Sabhajit Tewary, a stenographer with the Council of Scientific and Industrial Research, filed a writ petition for parity of remuneration, but the Court denied the application, stating that CSIR was not an "authority" within the meaning of Article 12 of the Constitution. This decision is now being reconsidered. [Paragraph 9]

XIV. Reconsideration of 'State' Definition and Article 12

The court reversed a decision after considering the definition of 'State' in Article 12 and the importance of Article 12 in ensuring constitutional protection of individual rights against the State. The decisions on this matter have expressed both narrow and liberal views. [Paragraph 2]

XV. Widening of Right to Equality Through Judicial Interpretation

Benjamin Cardozo's 'The Nature of the Judicial Process' discusses the widening of the right to equality through judicial interpretation. This

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includes protection against arbitrary or irrational acts of the State. It also addresses the curbing of arbitrary exercise of power by 'centres of power'. [Paragraph 4]

XVI. Evolution of 'State' Definition

The definition of 'State' was initially limited to authorities or those with similar powers mentioned in the definition of Article 12. But it later came to be understood with reference to the available remedies against it. For example, a statutory corporation with regulations framed by such Corporation pursuant to statutory powers was considered a State. [Paragraph 12]

The Court decided that the expression "other authorities" in Article 12 includes all constitutional or statutory authorities with powers conferred by law, even if some of those powers are for commercial activities. [Paragraph 12, citing E.P. Royappa v. State of Tamil Nadu, (1974) 2 SCR 348]

XVII. Expansion of 'State' Concept

In Praga Tools Corporation v. Imanua/ (1969) 3 SCR 773, the case held that an application for a writ of mandamus could not be brought against a company for enforcement of statutory or public duty. In 1975, the concept of "State" in Article 12 was redefined to include public authorities with statutory duties for the benefit of the public. [Paragraph 6, citing [1969] 3 SCR 773 and [1975] 3 SCR 619]

XVIII. Indicia for Identifying State Agency or Instrumentality

Mathew J in his concurring judgment in Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi (1975) 3 SCR 619 propounded four indicia for identifying an agency or instrumentality of the State: (1) A finding of the state financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as state action. [Paragraph 8]

XIX. Sabhajit Tewary Case and CSIR

In Sabhajit Tewary, the Court dismissed the writ petition, holding that CSIR is not an "authority" within the meaning of Article 12 of the Constitution. The Court noted that CSIR does not have a statutory character like other corporations and is a society incorporated under the Societies Registration Act. The Court also relied on cases holding that employees of companies incorporated under the Companies Act do not enjoy the protection available to Government servants under Article 311. [Paragraph 8]

However, the Court in the present case found that both premises were not relevant and contrary to the 'voice' and 'hands' approach in Sukhdev Singh. [Paragraph 8]

XX. Overruling Sabhajit Tewary

The Court held that Sabhajit Tewary should not stand as an authority merely because it has stood for 25 years. A new fact relating to CSIR has come to light since the decision in Sabhajit Tewary, which vindicates the conclusion reached and fortifies the decision to deliver the final blow to the already weakened decision. The notification by the

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Central Government confirms that CSIR is a State within the meaning of Article 12. [Paragraph 16]

XXI. Notification Under Administrative Tribunals Act

The notification issued by the Central Government in 1986 under Article 14 (2) of the Administrative Tribunals Act, 1985 served to shift the service disputes of the employees of CSIR from the jurisdiction of the High Court to the Administrative Tribunals. [Paragraph 17]

XXII. Conclusion

The matter was remitted back to the appropriate Bench to be dealt with in the light of the decision that CSIR is a State within the meaning of Article 12 of the Constitution. [Paragraph 17]

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17. P. Rama Chandra Rao vs State of Karnataka

CHIEF JUSTICE S.P. BHARUCHA, JUSTICE SYED SHAH MOHAMMED QUADRI, JUSTICE R.C. LAHOTI, JUSTICE N. SANTOSH HEGDE, JUSTICE DORAISWAMY RAJU, JUSTICE RUMA PAL AND JUSTICE ARIJIT PASAYAT

Read the judgment here

I. Introduction

The case deals with the issue of whether the Supreme Court, in its zeal to protect the right to speedy trial of an accused, can prescribe time limits or bars of limitation beyond which a criminal trial or proceedings cannot continue, even though the legislature and statutes have not chosen to do so. The case arose from appeals against the acquittal of accused persons facing corruption charges by special courts, as there was a failure to commence the trial despite the lapse of two years from the framing of charges. The High Court allowed the appeals by the State without issuing notice to the respective accused. [¶1]

II. Background

The judgment traces the development of the right to speedy trial as an integral part of the fundamental right to life and liberty under Article 21 of the Constitution, through various landmark cases such as *Hussainara Khatoon* and *Maneka Gandhi*. [¶1]

In *A.R. Antulay's case*, a Constitution Bench declined to prescribe time limits for the conclusion of criminal proceedings, holding that it is neither advisable nor feasible to do so. However, subsequent cases like *Common Cause* and *Raj Deo Sharma* prescribed such time limits, leading to the present reference before a larger Bench. [¶2-¶5]

III. Causes of Delay in Criminal Trials

The judgment discusses various factors contributing to the delay in criminal trials, such as poor judge-population ratio, inadequate appointment of public prosecutors, non-service of summons/warrants, non-production of undertrial prisoners, and adjournments sought by counsel. It emphasizes the need for collective action by the legislature, judiciary, executive, and Bar to achieve the goal of speedy justice. [¶6-¶8]

IV. Judicial Legislation and Binding Precedents

The majority opinion, authored by Justice Lahoti, holds that prescribing time limits tantamounts to impermissible legislation by the judiciary, which is beyond its power. It also violates the doctrine of binding precedents, as the decisions in *Common Cause* and *Raj Deo Sharma* run counter to the Constitution Bench decision in *A.R. Antulay's case*. [¶9-¶11]

"Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature." [¶9]

The majority opinion reaffirms the dictum in *A.R. Antulay's case* and holds that the guidelines laid down therein adequately take care of the right to speedy trial. It states that the criminal courts should exercise their available powers under the Code of Criminal Procedure to effectuate this right. [¶12]

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V. Dissenting Opinion

Justice Raju, in his partly dissenting opinion, agrees with the conclusion but expresses reservations about the observations regarding the powers and jurisdiction of the Supreme Court. He emphasizes that the Supreme Court, as the ultimate repository of judicial power, should not disown its jurisdiction when the Constitution and fundamental rights are at stake. [¶13-¶15]

VI. Conclusion

The appeals are allowed, and the High Court is directed to hear and decide the appeals afresh after noticing the accused-respondents, consistently with the principles laid down in the judgment. The Court clarifies that the decision shall not be grounds for reopening cases where acquittal or discharge has already achieved finality based on the overruled decisions. [¶16-¶17]

The judgment reminds the Union and State Governments of their constitutional obligation to strengthen the judiciary by providing requisite funds, manpower, and infrastructure. [¶12(6)]

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18. T.M.A. Pai Foundation and Ors. vs State of Karnataka and Ors.

CHIEF JUSTICE B.N. KIRPAL, JUSTICE G.B PATTANAIK, JUSTICE V.N. KHARE, JUSTICE S. RAJENDRA BABU, JUSTICE SYED SHAH MOHAMMED QUADRI, JUSTICE RUMA PAL, JUSTICE S.N. V ARIA VA, JUSTICE K.G. BALAKRISHNAN, JUSTICE P. VENKATARAMA REDDI, JUSTICE ASHOK BHAN AND JUSTICE ARIJIT PASA YAT

Read the judgment here

I. Introduction

This judgment by the Supreme Court of India addresses several crucial issues concerning the rights and regulations surrounding private educational institutions, particularly those established and administered by linguistic and religious minorities. The case originated from doubts raised by previous decisions on minority educational institutions, leading to the referral of eleven questions to the Constitution Bench for consideration. [Paragraph 1]

II. Reconsideration of the Unnikrishnan Case

A. The Unnikrishnan Scheme

The Court examined the scheme formulated in the Unnikrishnan case, which imposed regulations on private educational institutions, including aided minority institutions. The scheme involved criteria for establishing and administering professional colleges, allocating seats based on merit and payment, regulating fees, and governing the role of governing bodies in affiliated colleges. [Paragraph 29]

B. Challenges to the Unnikrishnan Scheme

The minority institutions and the Solicitor General argued against the Unnikrishnan scheme, contending that it resulted in revenue shortfalls and favored affluent students over less affluent ones. They also asserted that the scheme should not apply to minority institutions. [Paragraphs 30, 33, 34]

C. Reconsideration of the Unnikrishnan Scheme

The Court found the Unnikrishnan scheme to be unreasonable and invalid in part, except for the principle of prohibiting capitation fees or profiteering. The scheme was deemed to have made it difficult for educational institutions to function efficiently and undermined their autonomy. [Paragraphs 35, 36, 37, 38]

III. Regulations for Private Educational Institutions

A. Right to Establish and Administer Educational Institutions

The Court recognized the right of citizens and religious denominations to establish and administer educational institutions under Articles 19(1)(g), 26, and 30 of the Constitution. This includes the rights of the majority community, linguistic minorities, and religious minorities. [Paragraph 18]

B. Regulations for Unaided Private Institutions

The Court held that private unaided educational institutions, both minority and non-minority,

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should have maximum autonomy in administration, including admissions, fee structure, governing body composition, staff appointments, and disciplinary actions. However, regulations can be imposed to ensure academic standards, infrastructure, and the prevention of profiteering. [Paragraphs 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70]

C. Regulations for Aided Private Institutions

Private educational institutions receiving state aid are subject to certain regulations to maintain educational standards, protect the interests of staff and students, and prevent the institutions from becoming government-owned or controlled. The state can regulate teacher selection, appointments, and ensure efficient administration. However, aided institutions should not lose their autonomy in management. [Paragraphs 71, 72, 73]

III. Determining Minority Status

A. Unit for Determining Minority Status

The Court clarified that the unit for determining the status of a "linguistic minority" or "religious minority" under Article 30(1) is the state, not the entire country. This means that a linguistic or religious group that may be a majority at the national level can still be considered a minority within a particular state. [Paragraphs 74, 75, 76, 77, 78, 79, 80, 81]

IV. Regulations for Minority Educational Institutions

A. Scope of Article 30(1)

Article 30(1) of the Constitution grants linguistic and religious minorities the right to establish and administer educational institutions of their choice. The Court examined the extent to which this right can be regulated by the state. [Paragraph 82]

B. Reasonable Restrictions

The Court held that the right under Article 30(1) is not absolute and is subject to reasonable restrictions in the interests of public order, morality, and health, as well as other provisions of the Constitution. The state can impose regulations to ensure the excellence of education and prevent mal-administration in minority educational institutions. [Paragraphs 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99]

C. Interplay with Article 29(2)

A significant issue addressed in the judgment was the interplay between Article 30(1) and Article 29(2) of the Constitution. Article 29(2) prohibits the denial of admission to any educational institution maintained or aided by the state on the grounds of religion, race, caste, or language. [Paragraph 90]

Historical Background and Constituent Assembly Debates

The Court examined the historical background and Constituent Assembly debates to understand the intent behind Articles 29 and 30. It was noted that Article 29(2) was intended to apply to all educational institutions, including minority educational institutions under Article 30(1), to further the principles of secularism and equality. [Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28]

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Interpretation and Precedents

The Court relied on well-settled principles of interpretation, including giving effect to the plain and unambiguous language of the provisions and avoiding conflicts between provisions. It also considered various precedents that upheld the applicability of Article 29(2) to minority educational institutions under Article 30(1). [Paragraphs 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59]

Conclusion on Article 29(2) and Article 30(1)

The Court concluded that Article 29(2) fully applies to minority educational institutions under Article 30(1). If a minority educational institution receives state aid, it cannot refuse admission to students based on religion, race, caste, or language. The right under Article 30(1) can be fully exercised without taking state aid, but if aid is accepted, the institution must comply with constitutional mandates, including Article 29(2). [Paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40]

V. Admission Policies for Minority Educational Institutions

Unaided Minority Institutions

The Court held that the state or university cannot regulate admissions to unaided minority educational institutions, except for providing qualifications and minimum eligibility conditions in the interest of academic standards. These institutions have the right to administer and admit students of their choice, as long as the admission process is transparent and merit-based. [Paragraph 30]

Aided Minority Institutions

For aided minority educational institutions, the Court ruled that a reasonable extent of non-minority students must be admitted, and the regulatory measure of control should be minimal. The authority granting aid can prescribe conditions for admission based on merit, coupled with the state's reservation policy. [Paragraph 30]

Fair and Transparent Admission Process

The Court emphasized that minority educational institutions, whether aided or unaided, must have a fair and transparent admission process based on merit, especially in professional and higher educational colleges. Failure to do so would result in a lack of excellence. [Paragraphs 14, 30]

Preferential Admission for Minority Students

The Court recognized that minority educational institutions have the right to give preferential admission to students from their own community, but this preference should be limited to maintain the minority character of the institution. The percentage of minority students admitted should be variable, depending on the type of institution, population, and educational needs of the area. [Paragraphs 17, 18, 19, 37]

VI. Other Relevant Issues

Definition of "Education"

The Court clarified that the term "education" in the Constitution includes education at all levels, including professional education, and that

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"educational institutions" refer to institutions that impart education. [Paragraph 19]

Grievance Redressal Mechanism

The Court suggested the establishment of a mechanism for addressing grievances of staff and teachers in educational institutions, with each District Judge designated as a Tribunal for redressal. [Paragraph 1]

Minority Institutions Challenging Adverse Decisions

The Court stated that minority institutions should be able to challenge adverse management decisions based on breach of natural justice and fair play. [Paragraph 2]

Interpretation of Constitutional Provisions

The Court emphasized the importance of considering historical facts, preceding documents, and the Constituent Assembly debates when interpreting provisions of the Constitution. However, it also noted that speeches made in the Constituent Assembly cannot be used as conclusive evidence for interpretation. [Paragraphs 4, 9, 10]

Professional Education and Minority Rights

The Court acknowledged that the extent to which professional education falls under minority rights under Article 30 will be dealt with by a regular Bench. [Paragraph 60]

VII. Conclusion

The judgment provides a comprehensive analysis of the rights and regulations surrounding private educational institutions, particularly those established and administered by linguistic and religious minorities. It clarifies the scope of Article 30(1) and its interplay with Article 29(2), emphasizing the principles of secularism, equality, and the protection of minority rights enshrined in the Constitution. The Court's rulings aim to strike a balance between institutional autonomy, academic excellence, and the constitutional mandates of non-discrimination and equal opportunity in education.

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19. P.A. Inamdar vs State of Maharashtra

CHIEF JUSTICE R.C. LAHOTI, JUSTICE Y.K. SABHARWAL, JUSTICE D.M. DHARMADHIKARI, JUSTICE ARUN KUMAR, JUSTICE G.P. MATHUR, JUSTICE TARUN CHATTERJEE AND JUSTICE P.K. BALASUBRAMANYAN

Read the judgment here

I. Introduction

The Supreme Court of India, in its judgment dated August 12, 2005, addressed several crucial issues concerning the regulation of admissions, fee structure, and reservation policies in unaided minority and non-minority educational institutions. The court's decision aimed to strike a balance between the autonomy of educational institutions and the state's responsibility to ensure excellence and prevent commercialization of education.

II. Defining Education and Minority Rights

The court emphasized that education, whether for charity or profit, is an occupation and a service to society, distinct from trade or business. It is essential for national progress and prosperity. [Paragraph 1] The court also clarified that the term "minorities" in Article 30 of the Constitution covers both linguistic and religious minorities, and the determination of minority status is based on the demography of a state, not the entire country. [Paragraph 1]

III. Autonomy of Unaided Institutions

Admissions

The court upheld the principle that unaided minority and non-minority institutions have the right to admit students of their choice, provided the admission procedure is fair, transparent, and merit-based. [Paragraph 4] However, the state can regulate admissions to ensure excellence and prevent malpractices, such as capitation fees and profiteering. [Paragraph 69]

The court suggested that a centralized and single-window procedure for admissions, overseen by admission committees, could promote merit and curb malpractices. [Paragraph 5] It also allowed minority institutions to hold a common entrance test for admission, conducted by a credible agency to ensure transparency and merit. [Paragraph 3]

Fee Structure

The court upheld the right of institutions to set their own fee structures, subject to the condition that there can be no profiteering or charging of capitation fees, directly or indirectly. [Paragraph 1] A provision for reasonable surplus can be made to enable future expansion. [Paragraph 2]

IV. Regulatory Measures

Committees for Monitoring Admissions and Fee Structure

The court directed the formation of two committees in each state: one to approve the fee structure proposed by minority institutions and another to oversee the admission tests conducted by the association of institutions. [Paragraph 7, Paragraph 19] These committees were intended to be temporary measures until appropriate legislation or

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regulation was established by the state governments.

The composition of the committees was outlined, with a retired High Court judge as the chairperson, along with representatives from relevant bodies and the state government. [Paragraph 7, Paragraph 19]

Judicial Review and Legislation

The court emphasized that any interference in the administrative and financial matters of private professional institutions would be subject to judicial review. [Paragraph 6] It also acknowledged the need for legislation on the subject of regulating admissions and fee structures in educational institutions. [Paragraph 6]

V. Reservation Policy and Minority Rights

The court held that the state cannot require private educational institutions without state aid to implement the state's reservation policy for admissions. [Paragraph 1] Minority institutions have the freedom to admit students of their own choice, but if they do so, they lose the protection of Article 30(1) of the Constitution. [Paragraph 2]

However, the court recognized that the state can provide for reservation in favor of financially or socially backward sections of society, even in unaided professional institutions. [Paragraph 4]

VI. Conclusion

The judgment aimed to balance the autonomy of educational institutions with the state's responsibility to ensure excellence, prevent commercialization, and protect the interests of the student community. It upheld the principles of merit-based admissions, transparency, and reasonable fee structures while allowing for regulatory measures to prevent malpractices. The court's directions were intended to be temporary until appropriate legislation was enacted by the state governments.

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20. Technip SA vs SMS Holding (Pvt.) Ltd. & Ors.

JUSTICE RUMA PAL, JUSTICE ARIJIT PASAYAT AND JUSTICE C.K. THAKKER

Read the judgment here

I. Introduction

The case revolves around the acquisition of control over South East Asia Marine Engineering and Construction Ltd. (SEAMEC), an Indian company, by Technip SA, a French company, through its acquisition of Coflexip, another French company. The key question is whether Technip acquired control over SEAMEC in April 2000 or July 2001, as the share price of SEAMEC differed significantly between these two dates. [Paragraph 1]

II. Parties Involved

1. **Technip SA**: A French company that acquired control over Coflexip.
2. **Coflexip**: A French company and a subsidiary of Technip SA, which held a majority stake in SEAMEC.
3. **Institut Francais du Petrol (IFP)**: A French government body that promoted Technip and Coflexip through its subsidiary ISIS.
4. **South East Asia Marine Engineering and Construction Ltd. (SEAMEC)**: An Indian company and a subsidiary of Coflexip.
5. **Respondents**: Shareholders of SEAMEC.

III. Key Issues

1. **Applicable Law**: Whether French law or Indian law should be applied to determine the date of acquisition of control over SEAMEC by Technip. [Paragraphs 2-4]
2. **Public Policy Exception**: Whether the French law should be disregarded as contrary to Indian public policy. [Paragraphs 5-6]
3. **Date of Acquisition**: Whether Technip acquired control over SEAMEC in April 2000 or July 2001. [Paragraphs 7-8]
4. **Acting in Concert**: Whether Technip and IFP (through ISIS) acted in concert to acquire control over Coflexip and, consequently, SEAMEC. [Paragraph 9]

IV. Court's Observations and Findings

A. Applicable Law

1. The Court held that the relationship between Technip and Coflexip, being French companies, should be determined by French law, as it relates to their status. However, their obligations under Indian law vis-à-vis SEAMEC would be governed by Indian law. [Paragraph 3]

   "The relationship of Technip to Coflexip whether one of control or not is really a question of their status. The applicable law would therefore be the law of their domicile, namely, French law. Having determined their status according to French Law, the next question as to their obligation under the Indian Law vis-a-vis SEAMEC would have to be

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governed exclusively by Indian law." [Paragraph 3]

2. The Court rejected the respondents' argument that French law should be disregarded as contrary to Indian public policy, stating that domestic public policy must relate to basic principles of morality and justice, and the foreign law must amount to a flagrant or gross breach of such principles. [Paragraphs 5-6]

   "Domestic public policy which can justify a disregard of the applicable foreign law must relate to basic principles of morality and justice and the foreign law amount to a flagrant or gross breach of such principles." [Paragraph 6]

B. Date of Acquisition

1. The Court examined the relevant provisions of the French law and the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (Regulations). [Paragraphs 7-8]

2. The Court found no evidence that Technip obtained de facto control over Coflexip in April 2000, and the evidence suggested it was merely a strategic alliance. [Paragraph 9]

   "We are of the opinion that having regard to the balance of probabilities there was no evidence that Technip obtained de facto control of Coflexip in April 2000. The evidence would rather suggest that it was nothing more than a strategic alliance." [Paragraph 9]

3. The Court held that for triggering Regulations 10, 11, and 12, it must be established that Technip's purchase of shares in Coflexip was with the object of taking control over SEAMEC, the alleged target company. [Paragraph 10]

   "In order to trigger Regulations 10 to 12, it would have to be established that the purchase of the 29.68% shares by Technip in Coflexip was with the object of taking control of SEAMEC." [Paragraph 10]

4. The Court found that SEAMEC did not constitute a substantial part of Coflexip's assets, nor was the main purpose of acquiring control over Coflexip to secure control over SEAMEC. [Paragraph 11]

   "SEBI had noted that the takeover of SEAMEC was only an incidental fall out of the control of Coflexip and that SEAMEC formed a 'small and insignificant portion of the total business of Coflexip' contributing merely 2% of the total asset base of Coflexip as on December, 2000." [Paragraph 11]

C. Acting in Concert

1. The Court disapproved of the Securities Appellate Tribunal's (SAT) reasoning that Technip and IFP (through ISIS) acted in concert based on their common parenthood and family ties, stating that the statutory provisions exhaustively define what constitutes 'acting in concert'. [Paragraph 12]

   "We need not go into the reasons separately although we must say that we disapprove of the introduction of the concept of a joint

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family into corporate law when the statutory provisions, particularly Regulation 2(e) exhaustively defines what would amount to 'acting in concert'." [Paragraph 12]

2. The Court found that SAT erred in not focusing on whether Technip and IFP acted in concert to obtain control over SEAMEC, the alleged target company. [Paragraph 13]

   "Furthermore, it is abundantly clear that even the name of SEAMEC does not feature in any of the several reasons put forward by SAT whereas that, as we must emphasise, should have been the primary point of focus." [Paragraph 13]

V. Conclusion

The Court allowed the appeals of Technip and IFP, setting aside the order of SAT. The Court held that Technip acquired control over SEAMEC in July 2001, not in April 2000, and discharged the bank guarantees furnished by Technip. [Paragraph 14]

"We are thus of the opinion that SEBI's order must prevail and the order of SAT must be set aside." [Paragraph 11]

"The appeals are for these reasons allowed without costs." [Paragraph 14]

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21. M/s. S.B.P.and Co. vs M/s. Patel Engineering Ltd. and Anr.

CJI R.C. LAHOTI, J. B.N. AGRAWAL, J. ARUN KUMAR, J. G.P. MATHUR, J. A.K. MATHUR, J. P.K. BALASUBRAMANYAN

Read the judgment here

I. Introduction

The Supreme Court of India, in this landmark judgment, addressed the crucial question concerning the nature of the function of the Chief Justice or his designate under Section 11 of the Arbitration and Conciliation Act, 1996. The three-judge bench decision in Konkan Railway Corporation Ltd. vs. Mehul Construction Co. [(2000) 7 SCC 201], as approved by the Constitution Bench in Konkan Railway Corporation Ltd. & Anr. vs. Rani Construction Pvt. Ltd. [(2002) 2 SCC 388], had taken the view that the Chief Justice's function under Section 11(6) of the Act is purely administrative and not judicial or quasi-judicial. The correctness of this view was questioned in the present case. (Paragraph 1)

II. Background

The Arbitration and Conciliation Act, 1996 (the Act) was intended to comprehensively cover international and commercial arbitrations and conciliations, as well as domestic arbitrations and conciliations. It aimed to establish a fair, efficient, and capable arbitral procedure to meet the needs of the concerned arbitration. The Act was based on the UNCITRAL Model Law on International Commercial Arbitration. (Paragraph 3)

The Act replaced the procedure laid down in Sections 8 and 20 of the Arbitration Act, 1940. Part I of the Act deals with arbitration, Part II with the enforcement of certain foreign awards, and Part III with conciliation. The relevant provisions for this case are in Part I, dealing with arbitration. (Paragraphs 2-3)

III. Key Provisions

Section 7 of the Act defines an arbitration agreement, and Section 2(h) defines a 'party' as a party to an arbitration agreement. Section 11, titled 'Appointment of Arbitrators,' is the central provision in this case. (Paragraphs 4-5)

Under Section 11(6), if a party fails to act as required under the agreed appointment procedure, or if the parties or the appointed arbitrators fail to reach an agreement, or if a person or institution fails to perform the entrusted function, a party may request the Chief Justice or his designate to take the necessary measures for appointing an arbitrator. Section 11(7) gives finality to the decision rendered by the Chief Justice or his designate when moved under sub-sections (4), (5), or (6) of Section 11. (Paragraph 5)

IV. Analysis

A. Nature of the Chief Justice's Function under Section 11(6)

The Court analyzed the nature of the Chief Justice's function under Section 11(6) and concluded that it is a judicial power, not merely an administrative one. The reasoning is as follows:

1. **Adjudicatory Process**: While exercising the power under Section 11(6), the Chief Justice

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has to consider whether he has jurisdiction, whether there is a valid arbitration agreement, whether the applicant is a party to the agreement, and whether the conditions for exercising the power exist. This necessarily involves an adjudicatory process. (Paragraphs 8, 10)

2. **Finality of the Decision**: Section 11(7) gives finality to the Chief Justice's decision on matters entrusted to him under sub-sections (4), (5), or (6) of Section 11. This finality is indicative of a judicial decision rather than an administrative one. (Paragraph 8)

3. **Conferment of Power on Highest Judicial Authority**: The power under Section 11(6) is conferred on the Chief Justice of the High Court or the Chief Justice of India, the highest judicial authorities in the state or country, respectively. This suggests that the power is intended to be exercised judicially. (Paragraphs 12, 17)

4. **Affecting Rights of Parties**: The appointment of an arbitrator against the opposition of one party, or the rejection of objections regarding the existence of an arbitration agreement or a subsisting dispute, affects the rights of the parties. This cannot be considered a mere administrative act. (Paragraph 10)

5. **Comparison with Section 8**: Under Section 8, when a judicial authority is approached in a matter subject to an arbitration agreement, it has to decide whether a valid arbitration clause exists and whether the dispute is covered by it. It would be incongruous to hold that the Chief Justice cannot decide these issues under Section 11(6), while a judicial authority can do so under Section 8. (Paragraph 15)

6. **Judicial Norms and Principles**: The Court reasoned that when a statute confers power on the highest judicial authority, who normally performs judicial functions, it is difficult to assume that the power is conferred as a persona designata (personal capacity). The Chief Justice's power under Section 11(6) must be exercised judicially, following judicial norms and principles. (Paragraphs 13-14)

B. Designation of Authority under Section 11(6)

The Court also addressed the issue of the Chief Justice's power to designate another person or institution to exercise the function under Section 11(6):

1. **Designation of Non-Judicial Bodies**: The Court held that the Chief Justice cannot designate a non-judicial body or institution to decide on the existence of an arbitration agreement or other contentious issues, as these are judicial or quasi-judicial decisions. However, the Chief Justice can seek the opinion of an institution in nominating a qualified arbitrator under Section 11(8), but the order appointing the arbitrator must be made by the Chief Justice or his designate judge. (Paragraphs 16, 39)

2. **Designation of District Judges**: The Court ruled that the Chief Justice cannot designate a district judge to perform the functions under Section 11(6), as the intention of the legislature was not to entrust this power to the District Court. (Paragraph 40)

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3. **Designation of High Court or Supreme Court Judges**: The Chief Justice of the High Court can delegate the function under Section 11(6) to another judge of that court, and the Chief Justice of India can delegate it to another judge of the Supreme Court. In such cases, the designated judge would exercise the power vested in the Chief Justice under Section 11(6). (Paragraph 41)

C. Scope of the Chief Justice's Adjudication

The Court defined the scope of the Chief Justice's adjudication when entertaining an application under Section 11(6):

1. **Jurisdiction**: The Chief Justice has to decide his own jurisdiction, whether the party making the motion has approached the right High Court. (Paragraph 38)
2. **Existence of Arbitration Agreement**: The Chief Justice has to decide whether there is a valid arbitration agreement as defined in Section 7 of the Act and whether the applicant is a party to such an agreement. (Paragraph 38)
3. **Barred or Dead Claims**: The Chief Justice can decide whether the claim is barred by limitation or is a dead claim sought to be resurrected, or whether the parties have concluded the transaction by recording satisfaction of their mutual rights and obligations. (Paragraph 38)
4. **Scope of the Arbitration Clause**: While the Chief Justice can decide whether an arbitration agreement exists, it may not be possible for him to decide at that stage whether a live claim falls within the purview of the arbitration clause. This question can be left to the arbitral tribunal to decide along with the merits of the claims. (Paragraph 38)
5. **Conditions for Appointment**: The Chief Justice has to decide whether the applicant has satisfied the conditions for appointing an arbitrator under Section 11(6) of the Act. (Paragraph 38)
6. **Procedure**: For the purpose of taking a decision on these aspects, the Chief Justice can proceed based on affidavits and documents produced or take or record such evidence as may be necessary. (Paragraph 38)

D. Judicial Review and Appeals

The Court clarified the position regarding judicial review and appeals against orders passed under Section 11(6):

1. **Appeal against the Chief Justice's Order**: Since the Chief Justice's order under Section 11(6) is a judicial order, an appeal will lie against that order only under Article 136 of the Constitution of India to the Supreme Court. (Paragraph 43)
2. **No Appeal against the Chief Justice of India's Order**: There can be no appeal against an order of the Chief Justice of India or a judge of the Supreme Court designated by him while entertaining an application under Section 11(6) of the Act. (Paragraph 43)
3. **Judicial Review of Arbitral Tribunal's Orders**: The Court disapproved of the stand adopted by some High Courts that any order passed by the arbitral tribunal is capable of

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being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such intervention by the High Courts is not permissible. Once the arbitration has commenced, parties have to wait until the award is pronounced, unless a right of appeal is available under Section 37 of the Act. (Paragraphs 44-45)

E. Overruling of Konkan Railway Case

The Court overruled the decision in Konkan Railway Corporation Ltd. & Anr. vs. Rani Construction Pvt. Ltd. [(2000) 8 SCC 159], which had held that the Chief Justice's order under Section 11(6) was an administrative order and not amenable to judicial review. (Paragraph 46(xii))

V. Conclusion

In conclusion, the Supreme Court clarified that the power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Arbitration and Conciliation Act, 1996, is a judicial power and not merely an administrative one. The Chief Justice or his designate judge has the right to decide preliminary aspects such as jurisdiction, the existence of a valid arbitration agreement, the existence of a live claim, and the conditions for exercising the power. The Court also provided guidance on the designation of authority under Section 11(6), the scope of the Chief Justice's adjudication, and the avenues for judicial review and appeals against orders passed under this provision.

This landmark judgment aimed to ensure credibility in the arbitration process and minimize judicial intervention while upholding the principles of natural justice and the rights of parties involved in arbitration proceedings.

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22. Rameshwar Prasad & Ors. vs Union of India and Anr.

JUSTICE K.G. BALAKRISHNAN, J. B.N. AGRAWAL, J. ASHOK BHAN, J. ARIJIT PASAYAT

Read the judgment here

I. Introduction

The judgment deals with multiple writ petitions filed challenging the constitutionality, legality, and validity of the Union of India's Notification GSR 333(E), which ordered the dissolution of the Bihar Legislative Assembly. The petitions were filed by members of the dissolved Legislative Assembly under Article 32 of the Constitution. The challenges question the legitimacy of the Governor's report leading to the dissolution, arguing that it was based on unfair and tainted means, resulting in a minority government. The Governor's actions have been condemned as biased and unsupported by the believable speed and diligence of the President's approval. [Paragraph 1]

II. Background

A. Election Results and Party Positions

Based on the election results, no single party or alliance could secure a majority of 122 seats in the 243-member Legislative Assembly. The Rashtriya Janata Dal (RJD) and its alliance had 75 seats, while the National Democratic Alliance (NDA) comprising the Bharatiya Janata Party (BJP) and Janata Dal (United) had a total of 92 seats. Other parties and independents held the remaining seats. [Paragraph 2]

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B. Governor's Actions

The Chief Minister, Smt. Rabri Devi, resigned, and the Governor accepted her resignation. [Paragraph 3] Various political parties and independent MLAs met the Governor, expressing their unwillingness to support either the RJD or the NDA in forming the government. [Paragraphs 4-8]

The RJD staked a claim to form the government with support from multiple parties, but they did not have enough support to meet the minimum requirement. [Paragraph 9] The NDA delegation also met the Governor, claiming support from 10 independents, but they did not submit any authorization letter, and even with the claimed support, they would fall short of the majority mark. [Paragraph 10]

C. Governor's Recommendation

After consulting legal experts and case laws, including the Sarkaria Commission's recommendations, the Governor concluded that no political party or coalition could claim a majority in the Legislative Assembly. He stated that there was a complete inability for any political party to form a stable government commanding the confidence of the majority members, resulting in a failure of constitutional machinery. [Paragraphs 12-13]

The Governor recommended keeping the Constituent Assembly in suspended animation and requested the President to take appropriate action. [Paragraph 15]

III. Concerns Raised

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The petitions raised concerns about the increasing instability of elected governments due to unprincipled and opportunistic political realignments, undermining democracy. They highlighted the trend of attempting to influence elected representatives and party members with allurements like money and posts, which could distort the verdict of the people and tamper with constitutional provisions. [Paragraphs 3-6]

IV. Judicial Review and Bias

The judgment discusses the scope of judicial review and the principles for adjudging the validity of an action based on the subjective satisfaction of the authority. It cites the Bommai case, which held that the principles for adjudging the validity of an action based on the subjective satisfaction of the authority do not entirely apply to the exercise of constitutional power under Article 356. [Paragraph 34]

The judgment also examines the issue of bias and the circumstances under which a judge may be disqualified from a case. It cites the Pinochet case and the Locabail case, which provide guidance on the factors that may give rise to a real danger of bias and the need to decide the issue based on the facts of each individual case. [Paragraphs 30-33]

V. Role of Governors and Constitutional Provisions

The judgment delves into the role of Governors in Union-State relations and the provisions of the Constitution related to the imposition of President's Rule under Article 356. It discusses the historical context, the debates in the Constituent Assembly, and the recommendations of the Sarkaria Commission. [Paragraphs 49, 93]

The judgment highlights the importance of conventions and the need for the Governor to maintain the constitutional machinery in the State. It emphasizes the role of elected representatives and the functioning of political parties in upholding the Constitution. [Paragraph 93]

VI. Conclusion

The court dismissed the writ applications, referring to Article 172 of the Constitution and Section 73 of the R.P. Act, which argue that the Legislative Assembly had been constituted and there was no bar on its dissolution. The court also discussed the power to limit the temporal effect of an administrative decision. [Paragraph 56]

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23. I.R. Coelho (Dead) By LRs. vs State of Tamil Nadu

JUSTICE S.P. BHARUCHA, JUSTICE B.N. KIRPAL, JUSTICE V.N. KHARE, JUSTICE SYED SHAH MOHAMMED QUADRI AND JUSTICE D.P. MOHAPATRA

Read the judgment here

I. Introduction

This judgment deals with the validity of the insertion of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (the Janmam Act) and the West Bengal Land Holding Revenue Act, 1979 into the Ninth Schedule of the Constitution of India. The matter has been referred to a larger Bench for consideration, along with the judgments in Waman Rao and Bhim Singh Ji cases. [Paragraph 1]

II. Background

Gudalur Janmam Estates Act

The Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969, insofar as it vested forest lands in the Janmam estates in the State of Tamil Nadu, was struck down by the Supreme Court in Balmadies v. State of Tamil Nadu [1973] 1 SCR 258 because it was not found to be a measure of agrarian reform protected by Article 31A of the Constitution. [Paragraph 1]

West Bengal Land Holding Revenue Act

Section 2(c) of the West Bengal Land Holding Revenue Act, 1979 was struck down by the Calcutta High Court as being arbitrary and, therefore, unconstitutional. The special leave petition filed by the State of West Bengal against this judgment was dismissed. [Paragraph 1]

Insertion into the Ninth Schedule

By the Constitution (Thirty-fourth Amendment) Act, the Janmam Act, in its entirety, was inserted into the Ninth Schedule. By the Constitution (Sixty-sixth Amendment) Act, the West Bengal Land Holding Revenue Act, 1979, in its entirety, was inserted into the Ninth Schedule. [Paragraph 1]

III. Contentions

The insertion of these Acts into the Ninth Schedule is being challenged on two grounds:

1. Judicial review is a basic feature of the Constitution, and to insert an Act or part of an Act that has been struck down as unconstitutional in the exercise of judicial review is to destroy or damage the basic structure of the Constitution. [Paragraph 1]
2. To insert into the Ninth Schedule after April 24, 1973, an Act or part of an Act that has been struck down as violative of the fundamental rights conferred by Part III of the Constitution is to destroy or damage its basic structure. [Paragraph 1]

IV. Relevant Provisions

Article 31B of the Constitution provides that none of the Acts and Regulations specified in the Ninth Schedule shall be deemed void or inconsistent with the fundamental rights conferred by Part III of the Constitution, notwithstanding any judgment,

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decree, or order of any court to the contrary. [Paragraph 5]

V. Waman Rao Judgment

The judgment in Waman Rao & Ors. Etc. Etc. v. Union of India and Ors. [1981] 2 SCR 1 dealt with Article 31B. It referred to the judgment in Kesavananda Bharti [1973] Suppl. SCR 1, which held that Parliament has no power to amend the Constitution to damage or destroy its basic or essential features or basic structure. [Paragraph 7]

The order in Waman Rao held that:

- All amendments to the Constitution made before April 24, 1973, by which the Ninth Schedule was amended, were valid and constitutional. [Paragraph 7]
- Amendments made on or after April 24, 1973, by which the Ninth Schedule was amended, were open to challenge on the ground that they damage the basic and essential features of the Constitution or its basic structure. [Paragraph 7]
- If an Act or Regulation included in the Ninth Schedule by an amendment made after April 24, 1973, is saved by Article 31A or Article 31C (as it stood prior to the 42nd Amendment), the challenge to the validity of the relevant Constitutional Amendment on the ground that it damages or destroys a basic or essential feature of the Constitution or its basic structure as reflected in Articles 14, 19, or 31 will become otiose. [Paragraph 7]

Chandrachud, C.J., in Waman Rao, stated that laws and regulations included in the Ninth Schedule prior to April 24, 1973, would not be open to challenge on the ground of inconsistency with Part III of the Constitution. However, Acts and Regulations included on or after April 24, 1973, would not receive the protection of Article 31B, as there was no justification for making additions to the Ninth Schedule with a view to conferring blanket protection on the laws included therein. The constitutional amendments making additions to the Ninth Schedule on or after April 24, 1973, would be valid only if they did not damage or destroy the basic structure of the Constitution. [Paragraph 7]

Bhagwati, J., in his judgment common to Waman Rao and Minerva Mills Ltd. & Ors. v. Union of India & Ors. [1981] 1 SCR 206, stated that all constitutional amendments made after the Kesavananda Bharti case would have to be tested by reference to the basic structure doctrine. In every case where a constitutional amendment includes a statute or statutes in the Ninth Schedule, its constitutional validity would have to be considered concerning the basic structure doctrine, and such an amendment would be liable to be declared invalid to the extent it damages or destroys the basic structure of the Constitution by according protection against violation of any particular fundamental right. [Paragraph 7]

VI. Bhim Singh Ji Judgment

The Constitution Bench that decided Waman Rao also decided the case of Maharao Sahib Sri Bhim Singh Ji Etc. Etc. v. Union of India & Ors. Etc. Etc. [1985] Suppl. 1 SCR 862, which dealt with the Urban Land (Ceiling and Regulation) Act, 1976, inserted into the Ninth Schedule by the Constitution (Fortieth Amendment) Act. [Paragraph 8]

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Tulzapurkar, J., held the entire Act to be unconstitutional, while the other four learned Judges agreed that a part of Section 27(1) of the Act was unconstitutional. Section 27(1) imposed restrictions on the transfer of urban or urbanizable land with a building or a portion of such building for a period of ten years, except with the previous permission of the competent authority. [Paragraph 8]

Tulzapurkar, J., and A.P. Sen, J., struck down Section 27(1), in part, for violation of the fundamental rights conferred by Articles 14 and 19(1)(f), respectively. However, Krishna Iyer, J., stated that a mere violation of Article 14 is not a betrayal of the basic feature, but a shocking, unconscionable, or unscrupulous travesty of the quintessence of equal justice that shakes the democratic foundation and must suffer the death penalty. [Paragraph 8]

VII. Referral to a Larger Bench

The Court deems it fit to refer these writ petitions and appeals for decision to a larger Bench, preferably of nine learned Judges, to consider the following:

1. Reconcile the apparent inconsistencies in the Waman Rao judgment and make it clear whether an Act or Regulation, or a part thereof, found by the Supreme Court to be violative of one or more fundamental rights conferred by Articles 14, 19, and 31, can be included in the Ninth Schedule. [Paragraph 9]
2. Determine whether it is only a constitutional amendment amending the Ninth Schedule that damages or destroys the basic structure of the Constitution that can be struck down. [Paragraph 9]
3. Consider the decision in the Bhim Singh Ji case for the purposes mentioned above. [Paragraph 10]

The papers and proceedings shall be placed before the Hon'ble the Chief Justice of India for appropriate orders. [Paragraph 11]

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24. Common Cause (A Regd. Society) vs Union of India & Ors.

JUSTICE H.K. SEMA AND JUSTICE MARKANDEY KAT JU

Read the judgment here

I. Introduction

The judgment pertains to a writ petition filed by Common Cause (A Registered Society) in the form of a public interest litigation (PIL) before the Supreme Court of India. The petitioner highlighted various problems related to traffic and road safety measures and sought directions from the Court to the authorities for taking various measures to control the occurrence of road accidents. [Paragraph 1]

II. Prayers Sought by the Petitioner

The petitioner sought the following reliefs from the Court:

1. To issue directions to the Union of India, in consultation with representatives of various state governments and union territories, to:
    1. Set up satisfactory procedures for licensing of vehicles and drivers, ensuring proper training and competence of drivers, and procedures for suspension/cancellation of licenses. [Paragraph 6(i)(a)]
    2. Ensure provision of adequate infrastructure on roads, including signs, signals, footpaths, and road repairs. [Paragraph 6(i)(b)]
    3. Set up methodologies for scientific analysis of accidents to minimize recurrence. [Paragraph 6(i)(c)]
    4. Establish organizations for providing road safety education to all types of road users. [Paragraph 6(i)(d)]
    5. Ensure availability of ambulances for immediate shifting of injured persons to hospitals. [Paragraph 6(i)(e)]
    6. Set up expert committees in each state/UT and major cities to deal with requirements for minimizing road accidents. [Paragraph 6(i)(f)]
2. To direct the Union of India to formulate a suitable Road Traffic Safety Act to meet the requirements for minimizing road accidents. [Paragraph 6(ii)]
3. To pass any other necessary orders to deal effectively with matters related to traffic safety and minimization of road accidents. [Paragraph 6(iii)]

III. Court's Observations and Reasoning

Separation of Powers and Judicial Restraint

The Court observed that the prayers made by the petitioner require the Court to give directions of a legislative or executive nature, which can only be given by the legislature or executive. The judiciary cannot encroach into the domain of the legislature or executive, as it would violate the doctrine of separation of powers. [Paragraph 8, citing *Divisional Manager, Aravali Golf Course & Anr. vs. Chander Hass*]

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The Court referred to the seven-judge bench decision in *P. Ramachandra Rao vs. State of Karnataka*, which held that giving directions of a legislative nature is not a legitimate judicial function. The Court cannot legislate or perform executive functions. [Paragraphs 9-11, 17]

The Court emphasized that while judicial activism can be legitimate, such as giving an expanded meaning to Articles 14 and 21 of the Constitution, laying down new principles of law specifically reserved for the legislature amounts to an illegitimate exercise of judicial power. [Paragraphs 18-20]

The Court noted that it is not equipped with the skills, expertise, or resources to discharge functions that belong to the legislature or executive. Adjudication must be done within the system of historically validated restraints and conscious minimization of judges' preferences. [Paragraphs 21, 50]

Limits of Judicial Activism and Public Interest Litigation

The Court expressed concerns about the misuse of Article 21 of the Constitution to justify every kind of directive or claim by the petitioner. Article 21 is not a "brahmastra" (ultimate weapon) for the judiciary to grant every claim. Futile writs should not be issued by the Court. [Paragraphs 37, 39]

The Court acknowledged that while the judiciary can make suggestions or recommendations to the legislature or executive, these cannot be binding, as it would violate the principle of separation of powers. The judiciary must exercise judicial restraint and not perform executive or legislative functions. [Paragraph 53]

The Court cautioned that the view that the judiciary can solve all problems of the people is unconstitutional and fallacious. It creates a false impression that the judiciary is a panacea for all ills in society. The problems facing the nation are so massive that they can only be solved by the people themselves using their creativity and scientific thinking, not by relying on judicial crutches like PILs. [Paragraphs 54-56]

The Court expressed concern about the increasing trend of frivolous and vexatious PILs, which have become a nuisance, threatening to choke the dockets of superior courts and obstructing the hearing of genuine cases. PILs have largely become "publicity interest litigation," "private interest litigation," "political interest litigation," or "paise income litigation" (litigation for monetary gain). [Paragraphs 59-60]

Specific Observations on Road Safety and Motor Vehicles Act

The Court observed that the Motor Vehicles Act is a comprehensive enactment on the subject of road safety. If there is a lacuna or defect in the Act, it is for the legislature to correct it by a suitable amendment, and not for the Court to amend the law. [Paragraph 24]

The Court noted that there already exists a Road Safety Council as contemplated by Section 215 of the Motor Vehicles Act, which has been considering suggestions and measures regarding road safety. [Paragraphs 31, 35]

The Court stated that the directives sought in the petition require the expertise of administrative and technical officials, apart from financial resources. These are highly technical matters to be dealt with

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by administrative and technical authorities who have experience and expertise in the matter. [Paragraph 43]

The Court observed that Chapter VIII of the Motor Vehicles Act, 1988, has provisions for control of traffic, including fixing speed limits, restricting certain vehicles, erecting traffic signs, and other road safety measures. If further provisions are required, the petitioner may approach the legislature or concerned authority, but the Court cannot amend the law. [Paragraph 52]

IV. Conclusion

The Court dismissed the writ petition, concluding that the prayers made by the petitioner require the Court to give directions of a legislative or executive nature, which is not a legitimate judicial function. The Court emphasized the importance of judicial restraint and the doctrine of separation of powers, cautioning against the judiciary encroaching into the domains of the legislature or executive. [Paragraph 61]

Justice H.K. Sema, while agreeing with the conclusion to dismiss the petition, dissociated himself from certain observations made by Justice Markandey Katju regarding doubts about the jurisdiction of the Court in entertaining PILs. Justice Sema emphasized that if there is a buffer zone unoccupied by the legislature or executive, which is detrimental to public interest, the judiciary must occupy the field to subserve public interest. Each case should be examined on its own facts, and a blanket bar on PILs should be avoided. [Paragraphs 4, 9-10]

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25. State of West Bengal & Ors. vs The Committee for Protection of Democratic Rights, West Bengal & Ors.

CHIEF JUSTICE K.G. BALAKRISHNAN, JUSTICE R.V. RAVEENDRAN, JUSTICE D.K. JAIN, JUSTICE P. SATHASIVAM AND JUSTICE J.M. PANCHAL

Read the judgment here

I. Introduction

This judgment by the Supreme Court of India deals with a significant constitutional issue concerning the jurisdiction of the Central Bureau of Investigation (CBI) to investigate crimes within a state's territory without the consent of the state government. The case arose from a violent attack on a political party's camp in West Bengal in 2001, where the High Court directed the CBI to take over the investigation due to concerns about the impartiality of the state police. The state of West Bengal challenged this order in the Supreme Court, leading to the constitution of a larger bench to examine the legal issues involved.

II. Fundamental Rights and the Role of the Judiciary

The Court emphasized the paramount importance of protecting fundamental rights enshrined in the Constitution, particularly the rights to equality (Article 14), freedom of speech (Article 19(1)(a)), and the right to life and personal liberty (Article 21). [Paragraph 40] It stated that the violation of these rights cannot be immunized from judicial scrutiny based on the doctrine of separation of powers between the legislature, executive, and judiciary. [Paragraph 28]

The Court highlighted that the Constitution is a living document that must grow with the nation, and its provisions should be interpreted broadly and liberally. [Paragraph 29] The judiciary, as the guardian of the Constitution, must consider its growth and development over time. [Paragraph 29] The power of judicial review conferred on the Supreme Court and High Courts under Articles 32 and 226 is considered essential to the Constitution and cannot be taken away. [Paragraph 32]

III. Separation of Powers and Judicial Review

The Court discussed the doctrine of separation of powers and its role in the Indian constitutional scheme. It recognized that the separation of powers is a basic feature of the Constitution, but it is not a rigid concept. [Paragraph 26] The power of judicial review stands on a different level and is essential for resolving disputes regarding constitutional power and limitations. [Paragraph 27]

The Court emphasized that the separation of powers serves to limit the jurisdiction of each organ and act as a check and balance on the activities of other organs. [Paragraph 28] However, the modern view of constitutional courts worldwide is not only to demarcate the realm of functioning but also to define its minimum content. [Paragraph 30]

The Court stated that the evolution of the separation of powers doctrine requires a broader oversight function to include governmental inaction in today's world of positive rights and justifiable social and economic entitlements. [Paragraph 33] This is necessary to prevent the country from

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becoming a state of repose, and social and institutional engineering are part of this obligation. [Paragraph 33]

IV. Federal Structure and the CBI's Jurisdiction

The Court addressed the issue of the federal structure and the distribution of legislative powers between the Union and the States. It acknowledged that the Union is not allowed to encroach upon a State's legislative powers, but the doctrine of separation of powers is not applicable in this context. [Paragraph 24]

The Court examined the provisions of the Delhi Special Police Establishment Act, 1946, which established the CBI as a special force in Delhi for the investigation of certain offenses in Union Territories. [Paragraph 19] Section 5 of the Act allows the Central Government to extend the powers of the CBI to any area in a State for the investigation of specified offenses, but Section 6 requires the consent of the State Government for the exercise of such powers and jurisdiction. [Paragraph 22]

V. The High Court's Power to Direct CBI Investigation

The Court held that the High Court has the authority to direct the CBI to investigate a crime within a state without the state's consent. [Paragraph 45] This does not infringe upon the Constitution's federal structure or the separation of powers. As guardians of civil liberties, the Court has a duty to protect fundamental rights under Article 21 of the Constitution. [Paragraph 45]

However, the Court cautioned that this power should be exercised with caution and only in exceptional situations where the High Court finds a prima facie case requiring such an investigation. [Paragraph 46] Otherwise, the CBI may be overwhelmed and unable to properly investigate serious cases. [Paragraph 46]

VI. Conclusion

In conclusion, the Supreme Court upheld the High Court's power to direct the CBI to investigate a crime within a state's jurisdiction without the state's consent. This power is derived from the Court's obligation to protect citizens' fundamental rights and maintain the rule of law. However, the Court emphasized that this power should be exercised sparingly and in exceptional circumstances to avoid overburdening the CBI and maintain the credibility of investigations.

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26. Smt. Selvi & Ors. vs State of Karnataka

CHIEF JUSTICE K.G. BALAKRISHNAN, JUSTICE R.V. RAVEENDRAN AND JUSTICE J.M. PANCHAL

Read the judgment here

I. Introduction

This judgment by the Supreme Court of India deals with the legality and constitutional validity of involuntarily administering certain scientific techniques, namely narcoanalysis, polygraph examination, and the Brain Electrical Activation Profile (BEAP) test, for the purpose of improving investigation efforts in criminal cases. The court examined the tensions between efficient investigation and individual liberties, particularly the right against self-incrimination enshrined in Article 20(3) of the Constitution of India. [Paragraph 1]

II. Background

A. Narcoanalysis Technique

Narcoanalysis involves the intravenous administration of sodium pentothal, a barbiturate that induces a hypnotic trance and lowers inhibitions, making the subject more likely to divulge information. [Paragraph 41] This technique has been used in psychiatry and anesthesia, but its use in criminal investigations has been controversial. [Paragraph 42]

During the hypnotic stage induced by sodium pentothal, the subject exhibits behaviors such as handling negative emotional responses, exploring conflicts, and divulging information. It is difficult for the person to lie at this stage. [Paragraph 44] The personnel involved in conducting a narcoanalysis interview include a forensic psychologist, an anesthesiologist, a psychiatrist, a general physician, and a language interpreter if needed. [Paragraph 45]

While narcoanalysis can aid investigators in uncovering vital evidence and detecting malingering, it has limitations, and interrogators must be skilled to extract useful information. Some individuals may be suggestible to questioning, and there is no uniform criteria for evaluating the efficacy of this technique. [Paragraph 47]

B. Polygraph Examination

The polygraph examination, also known as the lie detector test, measures physiological responses such as respiration, blood pressure, and pulse rate to determine if someone is lying. [Paragraph 10] The examiner analyzes the results to assess the subject's credibility.

There are three prominent polygraph examination techniques that involve a pre-test interview to finalize questions and mitigate surprise. [Paragraph 11] The polygraph examiner should be familiar with the details of the ongoing investigation.

The use of polygraph examinations in the criminal justice system has been controversial, especially when used to detect deception or verify the truth of testimonies. [Paragraph 13] Polygraph tests are also being used on victims of sexual offenses, despite some states prohibiting it. [Paragraph 14]

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Polygraph tests have limitations and can lead to errors due to various factors, such as the subject's mental state and potential memory loss. [Paragraph 16] The errors in polygraph tests are grouped into 'false positives' and 'false negatives', and the qualifications and competence of the examiner are crucial in addressing these complexities. [Paragraph 17]

The biggest concern about polygraph tests is the potential for deliberate attempts by the subject to manipulate the results, using techniques to deceive the examiner. [Paragraph 18]

C. Brain Electrical Activation Profile (BEAP) Test

The BEAP test, also known as the P300 Waves test, measures brain activity in response to selected stimuli to determine familiarity with certain information. [Paragraph 67] It examines and measures 'event-related potentials' (ERP) – electrical wave forms emitted by the brain after exposure to an external event – to recognize specific patterns of brain activity indicating cognitive mental activities. [Paragraph 67]

The BEAP test involves attaching electrodes to the subject's scalp to measure the emission of wave components. It requires collaboration between investigators and examiners to design probes and detect deception. [Paragraph 69] The test subject is exposed to relevant and irrelevant stimuli, and the emission of P300 wave components is recorded to make inferences about the individual's familiarity with the information related to the crime.

The BEAP test led to the development of 'Brain Fingerprinting' by Dr. Lawrence Farwell, which has been used in criminal justice and litigation. [Paragraph 70] However, the P300 Wave component has not been extensively researched for its potential use in the criminal justice system, and Dr. Farwell's 'Brain Fingerprinting' technique has not been subject to rigorous independent study. [Paragraph 73]

III. Legal Issues

The court examined the following legal questions regarding the involuntary administration of these techniques:

1. Does it violate the 'right against self-incrimination' in Article 20(3) of the Constitution? [Paragraph 7]
2. Does the use of these techniques create a likelihood of incrimination?
3. Do the results from these techniques amount to 'testimonial compulsion' under Article 20(3)?
4. Is the involuntary administration of these techniques a reasonable restriction on 'personal liberty' under Article 21?

IV. Right Against Self-Incrimination

The right against self-incrimination is an essential safeguard in criminal procedure, ensuring the reliability and voluntary nature of statements. Compelled testimony is more likely to be false, impeding the integrity of the trial and verdict. [Paragraph 91] This rule ensures that the testimony considered during trial is reliable and avoids miscarriages of justice. [Paragraph 91]

Article 20(3) of the Constitution of India extends to the investigative stage in criminal cases and

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protects accused persons, suspects, and witnesses who are examined during an investigation. [Paragraph 82] The test results cannot be admitted in evidence if they have been obtained through the use of compulsion. [Paragraph 82]

The right against self-incrimination is vital to prevent coerced testimonies from being used in trials, ensuring that the prosecution must prove their case through legitimate means. [Paragraph 92] Obtaining evidence from accused individuals by compulsion could hinder the detection of truth and discourage diligent search for reliable independent evidence. [Paragraph 93]

A. Applicability of Article 20(3) to the Stage of Investigation

The court decisively answered the applicability of Article 20(3) to the stage of investigation, establishing that it extends to every stage where information is given. [Paragraph 99] A formal accusation is required to invoke the protection of Article 20(3). [Paragraph 99] All information that has a guilty element is covered under the scope of 'incrimination' for the purpose of Article 20(3). [Paragraph 99]

B. Testimonial Compulsion

The majority decision in Kathi Kalu Oghad is the controlling precedent for understanding the scope of 'testimonial compulsion'. [Paragraph 27] It states that 'personal testimony' comes under the prohibition of Article 20(3), and oral or written statements can be relied upon for identification or comparison. The bar of Article 20(3) can be invoked when statements are likely to lead to incrimination. [Paragraph 27]

The court recognized the distinction between testimonial acts and physical evidence in Article 20(3), citing foreign decisions. [Paragraph 27] In Schmerber v. California, the U.S. Supreme Court made a distinction between evidence of a 'testimonial' or 'communicative' nature as opposed to evidence of a 'physical' or 'real nature', concluding that the privilege against self-incrimination applied to the former but not to the latter. [Paragraph 27]

The court concluded that the results of the impugned tests (narcoanalysis, polygraph examination, and BEAP test) should be treated as testimonial acts for the purpose of invoking the right against self-incrimination. [Paragraph 149] The phrase 'and such other tests' in the Explanation to Sections 53, 53-A, and 54 of the Code of Criminal Procedure should only include tests that involve the examination of physical evidence. [Paragraph 149]

V. Personal Liberty and Right to Privacy

The involuntary administration of the impugned tests entails physical confinement and an intrusion into the subject's mental privacy. [Paragraph 53] The court recognized the need to balance an individual's right to privacy and compelling public interest, as laws designed to achieve the protection of public health and morality will not be in breach of Article 21 of the Constitution of India. [Paragraph 53]

The court expressed concern about the potential for custodial abuse, surveillance, harassment, and public distribution of test recordings, which could be viewed as a restraint on personal liberty. [Paragraph 1]

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A. Right to Privacy

The judicial understanding of privacy in India has mostly focused on protecting the body and physical spaces from intrusive actions by the State. [Paragraph 2] However, the court recognized the importance of personal autonomy in the choice between remaining silent and speaking, especially in circumstances where the person faces exposure to criminal charges or penalties. [Paragraph 2]

Forcing someone to undergo these techniques violates privacy boundaries and the right against self-incrimination, leading to adverse consequences even without criminal charges. [Paragraph 3]

B. Cruel, Inhuman, or Degrading Treatment

The administration of these techniques could cause mental pain and suffering, and the results could lead to physical abuse. [Paragraph 16] The threat of conducting tests could elicit testimony or cause mental trauma, especially for vulnerable sections of society. [Paragraph 16]

During a narcoanalysis interview, the test subject loses awareness of place and passing of time. The techniques used impair the test subject's capacity for decision or judgment, and can be considered cruel, inhuman, or degrading treatment. [Paragraph 4] The law disapproves of involuntary testimony, and a forcible intrusion into a person's mental processes is an affront to human dignity and liberty, often with grave and long-lasting consequences. [Paragraph 4]

The court considered international conventions and declarations related to torture and treatment of individuals, such as the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. [Paragraph 2] The involuntary administration of these tests could constitute cruel, inhuman, or degrading treatment as per Article 21 of the Constitution of India. [Paragraph 2]

VI. Right to Fair Trial

The involuntary administration of these tests impedes the right to a fair trial, access to legal advice, and impacts the fact-finding role of the judge. [Paragraph 2]

The subject may not be aware of the drug-induced revelations, and the investigators may choose not to communicate them, affecting the defendant's ability to present a meaningful defense. [Paragraph 3]

India's lack of a jury system means that the use of certain techniques could affect the judge's fact-finding role, as the same judge oversees both the evidentiary and guilt phases of the trial. [Paragraph 6] The consideration of test results could prejudice the judge, and reliance on scientific techniques could cloud their judgment. [Paragraph 6]

VII. Admissibility of Evidence

The narcoanalysis technique and polygraph examination have limitations and may not always produce truthful or accurate results, conflicting with the standard of proof in criminal trials. [Paragraph 4]

The use of expert opinion testimony in criminal justice has raised concerns about the credibility of experts, as they may have a bias towards the techniques they promote. [Paragraph 5]

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If the compulsory administration of any of the impugned techniques is permitted, there would be no principled basis to deny the same opportunity to defendants and witnesses, leading to an unnecessary rise in frivolous litigation. [Paragraph 7]

VIII. Safeguards and Guidelines

While the court ruled that the involuntary administration of these techniques violates the right against self-incrimination and personal liberty, it acknowledged that voluntary administration with certain safeguards is allowed. [Paragraph 2]

The National Human Rights Commission of India has formulated guidelines for administering the lie detector test, including obtaining consent from the accused, providing access to a lawyer, and recording the consent before a Judicial Magistrate. The test must be conducted by an independent agency in the presence of a lawyer. [Paragraph 4]

IX. Conclusion

The court concluded that the compulsory administration of the impugned techniques (narcoanalysis, polygraph examination, and BEAP test) violates the 'right against self-incrimination' as enshrined in Article 20(3) of the Constitution of India. [Paragraph 2] It impairs the reliability and voluntariness of evidence obtained, violating the individual's choice between speaking and remaining silent. [Paragraph 2]

The involuntary administration of these techniques is an unjustified intrusion into the mental privacy of an individual and a violation of international human rights norms. [Paragraph 2] No individual should be forcibly subjected to any of these techniques, but voluntary administration with certain safeguards is allowed. [Paragraph 2]

Ultimately, the court ruled that the use of these techniques for investigative purposes is not justifiable, as it violates the fundamental rights guaranteed by the Constitution of India. [Paragraph 2]

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27. Re: Special Reference No. 1 of 2012 [Under Article 143(1) of the Constitution of India]

CHIEF JUSTICE S.H. KAPADIA, JUSTICE D.K. JAIN, JUSTICE JAGDISH SINGH KHEHAR, JUSTICE DIPAK MISRA AND JUSTICE RANJAN GOGOI

Read the judgment here

I. Introduction

The judgment deals with various legal issues arising from a Presidential Reference made to the Supreme Court under Article 143(1) of the Constitution of India. The Reference sought the Court's opinion on the permissibility of methods other than auction for the disposal of natural resources, in light of the Court's previous decision in the "2G Case" (Centre for Public Interest Litigation & Ors. v. Union of India & Ors.). [Paragraph 14]

II. Maintainability of the Reference

The Court first addressed the objections raised regarding the maintainability of the Reference. The objections included the lack of genuine doubt, the filing and withdrawal of a review petition, the language exhibiting mala fides, the bar on entertaining a Presidential Reference on a decided matter, and the attempt to overturn the judgment in the 2G Case. [Paragraph 22]

The Court clarified that it has the jurisdiction to clarify its previous judgments and held that the Reference was maintainable. The Court emphasized that the word "doubt" is not necessary for a Reference to be maintainable under Article 143(1), and the President can seek the Court's opinion on any question of law or fact. [Paragraphs 27, 32]

III. Ratio Decidendi and Precedential Value

The Court discussed the principles for determining the ratio decidendi (the rationale or principle upon which a case is decided) and the precedential value of a judgment. It emphasized the importance of analyzing the specific facts and circumstances of a case and extracting the principle behind the decision. [Paragraphs 63-70]

The Court referred to various judgments that highlighted the need to read a judgment as a whole and not treat every observation as a precedent. The Court also clarified that it has the power to overrule or reconsider its previous decisions in exceptional circumstances, such as when a decision is rendered per incuriam (without considering relevant facts or law) or in the absence of relevant or material facts. [Paragraphs 43-55]

IV. Interpretation of the 2G Case Judgment

The Court then analyzed the relevant paragraphs of the 2G Case judgment to determine the ratio decidendi and its applicability to the disposal of natural resources other than spectrum. [Paragraph 72]

The Court observed that the 2G Case judgment focused on the validity of the auction method for the distribution of spectrum from September 2007 to March 2008. While the judgment discussed the principles of equality, public trust doctrine, and non-discriminatory methods for the distribution of natural resources, it did not declare auction as the

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only permissible method for all natural resources. [Paragraphs 78-80]

V. Permissibility of Methods Other than Auction

The Court addressed the first question of the Reference, which sought the Court's opinion on whether all natural resources must be disposed of through auctions. [Paragraph 81]

The Court examined the constitutional principles enshrined in Articles 14 (equality before law) and 39(b) (distribution of natural resources for the common good) and the applicability of the public trust doctrine. [Paragraphs 84-90]

After analyzing various judgments, the Court concluded that auction cannot be declared a constitutional mandate under Article 14 for the disposal of all natural resources. The Court held that the method of disposal should be determined based on legitimate public purposes, such as maximizing revenue returns and serving the common good. [Paragraphs 95-110]

The Court emphasized that different resources may require different treatment, and non-floating of tenders or deviation from auctions is permissible if it is in line with public interest and not arbitrary or discriminatory. The Court also stated that the potential for abuse cannot be the basis for declaring a method unconstitutional, and the judiciary should not interfere in policy matters unless there is a violation of constitutional or statutory provisions. [Paragraphs 133-143]

VI. Conclusion

In conclusion, the Court held that auction is not the only permissible method for the disposal of all natural resources. The decision to use auctions should be based on legitimate public purposes, and deviation from auctions is permissible if it is in line with public interest, fairness, and transparency. The Court declined to answer further questions related to the mode of alienation of spectrum. [Paragraph 69]

The Court emphasized that the legality and constitutionality of policy and its implementation should be based on reason, fairness, and transparency to ensure the best interest of the citizens of the country. The disposal of natural resources for private exploitation at a cost lower than their actual worth should be considered unconstitutional. [Paragraph 110]

In-text citations: [Paragraph 14], [Paragraph 22], [Paragraphs 27, 32], [Paragraphs 63-70], [Paragraphs 43-55], [Paragraph 72], [Paragraphs 78-80], [Paragraph 81], [Paragraphs 84-90], [Paragraphs 95-110], [Paragraphs 133-143], [Paragraph 69], [Paragraph 110]

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28. Republic of Italy and Ors. vs Union of India and Ors.

CHIEF JUSTICE ALTAMAS KABIR AND JUSTICE J. CHELAMESWAR

Read the judgment here

I. Introduction

This case pertains to an incident that occurred on February 15, 2012, when two Italian naval officers fired upon an Indian fishing vessel, resulting in the death of two fishermen. The Republic of Italy challenged the jurisdiction of the State of Kerala in registering the FIR, investigating the matter, and arresting the accused. The High Court of Kerala dismissed the Writ Petition filed by the accused, prompting them to file a Special Leave Petition before the Supreme Court of India. [Para 20]

II. Jurisdiction of Kerala State Police

The Supreme Court first addressed the jurisdiction of the Kerala State Police to investigate the incident. It was determined that the incident occurred 20.5 nautical miles from the coastline of Kerala, within the Contiguous Zone. According to the Maritime Zones Act, 1976, the Kerala Police has no jurisdiction in this area, even with the extension of Section 188A of the Indian Penal Code. The Union of India has the authority to investigate and prosecute any violations in the Contiguous Zone. [Paras 84, 85]

III. Jurisdiction of Indian Courts

The Court then examined the jurisdiction of Indian courts to try the accused Italian marines. The incident involved Italian marines accused of a crime in international waters, leading to disputes at the governmental level. The State of Kerala does not have the authority to try the accused. [Para 86]

IV. Application of UNCLOS and Maritime Zones Act

The case involved the interpretation and application of the United Nations Convention on the Law of the Sea (UNCLOS) and the Maritime Zones Act, 1976. The Court noted that India, as a signatory of UNCLOS 1982, is obligated to respect its provisions and apply them if there is no conflict with domestic law. [Para 97]

A. Territorial Waters and Sovereignty

The Court discussed the concept of sovereignty and its application to territorial waters. It was established that the sovereignty of a coastal state extends to its territorial waters, which is a well-accepted principle of international law. [Paras 7, 8, 9, 10]

B. Contiguous Zone and Exclusive Economic Zone

The Court examined the provisions of the Maritime Zones Act, 1976, and UNCLOS regarding the Contiguous Zone and the Exclusive Economic Zone. It was noted that India has sovereign rights within the Contiguous Zone, but only sovereign rights within the Exclusive Economic Zone for specific purposes, such as resource exploration and energy production. [Paras 12, 31, 96]

C. Incident of Navigation and Article 97 of UNCLOS

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The Court considered whether the incident could be classified as an "incident of navigation" under Article 97 of UNCLOS. It was determined that the expression "incident of navigation" does not cover a criminal act, such as the killing of Indian fishermen on a foreign vessel. Therefore, Article 97 of UNCLOS, which deals with penal jurisdiction in navigation incidents, does not apply to the present case. [Paras 34, 35, 95]

V. Concurrent Jurisdiction and Article 100 of UNCLOS

The Court acknowledged the possibility of concurrent jurisdiction between India and Italy in this case. It stated that if there is evidence of concurrent jurisdiction, the directions given in the judgment may be reconsidered. The accused Italian marines were also granted the right to invoke Article 100 of UNCLOS, which requires states to cooperate in the repression of piracy on the high seas or in any other place outside a state's jurisdiction. [Paras 20, 27, 99]

VI. Establishment of a Special Court

The Court directed the Union of India to set up a Special Court to try the case in accordance with the Maritime Zones Act, the Indian Penal Code, the Code of Criminal Procedure, and UNCLOS 1982. [Para 99]

VII. Conclusion

The Supreme Court disposed of the Special Leave Petition and the Writ Petition, ruling that the State of Kerala did not have jurisdiction to investigate the incident, and that a Special Court established by the Union of India would have the authority to try the accused Italian marines. The Court also acknowledged the potential for concurrent jurisdiction between India and Italy, subject to the presentation of evidence, and granted the accused the right to invoke Article 100 of UNCLOS.

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29. Novartis AG vs Union of India & Others

JUSTICE AFTAB ALAM AND JUSTICE RANJANA PRAKASH DESAI

Read the judgment here

I. Introduction

This case revolves around the patent application filed by Novartis AG (the appellant) for the beta crystalline form of Imatinib Mesylate, a drug used in the treatment of certain types of cancer. The judgment discusses the interpretation of various provisions of the Patents Act, 1970, particularly Section 3(d), which was amended in 2005 to comply with the TRIPS Agreement. The case highlights the balance between promoting innovation and ensuring access to affordable medicines.

II. Background

A. The Zimmermann Patent and Imatinib Mesylate

- Jorg Zimmermann invented N-phenyl-2-pyrimidine-amine derivatives, including Imatinib, which can be used as anti-tumor drugs and in the treatment of atherosclerosis. The compounds were granted patents in the US and Europe. [Paragraph 5]
- The appellant claimed to have produced the beta crystalline form of Imatinib Mesylate from Imatinib free base in two ways. [Paragraph 6]
- The drug Gleevec, derived from the Zimmermann patent, came to market for commercial sale. The appellant claimed that Gleevec was part of the Zimmermann patent and obtained drug approval on that basis. [Paragraph 9]

B. India's Patent Regime and the TRIPS Agreement

- India's patent regime at the time of Independence was not beneficial for the country and mainly benefited foreigners. It did not promote scientific research or industrialization and limited the innovativeness of Indians. [Paragraph 31]
- The TRIPS Agreement required India to provide patent protection for pharmaceutical and agricultural products. India amended its Patents Act in 1994 to comply with these obligations. [Paragraph 61]
- India's patent law was taken to the WTO panel twice, first by the USA and then by the European Communities, regarding the lack of patent protection for pharmaceutical and agricultural chemical products. The WTO panel found India had not complied with its obligations under the TRIPS Agreement. [Paragraph 62]
- The Doha Declaration on TRIPS and Public Health was adopted at the fourth WTO Ministerial Conference in 2001, recognizing the flexibilities in the TRIPS Agreement to protect public health and promote access to medicines. [Paragraph 64]

C. Amendments to the Patents Act, 1970

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- The Patents (Amendment) Act, 1999, was passed to comply with the TRIPS provisions, amending the Patents Act, 1970, retrospectively. [Paragraph 67]
- The Patents (Amendment) Act, 2002, brought large-scale amendments to the patent law in India, aiming to modernize and harmonize it with international practices. [Paragraph 20]
- The Patents (Amendment) Act, 2005, was passed to allow for product patents for pharmaceutical and agricultural chemical substances, as required by the TRIPS Agreement. [Paragraph 74]

III. Key Issues

A. Interpretation of Section 3(d)

- Section 3(d) of the Patents Act, 1970, as amended in 2005, states that the discovery of a new form of a known substance must enhance its efficacy to be considered an invention. [Paragraph 95]
- The amendment in Section 3(d) was meant to deal specifically with chemical substances and pharmaceutical products, setting up a second tier of qualifying standards. [Paragraph 26]
- The interpretation of Section 3(d) and its relationship with the definition of "invention" in Section 2(1)(j) and Section 2(1)(ja) was a crucial issue in the case. [Paragraph 99]

B. Patentability of the Beta Crystalline Form of Imatinib Mesylate

- The appellant's case was rejected, as the beta crystalline form of Imatinib Mesylate did not demonstrate enhanced efficacy over Imatinib in free base form. [Paragraph 48]
- The court held that the test of enhanced therapeutic efficacy must be applied strictly, with only properties directly related to efficacy to be considered. The appellant's arguments of enhanced efficacy were not convincing. [Paragraph 48]
- The court found that the beta crystalline form of Imatinib Mesylate is a new form of a known substance and must satisfy the relevant provisions, including Section 3(d). [Paragraph 16]

C. Access to Affordable Medicines

- The court acknowledged concerns about the impact of the product patent regime on access to affordable medicines, as highlighted by the high price of the drug Gleevec patented by Novartis. [Paragraph 82]
- The Parliamentary debate on the 2005 amendment focused primarily on medicines and drugs, with concerns about creating private monopolies in the pharmaceutical industry and the impact on affordable drug prices. [Paragraph 79]
- The court recognized the importance of the TRIPS Agreement and the Doha Declaration in addressing issues related to public health and access to medicines. [Paragraph 64]

IV. Conclusion

The Supreme Court dismissed the appeals filed by Novartis AG, upholding the decision of the Intellectual Property Appellate Board (IPAB) and

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the Assistant Controller of Patents and Designs. The court held that the beta crystalline form of Imatinib Mesylate failed the tests of "invention" and "patentability" under the Patents Act, 1970, as it did not demonstrate enhanced efficacy over the known substance, as required by Section 3(d). The judgment highlights the balance struck by the Indian patent law between promoting innovation and ensuring access to affordable medicines, in line with the TRIPS Agreement and the Doha Declaration on TRIPS and Public Health.

This summary has been prepared using technology alone. Please be advised to read the judgment for accuracy and verify.

30. Dr. Balram Prasad vs Dr. Kunal Saha & Ors.

JUSTICE CHANDRAMAULI KR. PRASAD AND JUSTICE V. GOPALA GOWDA

Read the judgment here

I. Introduction

This is a summary of the judgment delivered by the Supreme Court of India in the case of Dr. Balram Prasad v. Dr. Kunal Saha & Ors. The case involves a medical negligence claim filed by Dr. Kunal Saha against several doctors and the AMRI Hospital in Kolkata, West Bengal, for the death of his wife, Anuradha Saha.

II. Background

In May 1998, Anuradha Saha, a psychology graduate from an Ivy League school in New York, developed a skin rash and was treated by various doctors, including Dr. Sukumar Mukherjee, Dr. Baidyanath Haldar, Dr. Abani Roy Chowdhury, and Dr. Bairam Prasad. [para 41-45] Despite their efforts, her condition deteriorated, and she was eventually transferred to Breach Candy Hospital in Mumbai, where she passed away on May 28, 1998, due to septicemic shock with multi-system organ failure. [para 43]

III. Legal Proceedings

Dr. Kunal Saha filed a complaint before the National Consumer Disputes Redressal Commission (NCDRC) in 1999, seeking compensation of Rs. 77,07,45,000, which was later amended to Rs. 20,00,00,000. [para 4] The NCDRC awarded a compensation of Rs. 1,55,60,000, finding the doctors and the AMRI Hospital liable for medical negligence. [para 39]

Aggrieved by the NCDRC's decision, the doctors, the AMRI Hospital, and Dr. Kunal Saha filed appeals before the Supreme Court. [para 2]

IV. Key Issues

The key issues before the Supreme Court were:

1. Whether the claimant (Dr. Kunal Saha) was justified in seeking enhancement of compensation, and if so, the amount he was entitled to. [para 79]
2. Whether the claimant was entitled to compensation on the enhanced claim filed before the NCDRC. [para 79]
3. Whether the claimant had forfeited his right to claim additional compensation under Order II Rule 2 of the Civil Procedure Code (CPC), as pleaded by the AMRI Hospital. [para 79]
4. Whether the NCDRC was justified in using the multiplier method to determine and award compensation to the claimant. [para 79]
5. Whether the claimant was entitled to pecuniary damages for loss of employment, property, and travel expenses. [para 79]
6. Whether the claimant was entitled to interest on the compensation. [para 79]
7. Review of the compensation awarded in the judgment, apportionment, and the claimant's liability for contributory negligence. [para 79]

V. Court's Findings and Judgment

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A. Compensation Enhancement

The Supreme Court allowed the claimant's appeal for enhancement of compensation, considering the steady inflation and devaluation of money over the 15-year period since the claim was filed. [para 82] The Court held that the claimant was entitled to enhanced compensation based on relevant facts and evidence. [para 84]

B. Future Potential Income

The Court recognized that the NCDRC had erred in calculating compensation based solely on Anuradha Saha's low income as a graduate student, failing to consider her future potential income as a psychology graduate from an Ivy League school. [para 85] The Court relied on previous decisions to establish that in cases of death, the future prospects of the deceased's income should be increased by a certain percentage based on their age. [para 87]

C. Pecuniary Damages

The Court awarded the claimant Rs. 5,72,00,550 for the loss of income of the deceased, Rs. 7 lakhs for medical treatment, and Rs. 1,50,000 for travel and hotel expenses. [para 7] However, the claim for loss of income for missed work was rejected. [para 99]

D. Non-Pecuniary Damages

The Court recognized the invaluable contribution of a wife to the household and the loss of personal care and attention to the husband and children. [para 26-27] It awarded Rs. 10 lakhs for the pain and suffering of the claimant's wife and Rs. 1,00,000 for the loss of consortium. [para 30]

E. Interest on Compensation

The Court awarded interest at the rate of 6% per annum on the compensation amount from the date of the complaint until the payment, as the NCDRC had not awarded interest for the 15-year period, which was unreasonable. [para 34]

F. Multiplier Method

The Court rejected the use of the multiplier method for determining compensation in medical negligence claims, finding it inappropriate and potentially leading to over-compensation. [para 97]

G. Apportionment of Liability

The Court apportioned liability among the doctors and the AMRI Hospital as follows:

- Dr. Sukumar Mukherjee: Rs. 10 lakhs [para 7]
- Dr. Baidyanath Haldar: Rs. 10 lakhs [para 7]
- Dr. Bairam Prasad: Rs. 5 lakhs (as a junior doctor) [para 7]

The AMRI Hospital was directed to pay the remaining compensation to the claimant after deducting the amounts payable by the doctors, with interest. [para 37]

H. Contributory Negligence

The Court set aside the finding of contributory negligence by the claimant, which had led to a deduction in the compensation awarded by the NCDRC. [para 37]

VI. Conclusion

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The Supreme Court awarded a total compensation of Rs. 6,08,00,550 to the claimant, Dr. Kunal Saha, for the death of his wife, Anuradha Saha, due to medical negligence by the doctors and the AMRI Hospital. The Court emphasized the need for just and fair compensation based on the victim's status and future prospects, rejecting the use of the multiplier method in determining compensation. Additionally, the Court urged stricter action against negligent medical establishments and recommended the enactment of laws to regulate private hospitals and nursing homes. [para 4]

This summary has been prepared using technology alone. Please be advised to read the judgment for accuracy and verify.

31. Lalita Kumari vs Govt.of U.P. and Ors.

CHIEF JUSTICE P. SATHASIVAM, JUSTICE DR. B.S. CHAUHAN, JUSTICE RANJANA PRAKASH DESAI, JUSTICE RANJAN GOGOI AND JUSTICE S.A. BOBDE

Read the judgment here

I. Introduction

The Supreme Court of India, in the case of Lalita Kumari v. Govt. of U.P., delivered a landmark judgment on the interpretation of Section 154 of the Code of Criminal Procedure (CrPC), which deals with the registration of First Information Reports (FIRs) by the police. The judgment aimed to provide clarity on the mandatory nature of FIR registration and the circumstances under which a preliminary inquiry may be conducted before registering an FIR.

II. Background

The case originated from a petition filed by Lalita Kumari's father under Article 32 of the Constitution, seeking protection for his kidnapped daughter. Despite submitting a written report, the police failed to take action, leading to the filing of an FIR. The Supreme Court issued notices to the Union of India, Chief Secretaries of all States and Union Territories, and Director Generals of Police/Commissioners of Police to ensure immediate registration of FIRs and provide copies to complainants. [Para 2, 3]

III. Conflicting Decisions and Referral to a Constitution Bench

The matter of whether a police officer is obligated to register a case for a cognizable offense was heard by the Supreme Court in Lalita Kumari vs. Government of Uttar Pradesh & Ors. Due to conflicting decisions on the issue, the bench referred the matter to a larger Constitution Bench for an authoritative judgment. [Para 4, 5]

IV. The Main Issue

The primary question before the Constitution Bench was the interpretation of Section 154 of the CrPC and the consideration of Sections 156 and 157, which deal with the reporting and investigation of cognizable offenses. [Para 6, 7, 8]

V. Arguments Presented

Various counsels representing the Union of India, States, and other parties presented their arguments before the Constitution Bench. The key arguments revolved around the mandatory nature of FIR registration, the scope for preliminary inquiries, the interpretation of the word "information" in Section 154(1), and the safeguards against false implications and arbitrary arrests. [Para 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21]

VI. Legislative Intent and Interpretation of Section 154

The Constitution Bench examined the legislative intent behind Section 154 of the CrPC and the principles of statutory interpretation. The court emphasized the literal rule of interpretation, which focuses on the plain language of the statute. [Para 29, 30, 31, 32, 36, 37, 38]

A. Mandatory Registration of FIR

The court held that Section 154(1) of the CrPC mandates the registration of an FIR if the

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information given to the police discloses a cognizable offense. The use of the word "shall" in the provision makes it mandatory for the police officer to register the case without questioning the reasonableness or credibility of the information. [Para 39, 40, 41, 42, 43, 44, 45, 46]

B. Recording of FIR in the FIR Book

The court clarified that the FIR must be recorded in the FIR Book or FIR Register, and not in the General Diary maintained under the Police Act. The FIR Book is a separate register with unique annual serial numbers for each FIR, allowing for strict control and tracking by police officers and courts. [Para 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 61, 62, 63]

C. Interpretation of "Information"

The court noted that the word "information" in Section 154(1) is not qualified by "reasonable" or "credible," unlike other sections of the CrPC. This deliberate change in wording indicates that the police officer cannot refuse to record information on the ground of reasonableness or credibility. [Para 64, 65, 66, 67, 68]

VII. Preliminary Inquiry

The court addressed the issue of whether a preliminary inquiry can be conducted before registering an FIR. While acknowledging the arguments in favor of preliminary inquiries, the court held that such inquiries are permissible only to ascertain whether the information discloses a cognizable offense. [Para 70, 71, 72]

A. Exceptions for Preliminary Inquiry

The court recognized certain categories of cases where a preliminary inquiry may be warranted, such as:

- Medical negligence allegations against doctors [Para 21, 52]
- Matrimonial disputes
- Commercial offenses
- Corruption cases
- Cases with abnormal delay in reporting [Para 3]

However, the court emphasized that the preliminary inquiry should be time-bound, not exceeding seven days, and all information related to cognizable offenses must be recorded in the General Diary/Station Diary/Daily Diary. [Para 52]

VIII. Safeguards and Protections

The court addressed concerns regarding the potential misuse of mandatory FIR registration and the rights of the accused.

A. Safeguards against Arbitrary Arrests

The court clarified that the registration of an FIR does not automatically lead to the arrest of the accused. There are safeguards in place, such as the provision for anticipatory bail, to protect the accused from arbitrary arrests. [Para 97, 98, 99]

B. Protections for the Accused

The court highlighted that the Code of Criminal Procedure provides various protections for the accused, including the power of the police to close investigations if there are insufficient grounds. The court emphasized that the registration of an FIR

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does not necessarily mean that the police must investigate every case mandatorily. [Para 3]

C. Conformity with Article 21

The court held that the mandatory registration of FIRs and the subsequent investigation conform to the "procedure established by law" under Article 21 of the Constitution, which protects the rights of the accused. [Para 76]

IX. Advantages of Mandatory FIR Registration

The court recognized several advantages of mandatory FIR registration, including:

- Ensuring access to justice for victims [Para 88]
- Upholding the rule of law [Para 88]
- Facilitating swift investigation and prevention of crimes [Para 88]
- Reducing manipulation in criminal cases [Para 88]
- Promoting transparency in the criminal justice system [Para 86]
- Enabling judicial oversight [Para 86]

X. Conclusion

The Supreme Court's judgment in Lalita Kumari v. Govt. of U.P. provided a comprehensive interpretation of Section 154 of the CrPC and clarified the mandatory nature of FIR registration for cognizable offenses. The court struck a balance between the rights of victims and the accused by allowing for limited exceptions for preliminary inquiries in certain cases, while emphasizing the importance of transparency, access to justice, and the rule of law. The judgment aimed to address the prevalent issue of non-registration of FIRs and ensure accountability in the criminal justice system.

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32. National Legal Services Authority vs Union of India and Others

JUSTICE K.S. RADHAKRISHNAN AND JUSTICE A.K. SIKRI

Read the judgment here

1. Introduction

This judgment by the Supreme Court of India addresses the grievances of the transgender (TG) community, who seek legal recognition of their gender identity and claim third gender legal status. The National Legal Services Authority and other organizations filed petitions to provide free legal services and support to marginalized sections of society, including the Hijra community (a term used for transgender individuals in South Asia). [Paragraphs 1-4]

2. Arguments Presented

A. Petitioners' Arguments

1. **Shri Raju Ramachandran**, senior counsel for the National Legal Services Authority, emphasized the challenges faced by the TG community and argued for their legal right to determine their gender identity and access equal rights and privileges as citizens. He highlighted the discrimination and restrictions faced by the community in various aspects of life, and emphasized that the State cannot discriminate against them based on gender, as it violates the Constitution of India. [Paragraph 5]

2. **Shri Anand Grover**, senior counsel for the Intervener, discussed the historical background of the third gender identity in India and their position in Hindu mythology, Vedic and Puranic literatures, and the role they played in the Islamic world. He also mentioned the repealed Criminal Tribes Act, 1871, the recognition of their gender identity by international forums and U.N. bodies, and the violation of the fundamental rights of the transgender community in India. [Paragraph 6]

3. **Shri T. Srinivasa Murthy**, counsel for I.A. No. 2 of 2013, argued that transgender persons should be declared socially and educationally backward and be given the same benefits as male and female genders. He also stated that the right to choose one's gender identity is integral to the right to lead a dignified life, guaranteed by Article 21 of the Constitution of India. [Paragraph 7]

4. **Shri Sanjeev Bhatnagar**, counsel for the petitioner in Writ Petition No.604 of 2013, highlighted the need for constitutional and legal protection for the Kinnar community and their socio-economic benefits. [Paragraph 8]

B. Respondent's Arguments

Shri Rakesh K. Khanna, Additional Solicitor General, representing the Union of India, acknowledged the sensitive human issue raised by the transgender community. He mentioned the formation of an Expert Committee to study their problems and ensure their representation. [Paragraph 9]

3. Experiences of Transgender Individuals

The judgment highlights the trauma and discrimination experienced by transgender

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individuals from various sections of society, including their own families. Laxmi Narayan Tripathy, a Hijra, detailed the trauma experienced from birth, while Siddarth Narrain, a eunuch, recalled being beaten by family members for joining the hijra community. Sachin, a TG person, expressed the challenges of not being accepted for their identity. [Paragraph 10]

4. Definition and Historical Background

1. The term "transgender" is an umbrella term that encompasses individuals whose gender identity does not match their biological sex, including Hijras/Eunuchs, who identify as a "third gender," individuals undergoing or who have undergone Sex Re-Assignment Surgery (SRS), and those who cross-dress. [Paragraph 11]

2. The TG community has a strong historical presence in Hindu mythology and other religious texts, and the concept of "tritiya prakrti" or "napunsaka" (third gender) is integral to Vedic and Puranic literatures. [Paragraphs 12-15]

3. Historically, Hijras/transgender persons had a prominent role, but with colonial rule from the 18th century, things changed. The Criminal Tribes Act, 1871, deemed the entire Hijra community as 'criminal' and provided for their registration, surveillance, and control. The act was repealed in August 1949. [Paragraph 16]

4. Section 377 of the Indian Penal Code (IPC) criminalized non-vaginal sexual acts, including anal and oral sex, and was used to prosecute transgender persons, demonstrating the harassment and abuse faced by the community. [Paragraphs 17-18]

5. International Perspectives and Laws

1. The judgment extensively references international judicial decisions and laws to show that recognition of "sex identity gender" and the guarantee of equality and non-discrimination based on gender identity is growing in international law. [Paragraph 43]

2. Various international bodies, including the United Nations, have endorsed the Yogyakarta Principles as an important tool for identifying State obligations to respect the human rights of all persons, regardless of their gender identity. [Paragraph 23]

3. The judgment cites cases and laws from various countries, including the United Kingdom, Australia, New Zealand, Malaysia, Germany, Argentina, and the United States, that have recognized the rights of transgender individuals and provided legal recognition of their gender identity. [Paragraphs 25-42]

6. Constitutional Rights and Protections

1. The judgment emphasizes that the Indian Constitution guarantees equality before the law for all individuals, including transgender persons, and prohibits discrimination based on gender identity. [Paragraph 54]

2. Articles 15 and 16 of the Constitution prohibit discrimination based on sex and gender, and the expression 'sex' in these articles is not limited to biological sex but also includes those who do not identify as male or female. [Paragraphs 56-60]

3. Article 19(1) of the Constitution guarantees certain fundamental rights to citizens of India, including freedom of speech and expression,

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and the expression of self-identified gender. [Paragraph 62]

4. Article 21 of the Constitution protects the rights to life and personal liberty, including dignity and privacy. Gender identity recognition is a fundamental right to dignity and freedom under the Constitution. [Paragraphs 67-69]

5. The judgment emphasizes that the expressions in Articles 14, 15, 16, 19, and 21 are "gender neutral" and refer to human beings, including Hijras/Transgenders, based on self-identification and not surgical or medical procedures. [Paragraph 76]

7. Recommendations and Directions

1. The judgment concludes that discrimination based on sexual orientation or gender identity nullifies equality under the law and provides directions to safeguard the rights of the TG community. [Paragraph 77]

2. The judgment recommends that the government create public awareness to make transgender individuals feel included in society and regain their respect. [Paragraph 99]

3. The recommendations of the Expert Committee formed to study the problems faced by the transgender community should be implemented within six months. [Paragraph 99]

4. The judgment also suggests various measures to address the issues faced by the TG community, including:

1. Addressing gaps in HIV surveillance, prevention, and care interventions for Hijras/TG individuals. [Paragraph 45.1]

2. Addressing structural determinants of risks and mitigating their impact by including mental health counseling, crisis intervention, addressing substance abuse, and connecting to livelihood programs in HIV interventions. [Paragraph 45.2]

3. Training health care providers to be competent and sensitive in providing health care services to Hijras/TG, including STI and HIV-related services, and developing guidelines for gender transition and SRS implementation. [Paragraph 45.3]

4. Providing free gender transition and SRS services in public hospitals in several parts of India to clarify the ambiguous legal status of sex reassignment surgery. [Paragraph 45.4]

5. Implementing stigma and discrimination reduction measures through mass media awareness and focused training for police and health care providers. [Paragraph 45.5]

6. Taking action steps to address legal recognition of gender identity for Hijras/TG, in consultation with stakeholders, including ensuring clarity in procedures for issuing identity documents and addressing civil rights issues. [Paragraph 45.6]

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7. Opening up existing Social Welfare Schemes for needy Hijras/TG and creating specific welfare schemes to address their basic needs, including housing and employment. [Paragraph 45.7]

8. Involving vulnerable communities, including Hijras/TG women, in policy and program development. [Paragraph 45.8]

In conclusion, the judgment recognizes the rights of the transgender community, emphasizes the need for legal recognition of their gender identity, and provides recommendations to address the various issues and challenges faced by this marginalized community.

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33. Pramati Educational & Cultural Trust ® & Ors. v. Union of India & Ors.

CHIEF JUSTICE R.M. LODHA, JUSTICE A.K. PATNAIK, JUSTICE SUDHANSU JYOTI MUKHOPADHAYA DIPAK MISRA AND JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

Read the judgment here

1. Constitutional Validity of Article 15(5) and Article 21A

A. Article 15(5) and the Basic Structure of the Constitution

The Court held that the provision of Article 15(5) does not alter the basic structure and framework of the Constitution and is not violative of the concept of secularism. [Paragraph 1] The purpose of Article 15(5) is to provide equal opportunity for socially and educationally backward students, as well as Scheduled Castes and Scheduled Tribes, to study in educational institutions. This provision is an enabling provision to make the equality of opportunity promised in the Constitution a reality. [Paragraph 2]

The voluntary nature of the right under Article 19(1)(g) of the Constitution can be subjected to reasonable restrictions imposed by the State to maintain academic standards and prevent maladministration. Clause (5) in Article 15 allows the State to make special provisions for socially and educationally backward classes, but this does not destroy the right of unaided private educational institutions under Article 19(1)(g) of the Constitution. [Paragraph 3]

The Court held that Article 15(5) does not violate Article 14 of the Constitution. Minority educational institutions are protected under Article 30. Laws treating private aided and unaided educational institutions alike can be challenged under Article 14. [Paragraph 5]

The exclusion of religious minority institutions in clause (1) of Article 30 does not violate secularism, as it is important for maintaining India's diverse and secular character. [Paragraph 27]

B. Article 21A and the Right to Education

The Court held that Article 21A does not conflict with the rights of private unaided schools or minority schools under Articles 19(1)(g) and 30(1) of the Constitution, but the law made under Article 21A may affect these rights. The law should not abrogate the rights of unaided private educational schools or minority schools. [Paragraph 3]

The Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21A of the Constitution is constitutionally valid. [Paragraph 1]

The Court reasoned that the State's appropriation of seats for a reservation policy was not a reasonable restriction under Article 19(1)(g) of the Constitution. Parliament then inserted clause (5) in Article 15 to allow special provisions for socially and educationally backward classes, as well as the Scheduled Castes and Scheduled Tribes, in educational admissions. This new power is independent of the regulatory power under Article 19(1)(g) and raises the question of whether it infringes on private educational institutions' rights under Article 19(1)(g). [Paragraph 21]

2. The Right of Children to Free and Compulsory Education Act, 2009

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This summary has been prepared using technology alone. Please be advised to read the judgment for accuracy and verify.

A. Applicability to Minority Schools

The Court held that the Right of Children to Free and Compulsory Education Act, 2009, in so far as it was made applicable to aided minority schools, was held as ultra vires the Constitution.

Mr. Ajmal Khan and Mr. T.R. Andhyarujina argued that the 2009 Act should not apply to minority schools as it would violate Article 30(1) of the Constitution. They referred to previous court decisions to support their argument. [Paragraph 35]

The Court agreed that the 2009 Act requires aided and unaided minority schools to provide free and compulsory education to children, which may violate their constitutional rights. [Paragraph 46]

B. Applicability to Private Unaided Schools

The 2009 Act requires unaided schools to admit children from weaker sections and disadvantaged groups and provide free and compulsory education. The state funds the expenses for these children. This is consistent with the right to education in the Constitution. Non-minority private schools' argument against this is without merit. [Paragraph 44]

Both Mr. Rohatgi and Mr. Nariman believe that Section 12(1)(c) of the 2009 Act violates the rights of private unaided schools under Article 19(1)(g) of the Constitution. [Paragraph 34]

3. Conclusion

The Court held that the Constitution (Ninety-third Amendment) Act, 2005 and the Constitution (Eighty-Sixth Amendment) Act, 2002 are constitutionally valid, but the 2009 Act is not valid in its application to minority schools. Writ Petition (C) No.1081of2013 is allowed, and other related petitions are dismissed. [Paragraph 47]

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34. M/s. Kailash Nath Associates v. Delhi Development Authority & Anr.

JUSTICE RANJAN GOGOI AND JUSTICE R.F. NARIMAN

Read the judgment here

1. Introduction

This case revolves around a public auction conducted by the Delhi Development Authority (DDA) for Plot No. 2-A, Bhikaji Cama Place, District Centre, New Delhi. The appellant, M/s. Kailash Nath Associates, emerged as the highest bidder with a bid amount of Rs. 3.12 crores. As per the terms and conditions of the auction, the appellant deposited Rs. 78 lakhs, which was 25% of the bid amount, as earnest money with the DDA. [Para 2]

2. Sequence of Events

1. **Acceptance of Bid and Extension of Time for Payment**
    1. The DDA acknowledged the receipt of Rs. 78 lakhs and directed the appellant to deposit the remaining 75% by 17.5.1982. [Para 3]
    2. Due to a general recession in the industry, the appellant and others sought an extension of time for payment. [Para 3]
    3. The DDA set up two High Powered Committees, which recommended granting extensions, and the DDA extended the time for payment twice. [Paras 3, 4, 5]
2. **DDA's Letter and Appellant's Consent**
    1. On 1.12.1987, the DDA issued a letter (marked "without prejudice") to the appellant, seeking their consent to make the balance payment along with 18% interest, as the case was referred to the Central Government for relaxation of Nazul Rules. [Para 6]
    2. The appellant promptly consented to the terms on the same day. [Para 7]
3. **Central Government's Clarification and DDA's Cancellation**
    1. On 1.3.1990, the Central Government informed the DDA that the land in question was not Nazul land. [Para 8]
    2. Despite this, on 6.10.1993, the DDA cancelled the allotment of the plot and forfeited the earnest money of Rs. 78 lakhs, citing the appellant's failure to deposit the balance 75%. [Para 9]

3. Legal Proceedings

1. **Suit for Specific Performance and Damages**
    1. The appellant filed a suit for specific performance and, alternatively, for recovery of the earnest amount and damages. [Para 10]
    2. Shortly after, the DDA re-auctioned the premises and fetched Rs. 11.78 crores. [Para 11]
2. **Single Judge's Order**

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1. The Single Judge dismissed the suit for specific performance and damages but ordered the refund of the earnest money with 9% interest per annum. [Para 11]

2. The Single Judge held that the DDA did not suffer any loss and that the forfeiture of earnest money without notice was arbitrary. [Paras 67, 68, 69]

3. **Division Bench's Judgment**

    1. The Division Bench set aside the Single Judge's order and upheld the forfeiture of the earnest money. [Para 12]

4. Supreme Court's Observations and Findings

1. **Forfeiture of Earnest Money**

    1. The earnest money could be forfeited under the conditions of auction only in case of default, breach, or non-compliance by the bidder. [Para 15]

    2. The DDA did not insist on the payment of the balance 75% within three months and instead extended the time twice, indicating a waiver of the time essence. [Para 15]

    3. There was no breach of contract or misrepresentation by the appellant to justify the forfeiture of earnest money. [Para 15]

2. **DDA's Letter and Appellant's Consent**

    1. The DDA's letter of 1.12.1987 and the appellant's consent were valid, as the DDA's understanding was that the payment of the balance 75% was important, regardless of whether the land was Nazul or not. [Para 17]

    2. The DDA, being a public authority, could not behave arbitrarily by canceling the allotment after the Central Government's clarification. [Para 17]

3. **Arbitrary Forfeiture and Application of Article 14**

    1. The forfeiture of earnest money was arbitrary on two grounds: (i) there was no breach of contract by the appellant, and (ii) the DDA did not suffer any loss, yet appropriated Rs. 78 lakhs. [Para 29]

    2. Article 14 of the Constitution (equality before law) would apply in the field of contract, as the DDA is a public authority and cannot act arbitrarily. [Para 29]

4. **Applicability of Section 74 of the Contract Act**

    1. Section 74 deals with compensation for breach of contract where a penalty is stipulated. [Para 31]

    2. As earnest money is an amount to be paid in case of breach and named in the contract as such, it would necessarily be covered by Section 74. [Para 40]

    3. However, in cases of public auctions, Section 74 may not apply if the forfeiture takes place before an agreement is reached. [Paras 41, 42]

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4. In the present case, the forfeiture took place long after an agreement was reached, and the DDA did not suffer any loss but instead made a profit on re-auction. [Para 42]

5. **Principles of Compensation under Section 74**

    1. The Court enunciated seven principles governing compensation for breach of contract under Section 74. [Para 43]

    2. Notably, reasonable compensation can be awarded only if damage or loss is caused by the breach, and the liquidated amount or penalty is the upper limit. [Paras 43.1, 43.3]

6. **Errors in the Division Bench's Judgment**

    1. The Division Bench erred in principle by holding that the DDA's profit from re-auction was irrelevant, as compensation can only be given for damage or loss suffered. [Para 44]

    2. If no damage or loss is suffered, the law does not provide for a windfall. [Para 44]

5. Conclusion

The Supreme Court allowed the appeal, restored the Single Judge's order, and directed the refund of the earnest money of Rs. 78 lakhs with 9% interest per annum. The Court held that the forfeiture of earnest money by the DDA was arbitrary, as there was no breach of contract by the appellant, and the DDA did not suffer any loss but instead made a profit on re-auction. [Paras 44, 47]

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35. Shreya Singhal v. Union of India

JUSTICE J. CHELAMESWAR AND JUSTICE R. F. NARIMAN

Read the judgment here

1. Introduction

This judgment by the Supreme Court of India deals with the constitutionality of Section 66A of the Information Technology Act, 2000, which punished sending offensive messages through communication devices. A batch of writ petitions was filed under Article 32 of the Constitution, challenging the validity of this provision. [Para 1]

2. Background

Section 66A was introduced through an amendment to the Information Technology Act in 2008. The Statement of Objects and Reasons cited the need for new penal provisions to address crimes like publishing explicit materials and identity theft due to the rapid increase in computer and internet use. [Para 3]

The petitioners argued that Section 66A was unnecessary and that existing laws were sufficient to address these crimes. [Para 4] They contended that the section infringed upon the freedom of speech and expression, was vague in its terms, and discriminated against internet users. [Para 5]

3. Arguments by the Parties

A. Petitioners' Arguments

The petitioners' counsel raised several points regarding the unconstitutionality of Section 66A, including:

1. Infringement of free speech [Para 5]
2. Vagueness of terms used in the section [Para 50]
3. Discriminatory treatment of internet users [Para 5]

B. Respondent's Arguments

Mr. Tushar Mehta, the learned Additional Solicitor General, defended the constitutionality of Section 66A, arguing:

1. The legislature is best positioned to understand the needs of the people. [Para 6]
2. The Court should only interfere when a statute clearly violates citizens' rights under the Constitution. [Para 6]
3. There is a presumption in favor of the constitutionality of an enactment. [Para 6]
4. Freedom of speech and expression is protected under Article 19(1)(a) of the Constitution. [Para 6]

4. Court's Observations and Findings

A. Freedom of Speech and Expression

The Court emphasized the importance of freedom of speech and expression for individuals and democracy, stating that it is crucial for democratic organizations and must be preserved. [Para 9] It discussed the three fundamental concepts of discussion, advocacy, and incitement, with Article 19(1)(a) protecting discussion and advocacy, while Article 19(2) allows for limitations when speech reaches the level of incitement. [Para 13]

The Court also discussed the applicability of American judgments on freedom of speech and expression, noting that while they have persuasive

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value, there are differences when it comes to serving the public interest under the Indian Constitution. [Paras 17-19]

B. Unconstitutionality of Section 66A

The Court found Section 66A to be unconstitutional on the following grounds:

1. **Infringement of Freedom of Speech and Expression**: The section affects the public's right to know and encompasses information of all kinds, including that which may be annoying, inconvenient, or offensive to some. It does not have a proximate relation to any of the eight subject matters contained in Article 19(2). [Para 20]
2. **Vagueness and Overbreadth**: The terms used in Section 66A, such as "grossly offensive," "menacing," "annoyance," and "inconvenience," are vague and undefined. This vagueness can lead to arbitrary and discriminatory enforcement of the law, chilling free speech. [Paras 50-82]
3. **Lack of Procedural Safeguards**: Section 66A lacks the procedural safeguards available for offenses like criminal defamation under Sections 199, 95, and 96 of the Code of Criminal Procedure, revealing a lack of sensitivity to the fundamental right to free speech and expression. [Para 99]
4. **Failure to Meet Constitutional Standards**: Section 66A does not fall within any of the subject matters contained in Article 19(2) and is not severable. Therefore, no part of it can be upheld, and the provision as a whole must be declared unconstitutional. [Paras 94-96]

C. Other Provisions Examined

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The Court also examined the following provisions and made the following observations:

1. **Section 69A and the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009**: These were found to be constitutionally valid. [Para 14]
2. **Section 79 and the Information Technology (Intermediary Guidelines) Rules, 2011**: These were held to be valid, subject to certain conditions. Section 79(3)(b) was read down to mean that an intermediary must expeditiously remove or disable access to material upon receiving a court order or notification from the appropriate government or its agency that unlawful acts related to Article 19(2) are going to be committed. Similarly, Rule 3(4) of the 2011 Rules was read down in the same manner. [Paras 79, 119]
3. **Kerala Police Act, 1960**: The Act was found to be within the legislative competence of the State Legislature. However, Section 118(d) was declared unconstitutional for violating Article 19(1)(a). [Para 14]

5. Conclusion

The Supreme Court struck down Section 66A of the Information Technology Act, 2000, as unconstitutional, violating Article 19(1)(a) and not being saved by Article 19(2). The Court upheld the validity of other provisions, such as Section 69A, Section 79 (with conditions), and the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009, and the Information Technology (Intermediary Guidelines) Rules, 2011 (with conditions). [Para 119]

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36. Supreme Court Advocates-on-Record Association and Another v. Union of India

JUSTICE JAGDISH SINGH KHEHAR, JUSTICE J. CHELAMESWAR, JUSTICE MADAN B. LOKUR, JUSTICE KURIAN JOSEPH AND JUSTICE ADARSH KUMAR GOEL

Read the judgment here

I. Introduction

A. Brief overview of the case

This case deals with the constitutional validity of the Constitution (99th Amendment) Act, 2014, and the National Judicial Appointments Commission (NJAC) Act, 2014. The core issue relates to the process of selection and appointment of judges to the higher judiciary (Chief Justices and Judges of the High Courts and the Supreme Court), as well as the transfer of Chief Justices and Judges from one High Court to another.

The petitioners challenged the constitutional validity of the 99th Amendment and the NJAC Act, which sought to replace the existing "collegium system" of judicial appointments with a new mechanism involving the NJAC, a body comprising members from the judiciary, executive, and eminent persons. The respondents, including the Union of India, argued for reconsideration of the earlier judgments in the Second and Third Judges cases, which had established the primacy of the Chief Justice of India in the appointment process.

B. **Importance of the judgment**

This judgment is of immense significance as it deals with the fundamental issue of judicial independence and the delicate balance of power between the executive and the judiciary in the appointment of judges to the higher courts. The judgment upholds the principles laid down in the Second and Third Judges cases, which had established the primacy of the Chief Justice of India and the collegium system in the appointment process, as a means to safeguard the independence of the judiciary.

The judgment reaffirms the position that the independence of the judiciary is a part of the basic structure of the Constitution and that the appointment of judges is an integral part of this independence. It holds that the 99th Amendment and the NJAC Act violate this basic structure by diluting the primacy of the judiciary in the appointment process and introducing excessive executive involvement.

The judgment has far-reaching implications for the separation of powers and the system of checks and balances enshrined in the Constitution. It underscores the importance of an independent judiciary as a bulwark against potential executive overreach and as a guardian of the rule of law and individual liberties.

II. Background of the Case

A. Parties involved

The main parties involved in this case were:

Supreme Court Advocates-on-Record Association and others: The petitioners who challenged the constitutional validity of the 99th Constitutional Amendment Act and the National Judicial Appointments Commission (NJAC) Act.

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Union of India: The respondent, represented by the Attorney General and the Solicitor General, who defended the constitutional amendments and the NJAC Act.

B. **Facts of the case**

The case arose from the enactment of the 99th Constitutional Amendment Act and the NJAC Act by the Parliament of India in 2014. These legislations aimed to replace the existing system of appointing judges to the higher judiciary (Supreme Court and High Courts) through a collegium system, with a new system involving the National Judicial Appointments Commission (NJAC).

The collegium system, established by the Supreme Court's judgments in the Second and Third Judges Cases, gave primacy to the opinion of the Chief Justice of India in the appointment of judges. The new NJAC system sought to establish a commission comprising judicial and executive members to make recommendations for judicial appointments.

C. Legal issues raised

The primary legal issues raised in this case were:

Validity of the 99th Constitutional Amendment Act: The petitioners challenged the constitutional validity of the 99th Amendment, arguing that it violated the "basic structure" of the Constitution by undermining the independence of the judiciary.

Validity of the NJAC Act: The petitioners also challenged the validity of the NJAC Act, which established the NJAC and laid down the procedure for judicial appointments.

Interpretation of Articles 124, 217, and 222: A key issue was the interpretation of Articles 124, 217, and 222 of the Constitution, which deal with the appointment of judges to the Supreme Court and High Courts. The petitioners relied on the interpretation given in the Second and Third Judges Cases, while the respondents sought to revisit and reconsider those judgments.

Primacy of the Chief Justice of India: Another crucial issue was the primacy of the Chief Justice of India in the appointment process, as established by the Second and Third Judges Cases, and whether the new NJAC system undermined this primacy.

Separation of powers and judicial independence: The case also raised broader questions about the separation of powers between the executive, legislature, and judiciary, and the extent to which the new system affected the independence of the judiciary.

These legal issues formed the crux of the case and were extensively debated and deliberated upon by the Supreme Court.Here is a detailed explanation of the Constitutional Challenges section, with the petitioners' and respondents' arguments:

III. Constitutional Challenges

A. Petitioners' Arguments

The petitioners argued that the 99th Constitutional Amendment violated the basic structure of the Constitution by undermining the independence of the judiciary. Their key arguments were:

Primacy of Judiciary: The amendment negated the primacy of the judiciary in the appointment of judges to the higher judiciary, which was established by the Supreme Court in the Second

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and Third Judges cases. The petitioners contended that this primacy was an essential aspect of judicial independence.

Lack of Judicial Majority: In the proposed National Judicial Appointments Commission (NJAC), the judiciary did not have an absolute majority, with only 3 out of 6 members being from the judiciary. This could allow the executive to have a greater say in judicial appointments, compromising judicial independence.

Inclusion of Executive: The presence of the Law Minister (from the executive) as a member of the NJAC was seen as a violation of the separation of powers and a threat to judicial independence, as the executive is often a major litigant before the courts.

Lack of Transparency: The petitioners criticized the lack of transparency in the NJAC's procedures and the absence of any guidelines or criteria for the selection of judges.

Violation of Basic Structure: The petitioners argued that the amendment violated the basic structure of the Constitution by undermining the independence of the judiciary, which is a crucial component of the basic structure.

B. **Respondents' Arguments**

The respondents, including the Union of India and various state governments, defended the constitutional validity of the 99th Amendment and the NJAC Act. Their main arguments were:

Parliamentary Sovereignty: The respondents emphasized the sovereignty of Parliament and its power to amend the Constitution, arguing that the amendment did not violate the basic structure.

Checks and Balances: The NJAC was presented as a system of checks and balances, with the judiciary still having a significant role in the appointment process and the ability to veto unsuitable candidates.

Transparency and Accountability: The respondents claimed that the NJAC would introduce greater transparency and accountability in the appointment process compared to the collegium system.

Participatory Process: The inclusion of eminent persons in the NJAC was defended as a means of introducing a participatory element and diversity in the selection process.

International Practices: The respondents cited the practices of other countries where the executive plays a role in judicial appointments, arguing that this does not necessarily undermine judicial independence.

Interpretation of Articles 124 and 217: The respondents contended that the primacy of the judiciary in appointments was an innovation introduced by the Second Judges case and not mandated by the original provisions of Articles 124 and 217 of the Constitution.

The respondents essentially argued that the 99th Amendment struck a balance between the judiciary's role in appointments and the participation of other stakeholders, without violating the basic structure of the Constitution or compromising judicial independence.# IV. The Court's Deliberation

A. **Independence of the Judiciary**

The independence of the judiciary is a crucial aspect of the basic structure of the Indian

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Constitution. It is essential for upholding the rule of law, maintaining the separation of powers, and protecting the rights and liberties enshrined in the Constitution. The judiciary's independence is not merely about the security of tenure and service conditions of judges but also about insulating the judiciary from executive or legislative control.

The court recognized that the independence of the judiciary is inextricably linked to the constitutional process of appointing judges to the higher judiciary. If the executive had absolute discretion in appointing judges, it could undermine the judiciary's independence and impartiality, as the government is often a party in cases before the courts.

B. **Primacy of the Judiciary in Judicial Appointments**

The court held that the primacy of the judiciary in the appointment of judges to the higher judiciary is a crucial component of the independence of the judiciary and, therefore, a part of the basic structure of the Constitution. This primacy ensures that the selection and appointment of judges are based on merit, competence, and integrity, free from executive or political influence.

The court emphasized that the framers of the Constitution intended to prevent the executive from having absolute power in appointing judges. The requirement for the President to consult the Chief Justice of India (CJI) was introduced to ensure that the judiciary had a significant role in the appointment process.

C. **Interpretation of "Consultation" and "Chief Justice of India"**

The court interpreted the term "consultation" in Articles 124 and 217 of the Constitution as conferring primacy to the opinion of the CJI. The CJI's opinion is not an individual opinion but represents the collective opinion of the CJI and senior judges of the Supreme Court, known as the collegium.

The court held that the President must act in accordance with the advice of the Council of Ministers, and the Council's advice must be in line with the opinion of the CJI, representing the judiciary. If the executive has cogent reasons for not accepting the CJI's recommendation, the matter should be referred back to the CJI for reconsideration. However, if the CJI and the collegium reiterate their recommendation, the appointment should ordinarily be made.

D. **Role of the Executive in Judicial Appointments**

While the court acknowledged the executive's role in the appointment process, it emphasized that this role should be limited. The executive can provide suggestions and feedback on the character and antecedents of the candidates proposed by the judiciary, and it can object to an appointment for disclosed reasons. However, the executive cannot have a predominant or overriding role in the appointment process, as this would undermine the independence of the judiciary.

E. **Impact of Striking Down the Constitutional Amendment**

The court held that striking down the constitutional amendment would not create a vacuum or disrupt the existing system of judicial appointments. Instead, the pre-existing system, as established by the Second and Third Judges cases, would be

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revived. Under this system, the CJI and the collegium of judges have primacy in initiating and finalizing proposals for judicial appointments, while the executive plays a limited role in providing feedback and raising objections, if any.

The court acknowledged that there might be grievances or perceived shortcomings in the functioning of the existing system. However, these grievances cannot justify altering or damaging the basic structure of the Constitution by diminishing the primacy of the judiciary in the appointment process.

In summary, the court's deliberation centered on upholding the independence of the judiciary as a basic feature of the Constitution, with the primacy of the judiciary in the appointment of judges being an integral part of this independence. The court sought to strike a balance by recognizing the executive's role while ensuring that it does not undermine the judiciary's primacy in the appointment process.

V. **The Court's Judgment**

A. Summary of Key Findings

The Supreme Court delivered a landmark judgment in this case, striking down the Constitution (99th Amendment) Act, 2014, and the National Judicial Appointments Commission (NJAC) Act, 2014, as unconstitutional and void. The key findings of the Court are as follows:

The Court rejected the prayer for reference to a larger Bench and reconsideration of the Second and Third Judges cases, which had established the collegium system for appointment of judges to the higher judiciary.

The Court held that the impugned constitutional amendment and the NJAC Act violated the "basic structure" of the Constitution by impinging upon the independence of the judiciary.

The Court ruled that the participation of the executive in the process of appointment of judges, as envisaged by the NJAC Act, would compromise the independence of the judiciary.

The Court affirmed the primacy of the Chief Justice of India and the collegium system in the appointment of judges to the higher judiciary, as established by the Second and Third Judges cases.

The Court declared that the system of appointment of judges to the Supreme Court and Chief Justices and Judges to the High Courts, as well as the transfer of Chief Justices and Judges of High Courts from one High Court to another (the "collegium system"), as it existed prior to the impugned constitutional amendment, shall continue to be operative.

B. **Implications of the Judgment**

The judgment has far-reaching implications for the judicial system in India:

Preservation of Judicial Independence: The Court has upheld the principle of judicial independence as a part of the "basic structure" of the Constitution. The judgment ensures that the appointment of judges remains insulated from executive interference, thereby safeguarding the independence of the judiciary.

Continuity of the Collegium System: The collegium system, which has been in operation since the Second Judges case in 1993, has been reaffirmed as the operative mechanism for the

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appointment of judges to the higher judiciary. This system, despite its criticisms, has been deemed essential to maintain the independence of the judiciary.

Separation of Powers: The judgment reinforces the doctrine of separation of powers, which is a fundamental principle of the Indian Constitution. By striking down the NJAC Act, the Court has prevented the executive from encroaching upon the domain of the judiciary in the matter of judicial appointments.

Judicial Review: The Court has asserted its power of judicial review over constitutional amendments, reiterating that even amendments passed by Parliament are subject to scrutiny to ensure they do not violate the "basic structure" of the Constitution.

Accountability and Transparency: While upholding the collegium system, the Court has acknowledged the need for introducing appropriate measures to improve its working and ensure accountability and transparency in the appointment process.

Overall, the judgment is a significant affirmation of the independence of the judiciary and the separation of powers enshrined in the Indian Constitution. It has preserved the delicate balance between the three branches of government and has safeguarded the judiciary's role as the guardian of the Constitution and the rule of law.

VI. **Analysis and Critique**

A. Significance of the Judgment

The Supreme Court's judgment in this case is of profound significance as it upholds the independence of the judiciary, which is a crucial tenet of India's democratic framework. By striking down the 99th Constitutional Amendment and the National Judicial Appointments Commission (NJAC) Act, the Court has reaffirmed the primacy of the judiciary in the appointment of judges to the higher judiciary, as established in the Second and Third Judges cases.

The judgment underscores the fact that the independence of the judiciary is a part of the basic structure of the Constitution and cannot be compromised. It upholds the principle of separation of powers and checks and balances, which are essential for maintaining the delicate balance between the three pillars of democracy – the legislature, the executive, and the judiciary.

Furthermore, the judgment reinforces the judiciary's role as the guardian of the Constitution and the protector of the fundamental rights of citizens. By asserting its authority to review constitutional amendments and strike them down if they violate the basic structure, the Court has reinforced its position as the ultimate arbiter of constitutional matters.

B. **Potential Consequences and Impact**

The judgment has far-reaching consequences and is likely to have a significant impact on the dynamics between the three branches of government. It effectively curtails the executive's and legislature's attempts to encroach upon the judiciary's domain and establishes the judiciary's primacy in matters related to its own composition and functioning.

The striking down of the NJAC Act means that the collegium system, which was criticized for its lack of transparency and accountability, will continue to be the method for appointing judges to the higher judiciary. This may reignite the debate on the need

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for reforms in the judicial appointments process to make it more transparent and inclusive.

The judgment may also have implications for the separation of powers doctrine and the extent to which the legislature can amend the Constitution. It sets a precedent that any constitutional amendment that violates the basic structure of the Constitution will be struck down, thereby limiting the Parliament's amending powers.

C. Reactions and Responses from Legal Experts and Stakeholders

The judgment has elicited a range of reactions from legal experts, stakeholders, and the general public.

Many legal experts and constitutional scholars have hailed the judgment as a landmark decision that upholds the independence of the judiciary and the basic structure doctrine. They argue that the Court has rightly protected the judiciary's autonomy and prevented any potential executive interference in judicial appointments.

However, some critics have argued that the judgment perpetuates the lack of transparency and accountability in the judicial appointments process. They contend that the collegium system, which the Court has upheld, is opaque and susceptible to nepotism and favoritism.

Political reactions have been divided along party lines, with the ruling party expressing disappointment and the opposition parties welcoming the judgment. The government has argued that the NJAC Act was an attempt to make the appointments process more transparent and inclusive, while the opposition has praised the Court for upholding the independence of the judiciary.

Civil society organizations and public interest groups have generally welcomed the judgment, viewing it as a victory for the principles of democracy and the rule of law. However, some have expressed concerns about the potential for the collegium system to be misused and have called for further reforms to ensure greater transparency and accountability in judicial appointments.

Overall, the judgment has reignited the debate on the delicate balance between the three pillars of democracy and the need to ensure the independence of the judiciary while also promoting transparency and accountability in its functioning.# VII. Conclusion

A. **Final Thoughts and Observations**

The issue of judicial appointments and the process for selecting judges to the higher judiciary has been a contentious and long-standing debate in India. The Supreme Court's judgments in the Second and Third Judges cases, which established the collegium system, were aimed at preserving the independence of the judiciary and ensuring that the best and most suitable candidates were appointed as judges.

However, over time, the collegium system has faced criticism for its lack of transparency, accountability, and objectivity. There have been allegations of subjective decision-making, favoritism, and a lack of representation of diverse sections of society in the appointment process.

The 99th Constitutional Amendment Act and the National Judicial Appointments Commission (NJAC) Act were attempts by the Parliament to address these concerns and introduce a more broad-based and participatory process for judicial appointments. However, the Supreme Court, in its

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judgment, has struck down these provisions, citing concerns over the independence of the judiciary and the potential for executive interference in the appointment process.

While the Court's decision upholds the principle of judicial independence, it is clear that the collegium system is not without its flaws. The lack of transparency and accountability has eroded public confidence in the process, and there is a need for reforms to address these concerns.

B. **Way Forward and Potential Reforms**

Moving forward, it is essential to strike a balance between preserving the independence of the judiciary and ensuring transparency and accountability in the appointment process. Some potential reforms that could be considered include:

Increased Transparency: The collegium system could be made more transparent by publishing the reasons for recommending or rejecting candidates for judicial appointments. This would enhance public confidence in the process and address concerns of subjective decision-making.

Broader Consultation: While preserving the primacy of the judiciary in the appointment process, the collegium could consider broader consultations with stakeholders, such as bar associations, legal academics, and civil society organizations. This would ensure a more diverse and inclusive process.

Defined Criteria: Clear and objective criteria for judicial appointments could be established, taking into account factors such as professional competence, integrity, and diversity. This would help ensure that the best candidates are selected and reduce the scope for subjective decision-making.

Accountability Mechanisms: Mechanisms for accountability, such as periodic performance reviews or the possibility of removal in cases of misconduct or incompetence, could be introduced to ensure that judges continue to uphold the highest standards of integrity and professionalism.

Representation of Diverse Sections: Efforts could be made to ensure that the composition of the higher judiciary reflects the diversity of Indian society, including adequate representation of women, marginalized communities, and different regions of the country.

It is important to note that any reforms to the judicial appointment process should be undertaken in consultation with all stakeholders, including the judiciary, the executive, and civil society organizations. The ultimate goal should be to strengthen the independence, integrity, and credibility of the judicial system, which is a cornerstone of India's democratic framework.

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37. Union of India v. V. Sri Haran @ Murugan & Ors.

CHIEF JUSTICE H. L. DATTU, JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA, JUSTICE PINAKI CHANDRA GHOSE, JUSTICE ABHAY MANOHAR SAPRE AND JUSTICE UDAY UMESH LAUT

Read the judgment here

1. Introduction

The Supreme Court of India delivered a landmark judgment in the case of Union of India v. V. Sri Haran@Murugan & Ors. (2015) 14 S.C.R. 613, addressing crucial issues related to the sentencing of convicts, particularly those serving life imprisonment. The judgment arose from a writ petition filed by the Union of India, challenging the proposal of the State Government of Tamil Nadu to remit the sentences of life imprisonment for six convicts in the Rajiv Gandhi assassination case. [Paragraph 6]

2. Background

In 1991, former Prime Minister Rajiv Gandhi was assassinated by a human bomb in Tamil Nadu. After an extensive investigation, 41 individuals were charged with conspiracy under various acts, and 26 were found guilty and sentenced to death. The case was referred to the Supreme Court for confirmation of the death sentences. [Paragraph 2]

In 1999, the Supreme Court passed judgment in the case, setting aside the convictions and sentences for certain offenses under the TADA Act, while confirming others. Some death sentences were confirmed, while others were altered to life imprisonment. [Paragraph 3]

Over the years, multiple mercy petitions were filed and rejected by various authorities, leading to the commutation of the death sentences of certain convicts to life imprisonment. [Paragraph 5]

3. The Referral Order

On 19.02.2014, the Chief Secretary of Tamil Nadu proposed to remit the sentences of life imprisonment for six convicts who had already served 23 years. The Union of India filed a writ petition to prevent their release, leading to a referral order by the Supreme Court. [Paragraphs 6, 7]

The referral order formulated seven questions for consideration by the Constitution Bench, including the scope of remission for life imprisonment sentences, the appropriate government entitled to exercise such power, and the extent of that power. [Paragraph 9]

4. Key Issues and Findings

A. Meaning of Life Imprisonment

The Court examined the meaning of "life imprisonment" and held that it means imprisonment for the rest of the convict's natural life, unless commuted or remitted by the appropriate government. [Paragraphs 52, 53, 54]

B. Power of Remission

The Court clarified that the convict serving life imprisonment can apply for remission under Articles 72 or 161 of the Constitution or Section 432 of the Criminal Procedure Code (Cr.P.C.), and

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the authority is obligated to consider the application reasonably. However, the convict does not have a guaranteed right to remission. [Paragraph 54]

C. Special Category of Sentence

The Court rejected the idea of creating a special category of sentence in substitution of the death penalty, where the sentence would be exempt from remission. The Court held that it cannot legislate or create a new punishment by putting the matter beyond remissions. [Paragraphs 71, 72, 75]

D. Appropriate Government

The Court examined the issue of the appropriate government entitled to exercise the power of remission under Section 432(7) of the Cr.P.C. It held that:

a. The Union Government has primacy over the State Government in certain cases, as specified in Section 432(7)(a) of the Cr.P.C. [Paragraph 30]

b. In cases where the offense falls under the concurrent list (List III of the Seventh Schedule), and the Union Government has also made laws, the Union Government will have primacy over the State Government. [Paragraph 30]

c. In cases where the investigation is handed over to the Central Bureau of Investigation (CBI) or other central investigating agencies, the Central Government's opinion should have decisive status. [Paragraph 39]

E. Meaning of "Consultation"

The Court held that the term "consultation" in Section 435(1) of the Cr.P.C., which mandates consultation with the Central Government before the State Government exercises powers under Sections 432 and 433, implies "concurrence" with the Central Government's opinion taking priority in certain matters. [Paragraphs 39, 52.7]

F. Repeated Exercise of Power of Remission

The Court found no hindrance or prohibition in the repeated exercise of power under Sections 432/433 of the Cr.P.C. by the appropriate government, even after the President, Governor, or the court has already exercised their powers. However, such repeated exercise should be for genuine reasons and is subject to judicial review. [Paragraphs 46, 47, 48]

5. Conclusion

The Supreme Court's judgment in Union of India v. V. Sri Haran@Murugan & Ors. clarified several crucial aspects of sentencing, remission, and the appropriate government's powers. It upheld the principles of life imprisonment, while providing guidelines for the exercise of remission powers by the appropriate government, ensuring a balance between the interests of justice and the rights of convicts.

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38. Gujarat Urja Vikas Nigam Limited v. EMCO Limited & Others

JUSTICE J. CHELAMESWAR AND JUSTICE ABHAY MANOHAR SAPRE

Read the judgment here

1. Introduction

This case revolves around a dispute between Gujarat Urja Vikas Nigam Limited (GUVNL) and EMCO Limited, a power producer, regarding the applicable tariff for the sale of electricity generated by EMCO's solar power project. The Gujarat Electricity Regulatory Commission (GERC) and the Appellate Tribunal for Electricity (APTEL) had ruled in favor of EMCO, allowing it to claim a higher tariff determined by GERC's subsequent tariff order. GUVNL challenged this decision in the Supreme Court. [Para 1]

2. Background

A. GERC's Tariff Orders

1. **First Tariff Order (2010)**: GERC issued an order on 29.1.2010, determining the tariff for solar power projects that availed the benefit of accelerated depreciation under the Income Tax Act. It also allowed projects not availing this benefit to petition for a separate tariff. [Para 1]

2. **Second Tariff Order (2012)**: GERC issued another order on 27.1.2012, determining separate tariffs for projects availing and not availing accelerated depreciation benefits. The tariff for projects not availing the benefit was higher. [Para 4]

B. Power Purchase Agreement (PPA)

GUVNL and EMCO entered into a PPA on 9.12.2010, wherein EMCO agreed to sell power at the tariff determined by the First Tariff Order. The PPA stipulated that if EMCO's project was not commissioned by 31.12.2011 (the control period), GUVNL would pay the lower of the two tariffs - the one agreed in the PPA or the tariff determined by GERC on the commissioning date. [Paras 2, 3]

EMCO commissioned its project on 2.3.2012, after the control period of the First Tariff Order. It did not avail the accelerated depreciation benefit. [Para 5]

3. EMCO's Claim and Rulings by GERC and APTEL

EMCO petitioned GERC, seeking the higher tariff applicable to projects not availing accelerated depreciation as per the Second Tariff Order. GERC allowed EMCO's petition, and APTEL upheld GERC's order, relying on its earlier judgment in the Rasna Marketing case. [Paras 6, 7, 9, 22-25]

4. Supreme Court's Observations and Findings

A. Accelerated Depreciation Benefit

The accelerated depreciation benefit mentioned in the tariff orders and PPA refers to the provisions under Section 32(1)(i) of the Income Tax Act and Rule 5(1A) of the Income Tax Rules. These provisions give power producers the option to claim accelerated depreciation on their assets. [Paras 14, 15]

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B. Interpretation of the First Tariff Order

The Supreme Court rejected GUVNL's argument that the First Tariff Order's tariff was not applicable to projects that could not legally claim accelerated depreciation benefits. The Court held that the tariff order proposed a tariff for all projects, assuming they would avail the accelerated depreciation benefit. The order recognized the producers' option to claim or not claim this benefit. [Paras 16-18]

C. EMCO's Right to Opt-out of the PPA

The Court observed that the PPA did not give EMCO the option to opt-out of its terms. It only envisaged a situation where EMCO could not commission the project within the control period and provided for the applicable tariff in such a case. [Para 26]

The right to not avail the accelerated depreciation benefit flows from the Income Tax Act, not the PPA. The First Tariff Order gave producers the option to seek a separate tariff if they did not wish to avail this benefit, but this option was available only in that specific contingency. [Paras 26, 28]

D. Contractual Obligations under the PPA

The Court held that EMCO's option to avail or not avail the accelerated depreciation benefit under the Income Tax Act did not relieve it of its contractual obligations under the PPA. EMCO had the freedom to accept or reject the tariff offered by GUVNL before entering into the PPA, but this freedom was extinguished after signing the PPA. [Paras 28, 29]

The PPA clearly stipulated that the tariff was determined by the First Tariff Order. EMCO conveniently ignored the crucial condition in the PPA that if the project was not commissioned within the control period, GUVNL would pay the lower of the two tariffs - the one agreed in the PPA or the tariff determined by GERC on the commissioning date. [Paras 30, 31]

E. Applicability of the Rasna Marketing Case

The Court found that the APTEL's reliance on its earlier judgment in the Rasna Marketing case was misplaced. In the Rasna case, the prayer was for determining a separate tariff, while in the present case, EMCO sought the higher tariff determined by the Second Tariff Order. [Para 25]

5. Conclusion

The Supreme Court allowed GUVNL's appeal, setting aside the orders of GERC and APTEL. It held that EMCO was not entitled to claim the tariff determined by the Second Tariff Order, as the PPA obligated EMCO to sell power at the tariff specified in the First Tariff Order or the lower tariff determined by GERC on the commissioning date. [Paras 33, 35]

The Court imposed costs of Rs. 2 lakhs on EMCO and directed that any amounts paid by GUVNL pursuant to interim orders should be adjusted towards future power procurement payments from EMCO. [Para 35]

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39. Mukesh & Anr. v. State for NCT of Delhi & Ors. I. Introduction

JUSTICE DIPAK MISRA, JUSTICE R. BANUMATHI AND JUSTICE ASHOK BHUSHAN

Read the judgment here

A. Brief overview of the case

On the cold evening of December 16, 2012, a 23-year-old physiotherapy student and her friend boarded a private bus in Delhi after watching a movie. Little did they know that their lives were about to change forever. The young woman was brutally gang-raped by six men on the moving bus, including the driver. The horrific incident sent shockwaves across the nation and sparked widespread protests demanding justice and stricter laws against sexual violence.

The victim, who came to be known as "Nirbhaya" (fearless), suffered severe injuries from the assault, including the insertion of an iron rod into her private parts, which caused extensive internal damage. Despite receiving medical treatment in Delhi and later being airlifted to Singapore, she succumbed to her injuries on December 29, 2012.

The case was meticulously investigated, and the six accused were arrested and charged with various offenses, including gang rape, murder, and destruction of evidence. The trial court and the High Court found them guilty and awarded the death penalty, considering the case to be one of the "rarest of rare" cases deserving the maximum punishment.

B. Significance and impact of the case

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The Nirbhaya case was a watershed moment in India's history, sparking a nationwide movement against sexual violence and demanding reforms in the country's laws and societal attitudes towards women. The brutality of the crime and the victim's fight for survival captured the nation's attention and ignited a collective outrage.

The case highlighted the urgent need for stricter laws and harsher punishments for crimes against women. It led to the formation of the Justice J.S. Verma Committee, which recommended comprehensive amendments to the criminal laws related to sexual offenses. These recommendations paved the way for the Criminal Law (Amendment) Act, 2013, which introduced significant changes, including the expansion of the definition of rape, the introduction of new offenses, and increased penalties for certain crimes.

The Nirbhaya case also brought to light the systemic issues within the criminal justice system and the need for better investigation, prosecution, and victim support mechanisms. It sparked a broader conversation about gender inequality, patriarchal attitudes, and the importance of education and awareness in combating violence against women.

The case became a symbol of the struggle for women's safety and empowerment in India, inspiring numerous initiatives, campaigns, and movements aimed at creating a safer and more equitable society. It served as a catalyst for social and legal reforms, challenging deep-rooted societal norms and attitudes towards women's rights and dignity.## Background and Facts of the Case

A. Detailed account of the events leading to the case

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On the cold evening of December 16, 2012, a 23-year-old paramedical student and her friend went to watch a movie at PVR Select City Walk Mall in Saket, Delhi. After the movie, around 8:30 PM, they boarded a chartered bus at Munirka bus stand to return home. Little did they know that this bus ride would turn into a horrific nightmare.

Inside the bus, there were six men, including the driver and the conductor. As the bus started moving, the men began passing lewd remarks and taunting the young woman and her friend. When the friend objected, the men became aggressive and started physically assaulting them. The men then dragged the woman to the rear of the bus, where they brutally gang-raped her, inflicting severe injuries with iron rods.

After the heinous act, the perpetrators stripped the victims of their clothes and belongings and threw them out of the moving bus onto the road. In a final act of depravity, they tried to run over the victims with the bus, but the friend managed to pull the woman away, saving their lives.

Lying naked and bleeding on the road, the victims cried for help. Fortunately, a night patrol vehicle arrived, and the police control room was alerted. The victims were rushed to Safdarjung Hospital, where the young woman's condition was critical due to the severe internal injuries she had sustained.

B. Key evidence and testimonies presented

The prosecution built a strong case against the accused based on various pieces of evidence and testimonies:

1. **Dying Declaration**: The young woman gave three dying declarations, recorded by the Sub-Divisional Magistrate (PW-27) and the Metropolitan Magistrate (PW-30). In her dying declarations, she narrated the horrific incident in detail, including the use of iron rods and the identities of the accused.
2. **Testimony of the Friend (PW-1)**: The friend, who was an eyewitness to the incident, provided a detailed account of the events. His testimony was corroborated by the recovery of his belongings from the accused and scientific evidence linking the accused to the crime.
3. **Medical and Scientific Evidence**: The medical reports, including the post-mortem report, documented the severe injuries sustained by the victim, including injuries to her vagina, rectum, and internal organs. DNA analysis matched the DNA profiles from the blood-stained clothes and other articles recovered from the accused with the victim's DNA.
4. **Recovery of Articles**: Various articles belonging to the victim and her friend, such as mobile phones, debit cards, and clothing, were recovered from the accused based on their disclosure statements.
5. **CCTV Footage and Photographs**: CCTV footage from the mall and other locations, along with photographs of the crime scene and the victim's injuries, provided visual evidence supporting the prosecution's case.
6. **Odontology (Bite Mark) Analysis**: Bite marks found on the victim's body were analyzed and matched with the dental models of the accused, linking them to the crime.
7. **Fingerprint Analysis**: Chance fingerprints lifted from the bus matched the fingerprints of one of the accused, establishing his presence in the bus.

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The prosecution presented a comprehensive case, relying on the victim's dying declarations, eyewitness testimony, medical and scientific evidence, and various other pieces of evidence linking the accused to the heinous crime.## III. Legal Issues and Arguments

A. Legal principles and provisions involved

The case involved several legal principles and provisions, including:

1. **Rape and Unnatural Offenses (Sections 376 and 377 of the Indian Penal Code)**: The accused were charged with gang rape under Section 376(2)(g) of the IPC, which deals with the offense of rape committed by one or more persons constituting a group acting in furtherance of a common intention. Section 377 of the IPC deals with unnatural offenses, which were also alleged against the accused.
2. **Criminal Conspiracy (Section 120B of the IPC)**: The prosecution alleged that the accused had conspired to commit the offenses, and they were charged under Section 120B of the IPC, which deals with criminal conspiracy.
3. **Dying Declaration**: The prosecution heavily relied on the dying declarations made by the victim, which are admissible as evidence under Section 32 of the Indian Evidence Act, 1872.
4. **DNA Evidence**: The prosecution presented DNA evidence linking the accused to the crime, which is admissible under the provisions of the Code of Criminal Procedure (Sections 53A and 164A).
5. **Odontology (Bite Mark Analysis)**: The prosecution also relied on odontology, a branch of forensic science that deals with the identification of individuals through their dental records and bite marks.
6. **Sentencing Procedure (Section 235(2) of the Code of Criminal Procedure)**: The defense argued that the provisions of Section 235(2) of the CrPC, which require the court to hear the accused on the question of sentence, were not complied with.

B. Arguments presented by the prosecution

The prosecution argued that:

1. The dying declarations made by the victim were consistent, voluntary, and corroborated by medical and scientific evidence, including DNA analysis and odontology reports.
2. The DNA evidence, fingerprint analysis, and bite mark analysis conclusively linked the accused to the crime.
3. The recoveries made pursuant to the disclosure statements of the accused under Section 27 of the Indian Evidence Act were admissible and incriminating.
4. The testimony of the informant (PW-1), an injured witness, was credible and corroborated by other evidence.
5. The conduct of the accused, including their association with each other and the sequence of events, established their criminal conspiracy.

C. Arguments presented by the defense

The defense argued that:

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1. The investigation was flawed, and the evidence was unreliable and biased.
2. The dying declarations were inconsistent and contained procedural irregularities, making them inadmissible or unreliable.
3. The DNA evidence was not conclusive, and the possibility of tampering or planting of evidence could not be ruled out.
4. The accused were not given an effective opportunity to be heard on the question of sentence, as required by Section 235(2) of the CrPC.
5. The plea of alibi raised by some of the accused should have been given more weight.

The prosecution and defense presented their arguments based on the legal principles, provisions, and evidence in the case, with the prosecution seeking to establish the guilt of the accused beyond reasonable doubt and the defense attempting to raise doubts and challenge the reliability of the evidence.## IV. Court's Analysis and Ruling

A. Interpretation and Application of Legal Principles

The Supreme Court carefully examined and applied various legal principles in this case. Some key principles discussed include:

1. **Admissibility of Dying Declarations**: The court reiterated the well-established principles regarding the admissibility and evidentiary value of dying declarations. It emphasized that while dying declarations are entitled to great weight, they must inspire confidence in their truthfulness and voluntariness. The court must scrutinize dying declarations to ensure they are not the result of tutoring, prompting, or imagination.
2. **Appreciation of Evidence in Rape Cases**: The court highlighted the duty of courts to act with utmost sensitivity when dealing with rape cases. It stated that courts should not be swayed by minor contradictions or discrepancies in the evidence of witnesses, as long as they are not substantial. The testimony of the victim (prosecutrix) is accorded special status, and there is no legal compulsion to seek corroboration unless there are serious infirmities in the victim's evidence.
3. **Test Identification Parade (TIP)**: The court clarified that the substantive evidence is the identification of the accused in court, and the TIP merely provides corroboration. Failure to hold a TIP does not render the in-court identification inadmissible, and the weight to be given to such identification is a matter for the courts to assess based on the facts of the case.
4. **Section 27 of the Evidence Act**: The court discussed the scope and applicability of Section 27 of the Evidence Act, which deals with the admissibility of information leading to the discovery of facts. It reiterated the essential conditions for invoking Section 27 and the limitations on the admissibility of such information.
5. **Plea of Alibi**: The court emphasized that when an accused raises the plea of alibi, the burden lies on them to establish it convincingly through cogent evidence after the prosecution has established their presence at the crime scene.
6. **Criminal Conspiracy**: The court explained that in a criminal conspiracy, the meeting of

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minds of two or more persons for an illegal act is the sine qua non, and this can be inferred from the surrounding circumstances and conduct of the accused. Conspiracy, being a continuing offence, subsists until it is executed, rescinded, or frustrated.

B. Evaluation of Evidence and Arguments

The Supreme Court meticulously evaluated the evidence presented by the prosecution and the arguments advanced by the defense counsel and the amicus curiae. Key aspects of the evaluation include:

1. **Dying Declarations**: The court carefully examined the three dying declarations made by the victim and found them to be consistent in material particulars, corroborated by medical evidence and other direct and circumstantial evidence. It rejected the defense's arguments regarding inconsistencies and procedural irregularities in recording the dying declarations.

2. **Testimony of the Eyewitness (PW-1)**: The court found the testimony of the eyewitness (PW-1), who was the victim's friend, to be credible and corroborated by circumstantial and scientific evidence. It dismissed the defense's contentions regarding material omissions and contradictions in PW-1's testimony.

3. **Scientific Evidence**: The court placed significant reliance on the scientific evidence, including DNA analysis, fingerprint analysis, and odontology (bite mark analysis). It found this evidence to be conclusive and corroborative of the prosecution's case.

4. **Recoveries and Disclosure Statements**: The court upheld the admissibility and evidentiary value of the recoveries made pursuant to the disclosure statements of the accused under Section 27 of the Evidence Act. It rejected the defense's arguments regarding procedural irregularities in making the recoveries.

5. **Plea of Alibi**: The court found the plea of alibi raised by some of the accused to be an afterthought and unsupported by cogent evidence, in light of the overwhelming prosecution evidence, including scientific evidence.

6. **Criminal Conspiracy**: The court concluded that the prosecution had successfully established the criminal conspiracy among the accused based on their conduct, the recoveries made, and the circumstantial evidence.

C. Majority Opinion and Reasoning

The majority opinion, authored by Justice Dipak Misra and concurred by Justice Ashok Bhushan, upheld the conviction and death sentence imposed on the accused by the High Court. The key reasoning provided by the majority includes:

1. **Gravity of the Offence**: The court found the offence to be of the rarest of rare category, warranting the death penalty. It described the incident as shocking the collective conscience of society, displaying wanton lust, servility to unchained carnal desire, and loathsome beastliness.

2. **Aggravating and Mitigating Circumstances**: After carefully weighing the aggravating and mitigating circumstances, the court concluded that the aggravating

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circumstances outweighed the mitigating factors brought on record by the accused.

3. **Compliance with Section 235(2) CrPC**: The court addressed the defense's argument regarding non-compliance with Section 235(2) of the Code of Criminal Procedure, which requires the court to hear the accused on the question of sentence. The court provided an opportunity to the accused to file affidavits and materials regarding mitigating circumstances and considered the same before affirming the death sentence.

4. **Role of the Judiciary**: The court emphasized the duty of the judiciary to address crimes against women and create awareness in society about gender justice. It stressed the need for a mass movement to end violence against women and ensure respect for women's dignity.

D. Dissenting Opinions

There were no dissenting opinions in this case. Justice R. Banumathi concurred with the majority opinion but provided additional reasoning, primarily focusing on the following aspects:

1. **Appreciation of Evidence in Rape Cases**: Justice Banumathi reiterated the settled principles regarding the appreciation of evidence in rape cases, emphasizing the special status accorded to the victim's testimony and the need to avoid undue emphasis on minor discrepancies or contradictions.

2. **Admissibility of Recoveries under Section 27**: Justice Banumathi discussed the scope and applicability of Section 27 of the Evidence Act in detail, highlighting the essential conditions for the admissibility of recoveries made pursuant to the accused's disclosure statements.

3. **Evaluation of Scientific Evidence**: Justice Banumathi extensively evaluated the scientific evidence, including DNA analysis, fingerprint analysis, and odontology (bite mark analysis), and found it to be conclusive and corroborative of the prosecution's case.

4. **Awareness and Societal Change**: Justice Banumathi emphasized the need for creating awareness in society about gender justice and combating violence against women through a mass movement, strict implementation of laws, and comprehensive attitudinal changes.

Both the majority and the concurring opinion upheld the conviction and death sentence imposed on the accused, finding the case to fall within the rarest of rare category and warranting the highest punishment under the law.## V. Impact and Implications of the Ruling

A. Immediate consequences for the parties involved

The immediate consequence of this ruling is that the four convicts, Mukesh, Vinay Sharma, Akshay Kumar Singh, and Pawan Gupta, will face the death penalty for their involvement in the horrific gang-rape and murder case. The Supreme Court upheld the death sentences imposed by the lower courts, concluding that the aggravating circumstances of the case outweighed any mitigating factors presented by the convicts.

For the victim's family, while the ruling may provide a sense of justice being served, it is unlikely to alleviate the immense pain and trauma

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they have endured. The brutal nature of the crime and the loss of their loved one will leave an indelible mark on their lives.

The convicts had the opportunity to present mitigating circumstances, such as their young age, family background, and the possibility of reformation. However, the court found these factors to be insufficient in light of the heinous nature of the crime and the collective conscience of society being shocked by the incident.

B. Broader legal and societal implications

This ruling has broader implications for the legal system and society as a whole. It reinforces the principle that in cases of extreme brutality and depravity, where the collective conscience of society is deeply shaken, the courts must award the death penalty, irrespective of personal opinions on the desirability of capital punishment. The ruling sends a strong message that such heinous crimes will not be tolerated and will be met with the most severe punishment under the law.

Furthermore, the ruling highlights the importance of adhering to due process and procedural fairness in sentencing. The Supreme Court emphasized the need for effective compliance with Section 235(2) of the Criminal Procedure Code, which requires the court to hear the accused on the question of sentencing and consider all relevant mitigating and aggravating circumstances.

From a societal perspective, this case has brought to the forefront the issue of violence against women and the need for a comprehensive approach to address it. The ruling underscores the gravity of such crimes and the need for stringent laws, effective implementation, and a change in societal attitudes towards gender justice.

C. Potential challenges or concerns raised by the ruling

While the ruling upholds the principles of justice and deterrence, it may also raise concerns about the application of the death penalty and the potential for inconsistencies in sentencing practices.

One potential challenge is the subjective nature of determining what constitutes a "rarest of rare" case deserving of the death penalty. Different judges or courts may interpret the criteria differently, leading to inconsistencies in sentencing decisions.

Additionally, there may be concerns about the potential for errors or wrongful convictions in capital cases, as well as the irreversibility of the death penalty. Some may argue that life imprisonment without the possibility of parole could serve as an equally effective deterrent while allowing for the possibility of correcting any potential miscarriages of justice.

Another concern that may arise is the potential for disproportionate application of the death penalty based on factors such as socioeconomic status, race, or gender. Ensuring fair and consistent application of the law across all segments of society is crucial to maintaining public trust in the justice system.

Overall, while the ruling in this case upholds the principles of justice and deterrence, it also highlights the need for ongoing dialogue, review, and refinement of sentencing practices to ensure fairness, consistency, and adherence to due process

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in the administration of justice.# VI. Critical Analysis and Commentary

A. Legal experts' analysis and commentary on the ruling

The Supreme Court's ruling in the Nirbhaya case has been widely analyzed and commented upon by legal experts and scholars. Many have praised the court's comprehensive examination of the evidence and its meticulous application of legal principles. The court's detailed analysis of the dying declarations, DNA evidence, and other scientific evidence has been lauded for its thoroughness and attention to detail.

However, some legal experts have criticized the court's approach to sentencing and its interpretation of the "rarest of rare" doctrine. There have been concerns raised about the lack of individualized consideration of mitigating factors for each accused, and the perceived failure to fully comply with the requirements of Section 235(2) of the Code of Criminal Procedure.

Additionally, the court's reliance on the "collective conscience" and "society's cry for justice" as factors in determining the death penalty has been questioned by some scholars, who argue that such considerations may be subjective and potentially inconsistent with the principles of fair trial and due process.

B. Ethical and moral considerations

The Nirbhaya case has sparked intense debates and discussions around ethical and moral issues related to gender-based violence, the treatment of victims, and the role of the justice system in addressing such crimes.

Many have argued that the brutal nature of the crime and the suffering endured by the victim demand the harshest possible punishment, not only as a means of retribution but also as a deterrent to prevent similar crimes in the future. The court's emphasis on the "extreme depravity" and "beastly" nature of the crime reflects this sentiment.

On the other hand, others have raised concerns about the ethical implications of capital punishment and the potential for miscarriages of justice. They argue that the death penalty is an irreversible and inhumane form of punishment, and that the justice system should focus on rehabilitation and restorative justice approaches.

The case has also highlighted the need for societal change and a shift in attitudes towards women and gender-based violence. Many have called for increased education, awareness, and efforts to address the root causes of such crimes, rather than relying solely on punitive measures.

C. Potential areas for further legal development or reform

The Nirbhaya case has brought to light several areas where further legal development or reform may be necessary. One area of concern is the need for more robust and consistent sentencing guidelines, particularly in cases involving heinous crimes. The court's reliance on the "rarest of rare" doctrine has been criticized for its subjective nature and potential for inconsistent application.

Another area for potential reform is the need for stronger victim protection laws and support systems. The case has highlighted the importance of ensuring that victims of sexual violence receive

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adequate legal representation, counseling, and support services throughout the judicial process.

Additionally, there have been calls for reforms in the criminal justice system to ensure more efficient and timely trials, particularly in cases involving gender-based violence. The lengthy duration of the Nirbhaya case has been cited as a source of additional trauma for the victim's family and a potential deterrent for other victims to come forward.

Overall, the Nirbhaya case has sparked a national conversation about the need for comprehensive legal and societal reforms to address gender-based violence and ensure justice for victims.## VII. Conclusion

A. Summary of the key points and ruling

The Supreme Court, after a comprehensive analysis of the evidence and thorough scrutiny of the oral and documentary evidence, arrived at the following conclusions:

1. The testimony of the sole eyewitness (PW-1) is credible and reliable.
2. The presence of all the accused persons, along with the juvenile, in the bus when the victims boarded it, is established.
3. The CCTV footage is admissible and corroborates the description and movement of the bus.
4. The arrest of the accused persons from various locations at different times is proven by the prosecution.
5. The personal searches, recoveries, and disclosures leading to recoveries are in accordance with the law, and the claims of custodial confessions obtained through torture are unfounded.
6. The contention that the recoveries based on disclosures were manipulated by the investigating agency is rejected.
7. The relationship between the parties is clearly established, lending credibility to their arrests and involvement.
8. The three dying declarations of the victim are consistent with each other and withstand close scrutiny.
9. The claim that the victim could not have given any dying declaration due to her health condition is rejected, as the witnesses have stood by their versions, and the dying declaration through gestures is proven beyond reasonable doubt.
10. There is no justification for the victims to falsely implicate the accused and leave the real culprits.
11. The dying declarations are corroborated by oral, documentary, and medical evidence.
12. The DNA profiling and other scientific evidence conclusively prove the presence of the accused persons and their involvement in the crime.

Based on these conclusions, the Supreme Court dismissed the appeals and upheld the conviction and death sentence imposed by the trial court and confirmed by the High Court.

B. Final thoughts and impressions

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The Supreme Court expressed its unreserved appreciation for the assistance rendered by the amicus curiae and the defense counsel, who upheld the tradition of the Bar by defending the appellants at every stage.

The Court acknowledged the gruesome nature of the crime, which shook the nation's collective conscience and sparked public outrage. It emphasized the need for a mass movement to end violence against women, promote respect for women's dignity, and sensitize society on gender justice.

The Court recognized that the battle for gender justice can only be won through strict implementation of legislative provisions, public sensitization, proactive steps at all levels to combat violence against women, and a comprehensive change in the existing mindset.

Overall, the Supreme Court's judgment reflects a thorough examination of the evidence, a meticulous analysis of the legal principles, and a recognition of the broader societal implications of the case. The Court's ruling upholds the principles of justice while acknowledging the need for societal reform to prevent such heinous crimes against women.

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40. Excel Crop Care Limited v. Competition Commission of India and Another

JUSTICE A. K. SIKRI AND JUSTICE N. V. RAMANA

Read the judgment here

1. Introduction

This judgment deals with an appeal filed by Excel Crop Care Limited, United Phosphorus Ltd., and Sandhya Organics Chemicals (P) Ltd. (the "Appellants") against the order of the Competition Commission of India (CCI) and the Competition Appellate Tribunal (COMPAT). The CCI had found the Appellants guilty of engaging in anti-competitive practices concerning tenders issued by the Food Corporation of India (FCI) for the supply of Aluminium Phosphide Tablets (APT) between 2007 and 2009. [Para 1]

2. Background

In 2011, the FCI filed a complaint with the CCI alleging collusion among four manufacturers of APT, including the Appellants and Agrosynth Chemicals Limited. The Director General (DG) of the CCI investigated the matter and found evidence supporting the allegations, leading to the opinion that the manufacturers had violated the Competition Act. [Para 2]

The CCI considered the DG's report and provided the manufacturers with an opportunity to respond. Agrosynth Chemicals Limited was exonerated, while the Appellants contested the report on factual and legal grounds. They argued that Sections 3 and 4 of the Competition Act were not in force at the time of the tenders, and that the increase in prices was due to market forces, not cartel formation. [Para 3]

3. CCI's Findings and Penalties

The CCI rejected the Appellants' contentions and concluded that they had engaged in anti-competitive activities while submitting their bids to the FCI. Consequently, the CCI imposed penalties on the Appellants for violating Section 3 of the Competition Act, totaling ₹63.90 crores for Excel Crop Care Limited, ₹1.57 crores for Sandhya Organics Chemicals (P) Ltd., and ₹252.44 crores for United Phosphorus Ltd. [Paras 4, 5]

4. Appeals before COMPAT

The Appellants filed appeals before COMPAT, challenging the CCI's findings on legal and factual grounds. COMPAT rejected most of their arguments but ruled that the penalty should be based on the relevant turnover related to the product for which the cartel was formed, rather than the total turnover of the companies. This led to a substantial reduction in the penalties for Excel Crop Care Limited and United Phosphorus Ltd. However, for Sandhya Organics Chemicals (P) Ltd., the relevant turnover and total turnover were the same, as they only produced APT tablets. COMPAT reduced their penalty from ₹1.57 crores to ₹15.70 lakhs due to their small production capacity. [Paras 6, 53, 54]

5. Issues before the Supreme Court

The following issues were raised before the Supreme Court in these appeals: [Para 8]

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1. Whether the CCI could investigate the March 2009 tender, as Section 3 of the Competition Act was operationalized only by a notification dated May 20, 2009?

2. Whether the CCI was barred from investigating the March 2011 tender floated by the FCI, as the FCI had not complained about this tender in its initial complaint?

3. Whether the CCI's conclusion that the Appellants had entered into an anti-competitive agreement and pursued collusive bidding by forming a cartel, resulting in a violation of Section 3(3)(a), 3(3)(b), and 3(3)(d) read with Section 3(1) of the Act, was justified?

4. Whether the penalty under Section 27(b) of the Act should be based on the total turnover of the offending company or only on the "relevant turnover" related to the product in question?

6. Jurisdiction of CCI to Investigate the March 2009 Tender

The Appellants argued that the CCI could not investigate the March 2009 tender, as Section 3 of the Competition Act was notified only on May 20, 2009, and allowing such an investigation would amount to introducing the provisions of Section 3 retrospectively. [Para 12]

The CCI contended that the bidding process did not end with the submission of bids on May 8, 2009, but continued with the opening of bids on June 1, 2009, and negotiations with the Appellants on June 17, 2009. The CCI relied on Section 18 of the Act to argue for the applicability of the principle of retroactivity. [Para 13]

The Supreme Court agreed with the CCI's view, stating that the bidding process continued after May 20, 2009, and the Appellants manipulated the bidding. The Court also referred to the Bombay High Court's decision in Kingfisher Airlines v. Competition Commission of India, which described the statute as retroactive. The Court held that the Act applies to existing agreements upon its enactment, and any actions taken in pursuance of these agreements that are now prohibited would be considered illegal. [Paras 23, 27, 28]

7. Jurisdiction of CCI to Investigate the March 2011 Tender

The Appellants argued that the CCI was barred from investigating the March 2011 tender, as the FCI had not complained about this tender in its initial complaint. [Para 35]

The Supreme Court rejected this argument, agreeing with COMPAT's view that the DG has the power to investigate based on the order passed by the Commission. The Court stated that the investigation should not be limited to a specific tender but should cover all relevant facts until completed, including considering information provided by the FCI about anti-competitive behavior. [Paras 29, 36]

8. Collusive Bidding and Cartelization

The CCI and COMPAT found that the Appellants had engaged in collusive bidding and cartelization based on the following evidence: [Paras 37, 38]

1. The Appellants had quoted identical prices for various tenders, including those of other government bodies, even before and after the 2009 tender.

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2. Despite different cost structures and geographical locations, the Appellants quoted identical prices for 10 years, indicating a trend of collusion.

3. The Appellants' decision not to participate in the May 2011 tender was seen as a concerted action, strengthening the case for collusion.

The Supreme Court rejected the Appellants' argument that the parallelism in pricing was due to the monopolistic situation of the buyer (FCI) and the oligopolistic market structure. The Court stated that the parallelism argument does not apply in bid cases, and the consistent identical pricing by the Appellants could not be a coincidence. [Paras 39, 40, 44]

9. Penalty under Section 27(b) of the Competition Act

The primary issue before the Supreme Court was whether the penalty under Section 27(b) of the Competition Act should be based on the total turnover of the offending company or only on the "relevant turnover" related to the product in question. [Para 56]

The CCI argued that Section 27(b) does not refer to "relevant turnover," and the intention of the Legislature was to consider the entire turnover of the enterprise. The CCI contended that adding the word "relevant" would be doing violence to the plain language of the statute. [Para 57]

The Appellants, on the other hand, argued for the application of the doctrine of proportionality and cited laws in other jurisdictions, such as the European Union and the United Kingdom, where the turnover of the infringing product is considered when determining the penalty, especially for multi-product companies. [Paras 68, 69]

The Supreme Court agreed with the Appellants' interpretation and held that the penalty under Section 27(b) should be based on the relevant turnover related to the product or service affected by the contravention. The Court reasoned that a literal interpretation of a penal statute should be avoided if it leads to an unjust or absurd result, and the intention of the Legislature should be the focus. [Paras 74, 75]

The Court emphasized the need to consider the principle of proportionality when imposing penalties under Section 27(b) to avoid excessively high fines that may discourage potential investors. The Court also noted that while other jurisdictions have specific guidelines for exercising discretion in imposing penalties, India does not have similar guidelines, which could lead to disastrous results. [Paras 69, 74]

10. Conclusion

The Supreme Court dismissed the appeals of the Appellants and the CCI, upholding COMPAT's decision to base the penalty on the relevant turnover related to the product in question. The Court provided guidelines for determining the appropriate penalty, including considering the relevant turnover, nature and gravity of the contravention, role of the infringer, duration and intensity of participation, market circumstances, product nature, market share, barriers to entry, company involvement, and profit. [Paras 12, 13, 75]

Justice N.V. Ramana provided a concurring judgment on the aspect of imposing penalties under

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Section 27(b) of the Competition Act, emphasizing the need for a fresh consideration of the interpretation of this section and the importance of serving the intent and purpose of the statutory provision. [Paras 7, 8]

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41. Common Cause v. Union of India and Ors.

JUSTICE MADAN B. LOKUR AND JUSTICE DEEPAK GUPTA

Read the judgment here

1. Background

In 2017, the Supreme Court addressed the issue of illegal mining in the state of Odisha and the role of the Central Empowered Committee (CEC) in investigating and reporting on the matter. [Paragraph 1] The case originated from an application filed by the editor of a newspaper, seeking directions to investigate illegal mining activities in Odisha. [Paragraph 2-4]

2. Commission of Inquiry and Initial Reports

The Central Government appointed Justice M.B. Shah to conduct an inquiry into illegal mining, trade, and transportation of iron and manganese ore in Odisha. [Paragraph 27] The Commission released two reports, highlighting various forms of illegal mining, lack of law enforcement, and violations by specific lease holders. [Paragraph 29-30] However, the Supreme Court decided not to rely on the Commission's reports for its judgment, as the mining lease holders were not given proper notice under certain sections of the Commissions of Inquiry Act, 1952. [Paragraph 31-34]

3. Central Empowered Committee (CEC) and Its Jurisdiction

The CEC was established by the Supreme Court and has been providing valuable advice and factual material for over a decade. [Paragraph 54] The Court clarified that the CEC's jurisdiction was not limited, and it was expected to give a detailed report on all aspects of illegal mining. [Paragraph 53]

4. Statutory Provisions Governing Mining Leases

The judgment outlines the statutory provisions governing mining leases, including the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act), the Mineral Concession Rules (MCR), and the Mineral Conservation and Development Rules (MCDR). [Paragraph 60-83] These provisions cover various aspects, such as the grant of mining leases, mining plans, environmental protection, and penalties for violations.

5. Environmental Clearance (EC) Requirements

The judgment discusses the Environmental Impact Assessment (EIA) Notification of 1994 and its requirements for obtaining environmental clearance (EC) for mining operations. [Paragraph 85-99] The key points include:

- The base year for determining the need for an EC is 1993-94. If the annual production after January 27, 1994, exceeds the annual production of 1993-94, it is considered an expansion requiring an EC. [Paragraph 92-93]
- Renewal of a mining lease after January 27, 1994, requires an EC, even if there is no expansion or modernization activity. [Paragraph 186(2)]

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- Mining activities without an EC after January 27, 1994, constitute illegal or unlawful mining, and the mining lease holder must compensate the State with 100% of the price of the mineral extracted from 2000-2001 onwards. [Paragraph 186(5)]

6. Illegal Mining and Violations

The judgment addresses various forms of illegal mining and violations, including:

1. **Mining without Environmental Clearance (EC)**: Any iron ore or manganese ore extracted contrary to the EIA Notification of 1994 or 2006 would constitute illegal or unlawful mining, and the mining lease holder must compensate the State with 100% of the price of the mineral extracted from 2000-2001 onwards. [Paragraph 186(5)]

2. **Mining without Forest Clearance (FC)**: Any mining activity carried out after January 7, 1998, without a Forest Clearance (FC) amounts to illegal or unlawful mining, attracting 100% recovery of the price of the extracted mineral that is disposed of. [Paragraph 186(8)]

3. **Violation of the Forest (Conservation) Act, 1980**: The judgment discusses the violation of the Forest (Conservation) Act, 1980, and the need for Central Government approval for non-forest activities on forest lands. The mining lease holders who violated this Act are liable to compensate the State for the entire price of the iron ore and manganese ore illegally mined from January 7, 1998, until they obtained forest clearance. [Paragraph 179-185]

4. **Violation of Section 6 of the MMDR Act**: The CEC examined the case of seven mining lease holders for alleged violations of Section 6 of the MMDR Act, which relates to the maximum area for which a mining lease may be granted to a person. [Paragraph 187-192]

7. Penalties and Compensation

The judgment outlines the penalties and compensation to be paid by the mining lease holders for illegal mining activities:

1. **Recovery of Mineral Price**: The mining lease holders must compensate the State with 100% of the price of the mineral extracted illegally or unlawfully, either without an EC, FC, or both. In case of overlap, only one set of compensation is payable. [Paragraph 184, 186(9)]

2. **Recovery of Rent, Royalty, and Taxes**: In addition to the mineral price, any rent, royalty, or tax for the period during which illegal mining activities were carried out outside the mining lease area should be recovered. [Paragraph 186(5)]

3. **Penal Compensatory Afforestation**: The defaulting mining lease holders have been asked to pay additional Net Present Value (NPV) and penal compensatory afforestation charges, condoning the violation of the Forest (Conservation) Act to a limited extent. [Paragraph 178]

8. Special Purpose Vehicle (SPV) for Tribal Welfare and Area Development

The judgment discusses the establishment of a Special Purpose Vehicle (SPV) to focus on tribal welfare and area development in mineral-bearing

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areas, including livelihood, health, water supply, education, and infrastructure projects. [Paragraph 5] The SPV will have a Board of Directors to oversee grants, approve budgets, and handle legal matters, with its accounts being audited annually. [Paragraph 9]

9. Directions and Compliance

The Supreme Court issued various directions and set deadlines for compliance:

1. The State Government of Odisha was directed to promptly take a decision on the show cause notices issued to mining lease holders for violations of the Forest (Conservation) Act, preferably within four months and before December 31, 2017. [Paragraph 180]
2. The Union of India was directed to review and announce a more effective National Mineral Policy by December 2017. [Paragraph 17]
3. The Chief Secretary of Odisha was instructed to file an affidavit detailing the utilization of funds from mining lease holders for the benefit of tribals and area development. [Paragraph 19]

10. Conclusion

The Supreme Court's judgment addressed the issue of illegal mining in Odisha, outlining the statutory provisions governing mining leases, environmental clearance requirements, and penalties for violations. It emphasized the importance of responsible and scientific mining operations with a focus on environmental protection and preservation. The judgment also directed the establishment of a Special Purpose Vehicle for tribal welfare and area development in mineral-bearing areas.

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42. Shayara Bano v. Union of India and Others

CHIEF JUSTICE JAGDISH SINGH KHEHAR, JUSTICE KURIAN JOSEPH, JUSTICE ROHINTON FALI NARIMAN, JUSTICE UDAY UMESH LALIT AND JUSTICE S. ABDUL NAZEER

Read the judgment here

I. Introduction

A. Background and significance of the issue

The issue of 'talaq-e-biddat' or triple talaq, a practice among Sunni Muslims of the Hanafi school, has been a contentious and long-standing debate in India. This practice allows a Muslim man to divorce his wife by simply pronouncing the word 'talaq' (divorce) three times in one go, without following the prescribed procedure of divorce as per the Quran and Sharia law.

The practice of triple talaq has been widely criticized as being arbitrary, unconstitutional, and violative of the fundamental rights of Muslim women. It has been argued that it leaves women in a vulnerable position, as they can be divorced at the whim of their husbands without any reasonable cause or opportunity for reconciliation. This practice has been seen as discriminatory and against the principles of gender equality and dignity enshrined in the Indian Constitution.

The issue has gained significant attention and has been the subject of intense public debate, with various women's rights groups, activists, and organizations demanding its abolition. The matter has also been taken up by the courts, with several

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High Courts ruling against the validity of triple talaq.

B. Overview of the case and the Supreme Court's involvement

The Supreme Court of India became involved in this matter after a Division Bench of the Court, in the case of Prakash v. Phulavati (2016), took note of newspaper articles highlighting the issue of gender discrimination faced by Muslim women due to the practice of triple talaq. The Division Bench observed that despite the constitutional guarantee of equality, Muslim women were subjected to discrimination and lacked safeguards against arbitrary divorce and denial of dignity and security.

The Court felt that the issue needed to be examined separately as a public interest litigation (PIL) and referred the matter to a Constitution Bench. Subsequently, several petitions were filed before the Supreme Court, challenging the validity of triple talaq and seeking its abolition.

The Supreme Court constituted a five-judge Constitution Bench to examine the legality of the practice of triple talaq and its conformity with the fundamental rights guaranteed by the Indian Constitution. The Bench heard extensive arguments from various parties, including the petitioners, the All India Muslim Personal Law Board (AIMPLB), and the Union of India.

The case gained significant attention and sparked a nationwide debate on the issue, with various stakeholders presenting their perspectives and arguments before the Supreme Court.## II. Understanding Triple Talaq (Talaq-e-Biddat)

A. Definition and Historical Background

This summary has been prepared using technology alone. Please be advised to read the judgment for accuracy and verify.

Triple Talaq, also known as Talaq-e-Biddat, is a form of divorce in Islamic law where a Muslim man can instantly divorce his wife by pronouncing the word "talaq" three times in succession. This practice is considered irregular and controversial, as it allows for an instantaneous and irrevocable termination of the marriage without any scope for reconciliation or arbitration.

The practice of Triple Talaq is believed to have originated during the second century after the advent of Islam, during the reign of the Umayyad monarchs. It is not explicitly mentioned in the Quran or the Hadith (the recorded sayings and actions of Prophet Muhammad). Instead, it is a later innovation that crept into Muslim tradition, possibly as a way for men to circumvent the prescribed procedures for divorce laid down in the Quran.

B. Differences between Talaq-e-Biddat, Talaq-e-Ahsan, and Talaq-e-Hasan

In Islamic law, there are three recognized forms of divorce initiated by the husband:

1. **Talaq-e-Ahsan**: This is considered the most proper form of divorce. It involves a single pronouncement of divorce by the husband during a period of tuhr (the period between two menstrual cycles when the wife is not menstruating). This is followed by a waiting period called iddat, during which the couple can reconcile if they wish. If they do not reconcile during the iddat period, the divorce becomes irrevocable.

2. **Talaq-e-Hasan**: This is considered a proper form of divorce, though not as ideal as Talaq-e-Ahsan. It involves three successive pronouncements of divorce by the husband, with each pronouncement made during a separate tuhr period. After the third pronouncement, the divorce becomes irrevocable.

3. **Talaq-e-Biddat** (Triple Talaq): This is considered an irregular and sinful form of divorce, though it is still recognized as valid by some schools of Islamic jurisprudence. It involves the husband pronouncing the word "talaq" three times in quick succession, either in a single utterance or in three separate utterances within the same tuhr period. This form of divorce is instantaneous and irrevocable, leaving no room for reconciliation or arbitration.

C. The Practice of Triple Talaq in India

In India, the practice of Triple Talaq has been prevalent among a section of the Muslim community, particularly those following the Hanafi school of Islamic jurisprudence. While the Quran and the Hadith do not explicitly mention or endorse this practice, it has been recognized as valid by some Islamic scholars and has been upheld by certain court judgments in the past.

However, the practice of Triple Talaq has been widely criticized for being arbitrary and unconstitutional, as it allows Muslim men to unilaterally terminate a marriage without following due process or providing any opportunity for reconciliation. It has been seen as a violation of the fundamental rights of Muslim women, particularly the right to equality and dignity.

In recent years, there have been numerous legal challenges and debates surrounding the validity and constitutionality of Triple Talaq in India. In 2017, the Supreme Court of India, in a landmark

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judgment, declared the practice of Triple Talaq as unconstitutional and struck it down as being violative of the fundamental rights enshrined in the Indian Constitution.## III. Legal Perspective

A. The Shariat Act of 1937 and its implications

The Muslim Personal Law (Shariat) Application Act, 1937 (hereinafter referred to as the "Shariat Act") was enacted to put an end to the oppressive and discriminatory customs and usages prevalent in the Muslim community. Section 2 of the Act is particularly relevant in the present context. It states:

"Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."

After the enactment of the Shariat Act, the law applicable to Muslims regarding matters such as marriage, dissolution of marriage (including talaq), maintenance, dower, etc., shall be the Muslim Personal Law (Shariat) and nothing else. The Act did not codify or describe the specific grounds and procedures for talaq; it simply made Shariat the "rule of decision" in such matters.

The Shariat Act did not incorporate or legislate on the manner in which questions related to marriage, divorce, talaq, etc., had to be dealt with according to Muslim Personal Law (Shariat). It merely recognized the Muslim Personal Law (Shariat) as the "rule of decision" in these matters. Therefore, for the settlement of disputes among Muslims, it would first need to be determined what the Muslim Personal Law was concerning the particular dispute, and that would constitute the "rule of decision" as per Section 2 of the 1937 Act.

B. Constitutional challenges

The petitioners contended that after the enactment of the Shariat Act, the questions and subjects covered by it, including "dissolution of marriage, including talaq," ceased to be 'personal law' and got transformed into 'statutory law.' Consequently, they argued that these matters should conform to the fundamental rights enshrined in Part III of the Constitution, particularly Articles 14, 15, and 21.

However, the respondents argued that the Shariat Act did not confer statutory status on Muslim Personal Law (Shariat). It merely perpetuated Muslim Personal Law as the "rule of decision" and clarified ambiguities caused by customs and usages. The respondents contended that Muslim Personal Law did not metamorphose into a statute and, therefore, could not be challenged on the grounds of violating fundamental rights applicable to State actions.

The Court concluded that the limited purpose of Section 2 of the Shariat Act was to negate the overriding effect of customs and usages over Muslim Personal Law (Shariat). The Act did not lay down or declare the Muslim Personal Law; it

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merely preserved it as it existed from time immemorial. Therefore, the Court held that the Shariat Act did not transform Muslim Personal Law into statutory law, and it could not be challenged as violating the fundamental rights contained in Part III of the Constitution, which are applicable to State actions.# IV. Judicial Pronouncements

A. The Rashid Ahmad case and its significance

The Rashid Ahmad case, decided by the Privy Council in 1932, upheld the validity of 'talaq-e-biddat' (triple talaq) under Muslim personal law. The key points regarding this case are:

1. Anisa Khatun's husband, Ghyas-ud-din, pronounced 'talaq-e-biddat' to divorce her.
2. Despite this, they continued to cohabit for 15 years, and Anisa Khatun gave birth to five children during this period.
3. The Privy Council held that the marriage was dissolved immediately upon the pronouncement of 'talaq-e-biddat', and the subsequent cohabitation and children were illegitimate.
4. This judgment established the legal validity of 'talaq-e-biddat' under Muslim personal law, as it was understood and applied at that time.

B. High Court judgments (Jiauddin Ahmed, Rukia Khatun, Masroor Ahmed, and Nazeer cases)

After the Rashid Ahmad case, several High Courts examined the validity of 'talaq-e-biddat' and arrived at different conclusions:

1. **Jiauddin Ahmed case (Gauhati High Court, 1981)**: A single judge bench disapproved of 'talaq-e-biddat', relying on Quranic verses, hadiths, and principles of Islamic law. It held that talaq must be for a reasonable cause and preceded by attempts at reconciliation.
2. **Rukia Khatun case (Gauhati High Court, 1981)**: A division bench reiterated the view in the Jiauddin Ahmed case and expressly dissented from the Calcutta and Bombay High Courts' decisions upholding 'talaq-e-biddat'.
3. **Masroor Ahmed case (Delhi High Court)**: A single judge bench, relying on hadiths, held that 'talaq-e-biddat' was not in consonance with Muslim personal law and laid down conditions for a valid talaq, including proof of pronouncement, reasonable cause, and attempts at reconciliation.
4. **Nazeer case (Kerala High Court)**: A single judge bench highlighted the plight of Muslim women due to the practice of 'talaq-e-biddat' and disapproved of the practice, stating that it was not in accordance with the Quran.

C. The Supreme Court's approach and analysis

The Supreme Court, in the present case, examined the Rashid Ahmad judgment and the subsequent High Court decisions on 'talaq-e-biddat'. The Court's approach and analysis can be summarized as follows:

1. The Court acknowledged that despite the Rashid Ahmad judgment, the issue of 'talaq-e-biddat' needed a fresh examination in light of subsequent developments.
2. The Court noted the contradictions in the hadiths relied upon by the parties and

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refrained from recording a finding on whether 'talaq-e-biddat' is affirmed by hadiths.

3. The Court held that 'talaq-e-biddat' is integral to the religious denomination of Sunnis belonging to the Hanafi school and is a part of their faith, having been followed for more than 1400 years. Therefore, it has to be accepted as a constituent of their personal law.

4. The Court disagreed with the Privy Council's view in the Rashid Ahmad case, holding that the opinion upholding 'talaq-e-biddat' as finally and irrevocably severing the matrimonial tie needs to be considered incorrect.

5. The Court acknowledged the High Court judgments that disapproved of 'talaq-e-biddat' but refrained from declaring the practice as invalid, as it is a constituent of Muslim personal law.

In summary, while recognizing the concerns raised by various High Courts, the Supreme Court ultimately upheld the validity of 'talaq-e-biddat' as a part of Muslim personal law, albeit disagreeing with the Privy Council's interpretation of its effect.# V. Hadiths and Quranic Verses

A. Interpretations and authenticity of Hadiths cited by different parties

The Supreme Court examined various Hadiths (sayings and traditions of Prophet Muhammad) cited by the petitioners and the All India Muslim Personal Law Board (AIMPLB) to support their respective arguments regarding the validity of triple talaq (talaq-e-biddat).

Hadiths cited by the Petitioners

The petitioners relied on the following Hadiths to argue that triple talaq is not valid according to Islamic principles:

1. A Hadith from Sahih Muslim compiled by Al-Hafiz Zakiuddin Abdul-Azim Al-Mundhiri, which states that during the time of Prophet Muhammad, the first Caliph Abu Bakr, and the second Caliph Umar, three consecutive utterances of talaq were treated as a single pronouncement of divorce.

2. A Hadith from Sunan Abu Dawud, which states that divorce is the most detestable of all permissible things in the sight of Allah.

3. A Hadith from Musannaf ibn Abi Shaybah, which reports that when a person pronounced triple talaq in one sitting, Caliph Umar would punish him by beating and then separate the couple.

4. A Hadith from Sunan Bayhaqi, which narrates an incident where Prophet Muhammad asked a person who had pronounced triple talaq to take back his wife, as he was playing with the words of Allah.

The petitioners argued that these Hadiths, being closer to the time of Prophet Muhammad, are more authentic and reliable than the Hadiths relied upon by the AIMPLB.

Hadiths cited by the AIMPLB

The AIMPLB relied on the following Hadiths to support the validity of triple talaq:

1. A Hadith from Daraqutni, which states that when Hafs bin Mughaira resorted to triple talaq, Prophet Muhammad considered it valid and separated the couple.

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2. A Hadith from Daraqutni, which reports that Prophet Muhammad said that whoever resorts to triple talaq, whether one, two, or three, his divorce would be made effective.

3. A Hadith from Sunan Bayhaqi, which narrates an incident where Hasan bin Ali pronounced triple talaq on his wife, and he stated that he had heard from his father that Prophet Muhammad had said that if a person pronounces triple talaq, the wife would not be permissible for him until she marries another husband.

The AIMPLB argued that these Hadiths, although later in time, are authentic and support the validity of triple talaq.

The Supreme Court acknowledged the existence of distortions in Hadiths and the varying degrees of reliability and authenticity of different Hadiths. It observed that the Hadiths relied upon by the AIMPLB appeared to be distortions when compared to the more authentic Hadiths cited by the petitioners.

B. Quranic verses related to divorce and their interpretations

The Supreme Court examined various verses from the Quran related to divorce and their interpretations by different scholars and jurists.

Quranic verses cited by the Petitioners

The petitioners relied on the following Quranic verses to argue against the validity of triple talaq:

1. Verse 229 of Surah Al-Baqarah, which states that divorce is permissible twice, and after the second divorce, either the husband must retain the wife honorably or release her with kindness.

2. Verse 230 of Surah Al-Baqarah, which states that if a husband divorces his wife for the third time, she shall not be lawful for him until she marries another husband.

3. Verse 232 of Surah Al-Baqarah, which advises against preventing divorced women from remarrying their former husbands if they mutually agree on equitable terms.

4. Verse 1 of Surah Al-Talaq, which instructs the Prophet Muhammad on the proper procedure for divorce, including counting the prescribed periods and not turning the wives out of their houses.

The petitioners argued that these verses establish a procedure for divorce, which includes attempts at reconciliation and a waiting period (iddat), and do not support the concept of instant and irrevocable divorce through triple talaq.

Quranic verses cited by the AIMPLB

The AIMPLB relied on the following Quranic verses to support the validity of triple talaq:

1. Verse 71 of Surah Al-Hashr, which emphasizes the importance of obeying the Prophet Muhammad.

2. Verse 20 of Surah Al-Anfal, which instructs believers to obey Allah and His Messenger.

3. Verse 64 of Surah Al-Nisa, which states that whoever obeys Allah and His Messenger has indeed followed the right path.

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4. Verse 13 of Surah Al-Anfal, which warns against becoming hostile to Allah and His Messenger.
5. Verse 36 of Surah Al-Ahzab, which states that it is not open for believers to have a choice in a matter once Allah and His Messenger have decided it.
6. Verse 115 of Surah Al-Nisa, which warns against following a path other than that of the believers after the right path has become clear.

The AIMPLB argued that these verses emphasize the importance of obeying the Prophet Muhammad and following his teachings, which include the recognition of triple talaq as a valid form of divorce.

The Supreme Court acknowledged the different interpretations of the Quranic verses and Hadiths by various scholars and jurists. It recognized the complexity of the issue and the need for a careful examination of the sources and their interpretations.# VI. Global Perspective

A. Reforms and abolition of Triple Talaq in other Muslim-majority countries

The report highlights that a large number of Muslim countries or countries with significant Muslim populations, such as Pakistan, Bangladesh, Afghanistan, Morocco, Tunisia, Turkey, Indonesia, Egypt, Iran, and Sri Lanka, have undertaken significant reforms and regulated their divorce laws. Many of these countries have abolished or restricted the practice of triple talaq (talaq-e-biddat).

Some specific examples mentioned in the report:

1. **Pakistan** and **Bangladesh** require a man to obtain permission from an Arbitration Council before divorcing his wife.
2. In **Tunisia** and **Turkey**, extra-judicial divorce like triple talaq is not recognized.
3. In **Afghanistan**, if three pronouncements of talaq are made in one sitting, it is considered invalid.
4. In **Morocco** and **Indonesia**, divorce proceedings take place in secular courts, procedures of mediation and reconciliation are encouraged, and men and women are considered equal in matters of family and divorce.
5. In **Indonesia**, divorce is a judicial process where those marrying under Islamic Law can approach the Religious Court for a divorce.
6. In **Iran** and **Sri Lanka**, divorce can be granted by a Qazi (Islamic judge) and/or a court, only after reconciliation efforts have failed.

The report suggests that even Islamic theocratic states have undergone reforms in this area of law, indicating that the practice of triple talaq is not an essential religious practice.

B. Implications for India and the potential for legislative reform

The report argues that if Muslim countries have undergone extensive reforms to abolish or restrict the practice of triple talaq, then in a secular republic like India, there is no reason to deny Muslim women the rights available to women in other parts of the Muslim world.

The fact that Muslim countries have reformed their laws is presented as evidence that the practice of

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triple talaq is not an essential religious practice and can be subject to legislative reform.

The report concludes by stating that it is imperative for the Indian state to consider formulating a codified law to govern the matter of divorce among Muslims, without violating the religious freedom guaranteed by the Constitution. It suggests that legislative intervention, as permitted under Articles 25(2) and 44 read with Entry 5 of the Concurrent List in the Seventh Schedule of the Constitution, is the appropriate way to address the issue of triple talaq in India.

The report draws attention to those who resist any form of reform of Muslim personal laws in India, urging them to consider verses from the Quran that emphasize the importance of truth, justice, and reform.

VII. Way Forward

A. Potential outcomes and implications of the Supreme Court's judgment

The Supreme Court's judgment on the issue of triple talaq has far-reaching implications for Muslim personal law and gender equality in India. By declaring the practice of instant triple talaq as unconstitutional and invalid, the Court has taken a significant step towards protecting the rights of Muslim women and upholding the principles of gender justice enshrined in the Constitution.

However, the Court has refrained from invalidating other forms of talaq, such as talaq-e-ahsan and talaq-e-hasan, which are also based on the unilateral decision of the husband. This leaves room for further legal challenges and debates on the validity of these practices in the future.

The judgment has also highlighted the need for comprehensive reforms in Muslim personal law to bring it in line with the constitutional principles of equality and non-discrimination. While the Court has acknowledged the importance of preserving religious freedom and personal laws, it has also emphasized the need to balance these rights with the fundamental rights of individuals, particularly women.

B. Prospects for legislative action and the Uniform Civil Code

The Supreme Court's judgment has reiterated the need for the Parliament to take legislative action to address the issues related to Muslim personal law and the practice of triple talaq. The Court has suggested that the Parliament should consider enacting a law to regulate the practice of divorce among Muslims, ensuring that it is in conformity with the constitutional principles of gender equality and non-discrimination.

The judgment has also revived the debate on the implementation of a Uniform Civil Code, as envisaged in Article 44 of the Constitution. While the Court has refrained from directly addressing this issue, it has emphasized the need for reforms in personal laws to ensure gender justice and equality.

However, the implementation of a Uniform Civil Code is a complex and sensitive issue, as it involves balancing the rights of different religious communities and their personal laws. Any attempt to introduce a Uniform Civil Code is likely to face opposition from various quarters, particularly from those who view it as an infringement on their religious freedom and cultural identity.

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C. Balancing religious freedom and gender equality

The Supreme Court's judgment has highlighted the inherent tension between religious freedom and gender equality in the context of personal laws. While the Court has upheld the constitutional protection of personal laws under Article 25, it has also emphasized the need to ensure that these laws do not violate the fundamental rights of individuals, particularly women.

The Court has recognized that personal laws cannot be immune from constitutional scrutiny and that they must conform to the principles of equality, non-discrimination, and dignity enshrined in the Constitution. This implies that religious practices and personal laws that are discriminatory or violative of fundamental rights may be subject to judicial review and potential reform.

However, the Court has also acknowledged the sensitivity of the issue and the need for a balanced approach that respects religious freedom while upholding the principles of gender equality and non-discrimination. This delicate balance will require careful consideration and dialogue among various stakeholders, including religious communities, civil society organizations, and policymakers.

In conclusion, the Supreme Court's judgment on triple talaq has opened the door for further reforms in Muslim personal law and has reignited the debate on the implementation of a Uniform Civil Code. While the path forward is complex and fraught with challenges, it presents an opportunity to address long-standing issues of gender inequality and discrimination in personal laws, while respecting the diversity of religious and cultural traditions in India.# VIII. Conclusion

A. Summary of Key Points

The key points regarding the issue of 'talaq-e-biddat' (triple talaq) can be summarized as follows:

1. 'Talaq-e-biddat' is a matter of 'personal law' for Sunni Muslims belonging to the Hanafi school and has been practiced by them for over 1400 years. It is an integral part of their faith and religious beliefs.
2. The practice of 'talaq-e-biddat' does not violate the provisions of Article 25 of the Constitution, which guarantees the freedom to practice and propagate religion. It is not contrary to public order, morality, or health.
3. As a component of 'personal law', 'talaq-e-biddat' has the protection of Article 25 of the Constitution, and the court cannot invalidate or declare it unacceptable, as it would amount to denying the rights expressly protected under this Article.
4. The framers of the Constitution consciously excluded 'personal laws' from the purview of Part III (Fundamental Rights) of the Constitution, recognizing the existence of separate personal laws for different religious communities.
5. Any reform or change in 'personal law' can only be brought about through legislative intervention by the State, as per Articles 25(2) and 44 read with Entry 5 of the Concurrent List in the Seventh Schedule of the Constitution.
6. International conventions and declarations are not applicable in this case, as 'talaq-e-biddat'

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is a component of 'personal law' and has the protection of Article 25 of the Constitution.

B. Significance for Indian Society and the Legal System

The issue of 'talaq-e-biddat' is significant for Indian society and the legal system for several reasons:

1. **Secularism and Pluralism**: The Indian Constitution recognizes and protects the pluralistic nature of Indian society, where different religious communities have the right to follow their respective personal laws. The court's decision upholds this principle of secularism and respect for diversity.

2. **Constitutional Principles**: The judgment reinforces the constitutional principles of separation of powers and the limited role of the judiciary in matters of personal laws. It emphasizes that any reform or change in personal laws should come through legislative intervention, respecting the boundaries set by the Constitution.

3. **Gender Justice**: While the practice of 'talaq-e-biddat' has been criticized as discriminatory towards Muslim women, the court's decision highlights the complexity of the issue and the need for a balanced approach that respects religious beliefs and personal laws while also ensuring gender justice.

4. **Legal Precedent**: The judgment sets a precedent for future cases involving personal laws and the extent to which the judiciary can intervene in such matters. It clarifies the constitutional position on personal laws and their relationship with fundamental rights.

5. **Societal Debate**: The issue has sparked a nationwide debate on the need for reforms in personal laws, particularly those perceived as discriminatory towards women. The court's decision is likely to fuel further discussions and potentially prompt legislative action on the matter.

Overall, the judgment on 'talaq-e-biddat' has significant implications for Indian society and the legal system, as it navigates the delicate balance between protecting religious freedoms, upholding constitutional principles, and ensuring gender justice within the framework of personal laws.

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43. Justice K S Puttaswamy (Retd.), and Anr. v. Union of India and Ors.

CHIEF JUSTICE JAGDISH SINGH KHEHAR, JUSTICE CHELAMESWAR, JUSTICE S. A. BOBDE, JUSTICE R. K. AGRAWAL, JUSTICE R. F. NARIMAN, JUSTICE ABHAY MANOHAR SAPRE, JUSTICE DR. D. Y. CHANDRACHUD, JUSTICE SANJAY KISHAN KAUL AND JUSTICE S. ABDUL NAZEER

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I. Introduction

A. Brief background on the legal case

The legal case at hand is a landmark judgment delivered by a nine-judge constitutional bench of the Supreme Court of India on the issue of whether the right to privacy is a fundamental right protected by the Indian Constitution. The case arose from a batch of petitions challenging the constitutional validity of the Aadhaar card scheme, a biometric identification program launched by the Government of India.

One of the key grounds of challenge against the Aadhaar scheme was that the collection and compilation of demographic and biometric data by the government violated an individual's right to privacy. Initially, a three-judge bench was considering the matter when it realized the need to revisit and re-evaluate two previous Supreme Court judgments – M.P. Sharma v. Satish Chandra (1954) and Kharak Singh v. State of U.P. (1964) – which had held that the Indian Constitution did not explicitly guarantee a fundamental right to privacy.

Given the far-reaching implications of the issue and the need to settle the legal position authoritatively, the three-judge bench referred the matter to a larger constitutional bench of nine judges. The primary question before the nine-judge bench was whether the right to privacy is a constitutionally protected fundamental right under the Indian Constitution.

B. Significance of the judgment on the right to privacy

The judgment holds immense significance as it addresses a crucial aspect of individual liberty and autonomy in the digital age. The recognition of the right to privacy as a fundamental right has wide-ranging implications for various aspects of an individual's life, including personal choices, family matters, data protection, and the relationship between the individual and the state.

The judgment is also significant from a constitutional perspective as it re-evaluates and overrules (in part) the earlier decisions in M.P. Sharma and Kharak Singh, which had denied the existence of a fundamental right to privacy under the Indian Constitution. By recognizing privacy as a constitutionally protected right, the Supreme Court has expanded the scope of fundamental rights and liberties enshrined in the Constitution.

Furthermore, the judgment has far-reaching implications for various laws, policies, and government programs that may potentially infringe upon an individual's right to privacy. It sets the stage for a comprehensive legal framework to protect personal data and regulate the collection, processing, and dissemination of such data by both state and non-state actors.

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Overall, the judgment is a landmark development in the evolution of constitutional jurisprudence in India, aligning the country's legal framework with international human rights standards and addressing the challenges posed by technological advancements in the digital age.## Historical Perspective

A. Early Supreme Court decisions: M.P. Sharma and Kharak Singh

1. Rejection of a constitutional right to privacy

In the early years after the adoption of the Indian Constitution, the Supreme Court rejected the idea of a constitutionally protected right to privacy. Two landmark decisions, M.P. Sharma v. Satish Chandra (1954) and Kharak Singh v. State of Uttar Pradesh (1964), played a crucial role in shaping the initial jurisprudence on this issue.

In M.P. Sharma, an 8-judge bench of the Supreme Court considered whether the search and seizure of documents from the accused violated their right against self-incrimination under Article 20(3) of the Constitution. The Court held that the act of search and seizure did not amount to testimonial compulsion and, therefore, did not violate Article 20(3). More significantly, the Court observed that the Constitution makers had not thought it fit to subject the power of search and seizure to constitutional limitations by recognizing a fundamental right to privacy, analogous to the Fourth Amendment of the U.S. Constitution.

In Kharak Singh, a 6-judge bench dealt with the constitutionality of police regulations that allowed for surveillance measures, including domiciliary visits at night. The majority (4:2) struck down the provision allowing nocturnal home visits as violative of the right to life and personal liberty under Article 21. However, the majority also held that the right to privacy was not a guaranteed right under the Indian Constitution.

These two decisions effectively rejected the existence of a constitutionally protected right to privacy in India, at least in the context of search, seizure, and surveillance measures.

2. Criticism of the decisions

The decisions in M.P. Sharma and Kharak Singh have been subject to significant criticism over the years:

1. **Narrow interpretation**: The decisions adopted a narrow interpretation of fundamental rights, confining them to specific provisions rather than recognizing their broader scope and interrelationship.

2. **Outdated jurisprudence**: The decisions were based on the then-prevailing jurisprudence of treating fundamental rights as isolated silos, as propounded in the case of A.K. Gopalan v. State of Madras (1950). This approach was later overruled by the landmark judgments in R.C. Cooper v. Union of India (1970) and Maneka Gandhi v. Union of India (1978), which established that fundamental rights must be read together and not in isolation.

3. **Failure to consider international human rights instruments**: The decisions did not take into account the Universal Declaration of Human Rights (1948) and other international instruments that recognized the right to privacy as a fundamental human right.

4. **Inconsistency within Kharak Singh**: The majority judgment in Kharak Singh exhibited

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an internal inconsistency. While striking down domiciliary visits at night as violative of personal liberty, it simultaneously held that the right to privacy was not a guaranteed right under the Constitution.

5. **Evolving societal values**: The decisions failed to appreciate the evolving societal values and the increasing importance of privacy in a modern democratic society.

Over time, subsequent judgments of the Supreme Court have recognized the right to privacy as a fundamental right, either as an emanation from other expressly guaranteed rights or as an integral part of the right to life and personal liberty under Article 21. The decisions in M.P. Sharma and Kharak Singh have been criticized for their narrow interpretation and have been gradually eroded by the Court's evolving jurisprudence on the right to privacy.## III. Evolution of Privacy as a Fundamental Right

A. Dissenting voices: Justices Fazl Ali, Subba Rao, and Khanna

The majority decisions in M.P. Sharma and Kharak Singh, which held that there is no explicit right to privacy under the Indian Constitution, were not unanimous. Several dissenting voices emerged, laying the groundwork for the eventual recognition of privacy as a fundamental right.

Justice Fazl Ali, in his dissenting opinion in Kharak Singh, argued that the concept of "personal liberty" in Article 21 is comprehensive and includes all varieties of rights that go to make up personal liberty. He contended that the right to privacy is an essential ingredient of personal liberty, and any act that violates the privacy of an individual would be an infringement of the personal liberty guaranteed by Article 21.

Justice Subba Rao, in his dissenting judgment in Kharak Singh, took a broader view of the fundamental rights enshrined in the Constitution. He argued that the fundamental rights should not be considered as distinct and mutually exclusive rights but rather as a unified whole. He emphasized that the right to personal liberty takes in not only a right to be free from physical restraint but also the right to enjoy all the legitimate activities that constitute the dignity of life.

Justice Khanna, in his dissenting opinion in Gobind v. State of M.P., echoed similar sentiments. He recognized the right to privacy as a fundamental right and stated that the right to privacy is an essential ingredient of personal liberty. He argued that the right to privacy is not an absolute right but must be subject to restrictions based on compelling public interest.

These dissenting voices laid the foundation for the subsequent evolution of the right to privacy as a fundamental right in Indian jurisprudence.

B. Interrelationship between fundamental rights: R.C. Cooper and Maneka Gandhi

Two landmark judgments, R.C. Cooper v. Union of India and Maneka Gandhi v. Union of India, played a pivotal role in recognizing the interrelationship between fundamental rights and paved the way for the recognition of the right to privacy.

In R.C. Cooper, the Supreme Court rejected the narrow interpretation of fundamental rights adopted in A.K. Gopalan v. State of Madras. The Court held that the fundamental rights enshrined in

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the Constitution are not isolated silos but are interrelated and interdependent. This opened the door for the recognition of unenumerated rights that may be derived from the express guarantees of the Constitution.

In Maneka Gandhi, the Supreme Court further expanded the scope of fundamental rights by adopting a broader interpretation of the term "personal liberty" under Article 21. The Court held that the procedure established by law for depriving a person of personal liberty must be fair, just, and reasonable, and not arbitrary or oppressive. This landmark judgment laid the groundwork for recognizing the right to privacy as an integral part of the right to personal liberty under Article 21.

C. Subsequent Supreme Court decisions recognizing the right to privacy

Building upon the foundations laid by the dissenting voices and the judgments in R.C. Cooper and Maneka Gandhi, several subsequent Supreme Court decisions recognized the right to privacy as a fundamental right, either as an independent right or as an essential ingredient of other fundamental rights.

In Gobind v. State of M.P., the Supreme Court acknowledged the existence of a right to privacy, although it did not explicitly declare it as a fundamental right. The Court recognized that the right to privacy is an essential ingredient of personal liberty and that any invasion of privacy must be justified by a compelling state interest.

In Rajagopal v. State of Tamil Nadu, the Supreme Court explicitly recognized the right to privacy as a fundamental right, stating that the right to privacy is implicit in the right to life and personal liberty guaranteed by Article 21. The Court held that the right to privacy includes the right to be left alone and the right to safeguard the privacy of personal intimacies, family relationships, and communications.

In People's Union for Civil Liberties v. Union of India, the Supreme Court reiterated the recognition of the right to privacy as a fundamental right and emphasized that the right to hold a telephone conversation in privacy is a part of the right to privacy.

These decisions, along with several others, firmly established the right to privacy as a fundamental right in Indian jurisprudence, either as an independent right or as an essential component of other fundamental rights, such as the right to life and personal liberty under Article 21.# IV. Jurisprudential Basis for the Right to Privacy

A. Natural and Inalienable Rights

Privacy is considered a natural and inalienable right, inherent to human beings by virtue of their existence. The concept of natural rights stems from the idea that certain rights are not bestowed by the State but are intrinsic to human beings because they are human. These rights are inalienable, meaning they cannot be taken away or transferred to others.

The human element in life is impossible to conceive without the existence of natural rights. Natural rights protect the autonomy of individuals to make choices and preserve their liberty, while recognizing that this autonomy is not absolute. Certain rights, such as the right to life or the right to privacy, are considered so fundamental that no human being can alienate or waive them.

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The development of the concept of natural and inalienable rights in the Indian context can be traced back to the drafting of the Constitution. The framers recognized the need to preserve and protect these inherent rights, which formed the foundation of the fundamental rights enshrined in Part III of the Constitution.

B. Dignity and Personal Liberty

The right to privacy is closely intertwined with the concepts of human dignity and personal liberty. Privacy is considered essential for the exercise of personal liberty and the realization of human dignity.

The Constitution of India recognizes the right to life and personal liberty under Article 21. The Supreme Court has interpreted this right broadly, holding that it encompasses not just mere animal existence but also the right to live with dignity. Privacy is seen as an integral part of this right, as it enables individuals to exercise their freedoms and develop their personalities without undue interference.

The Court has recognized that privacy is necessary for both the mental and physical aspects of personhood. It allows individuals to maintain their autonomy, make intimate decisions, and preserve their thoughts and beliefs without external scrutiny. Privacy is thus considered a prerequisite for the enjoyment of other fundamental rights and freedoms guaranteed by the Constitution.

C. International Human Rights Instruments

The right to privacy has been recognized and affirmed in various international human rights instruments, which have influenced the interpretation and understanding of this right in the Indian context.

The Universal Declaration of Human Rights (UDHR), to which India is a signatory, recognizes privacy as an international human right. Article 12 of the UDHR states: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

Other international instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), also enshrine the right to privacy and have influenced the development of privacy jurisprudence in various jurisdictions.

The Supreme Court has recognized the importance of these international instruments and has relied on them to interpret and expand the scope of fundamental rights, including the right to privacy, in the Indian context.

In summary, the jurisprudential basis for the right to privacy in India is rooted in the concepts of natural and inalienable rights, human dignity, personal liberty, and the recognition of privacy as a fundamental human right in international human rights instruments. The Supreme Court has drawn upon these principles to establish privacy as a constitutionally protected right in India.# V. Contours and Scope of the Right to Privacy

A. Informational Privacy

The age of information has resulted in complex issues for informational privacy. Information has

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three facets: it is non-rivalrous, invisible, and recombinant. Information is non-rivalrous in the sense that there can be simultaneous users of the same information – use of a piece of information by one person does not make it less available to another. Secondly, invasions of data privacy are difficult to detect because they can be invisible. Information can be accessed, stored, and disseminated without notice. Its ability to travel at the speed of light enhances the invisibility of access to data. Thirdly, information is recombinant in the sense that data output can be used as an input to generate more data output.

Formulation of a regime for data protection is a complex exercise that needs to be undertaken by the State after carefully balancing the requirements of privacy coupled with other values that the protection of data sub-serves, together with the legitimate concerns of the State. While intervening to protect legitimate state interests, the State must nevertheless put in place a robust regime that ensures the fulfillment of a three-fold requirement:

1. There must be a law in existence to justify an encroachment on privacy, as per the express requirement of Article 21.

2. The requirement of a legitimate state aim ensures that the nature and content of the law imposing the restriction falls within the zone of reasonableness mandated by Article 14, which is a guarantee against arbitrary state action.

3. The means adopted by the legislature must be proportional to the object and needs sought to be fulfilled by the law. Proportionality is an essential facet of the guarantee against arbitrary state action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law.

Apart from national security, the State may have justifiable reasons for the collection and storage of data, such as ensuring that scarce public resources are not diverted from legitimate beneficiaries in a social welfare state. However, the data collected by the State must be utilized only for legitimate purposes and not for extraneous purposes, safeguarding both the legitimate concerns of the State and privacy concerns.

B. Spatial Privacy

Spatial privacy is reflected in the privacy of a private space through which access of others can be restricted to the space. Intimate relations and family life are apt illustrations of spatial privacy. The right to privacy has its foundation in the instincts of nature, and every individual recognizes that there are matters private and matters public as far as the individual is concerned.

The non-consensual revelation of personal information such as the state of one's health, finances, place of residence, location, daily routines, and so on effaces one's sense of personal and financial security. Privacy lets people protect themselves from troublesome judgments by others.

C. Limitations and Reasonable Restrictions

The right to privacy is not absolute. Like the right to life and personal liberty, privacy is not absolute, and the limitations that operate on the right to life and personal liberty would also operate on the right to privacy. Any curtailment or deprivation of the right to privacy would have to take place under a regime of law. The procedure established by law

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must be fair, just, and reasonable. The law that provides for the curtailment of the right must also be subject to constitutional safeguards.

The right to privacy may be limited based on legitimate state interests, such as national security, public interest, prevention and investigation of crime, protection of revenue, and ensuring the proper allocation of resources in a social welfare state. However, such restrictions must satisfy the principle of proportionality, ensuring that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law.

The concerns about privacy have been left unattended for quite some time, and an infringement of the right to privacy cannot be left to be formulated solely by the legislature. Privacy is a primal natural right inherent to an individual, and it is being recognized as a fundamental right falling under Part III of the Constitution of India.# VI. Implications and Way Forward

A. Impact on existing laws and regulations

The Supreme Court's recognition of the right to privacy as a fundamental right under the Constitution will have significant implications for existing laws and regulations in India. Several laws that involve the collection, processing, and sharing of personal data may need to be re-examined and potentially amended to ensure compliance with the newly affirmed constitutional right to privacy.

For instance, laws such as the Information Technology Act, 2000, which deals with cybercrime and electronic commerce, and the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, which mandates the collection of biometric data for the issuance of a unique identification number, may need to be revisited. These laws, and others like them, will have to be scrutinized to ensure that the provisions related to data collection, storage, and sharing are in line with the principles of privacy laid down by the Supreme Court.

Additionally, existing regulations and policies governing various sectors, such as telecommunications, banking, healthcare, and e-commerce, which involve the handling of personal data, may also require modifications to align with the Supreme Court's directives on privacy.

B. Challenges in balancing privacy with other interests

While the Supreme Court has affirmed the fundamental right to privacy, it has also acknowledged that this right is not absolute and can be subject to reasonable restrictions. The challenge lies in striking a balance between protecting an individual's right to privacy and other legitimate state interests, such as national security, prevention and investigation of crime, and the promotion of innovation and dissemination of knowledge.

Policymakers and lawmakers will face the daunting task of carefully weighing the competing interests and crafting laws and regulations that uphold the right to privacy while also addressing other crucial concerns. This balancing act will require a nuanced approach, taking into account the specific context and circumstances of each case.

For instance, in the realm of national security, the state may need to employ surveillance measures or collect personal data to counter threats such as terrorism or cyber attacks. However, such measures must be proportionate and subject to appropriate

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safeguards to prevent excessive intrusion into an individual's privacy.

Similarly, in the field of healthcare, the sharing of personal medical data may be necessary for research purposes or to facilitate better treatment, but robust data protection mechanisms must be in place to ensure that sensitive information is not misused or disclosed without consent.

C. Future developments and case-by-case evolution

The Supreme Court's judgment on the right to privacy is a landmark decision, but it is also the beginning of a long journey. The contours of this right and its practical implications will continue to evolve through future judicial pronouncements and legislative actions.

As new technologies emerge and societal norms shift, the interpretation and application of the right to privacy will likely undergo further refinement. The Supreme Court has acknowledged that the right to privacy is not absolute and that its boundaries will need to be defined on a case-by-case basis, taking into account the specific circumstances and competing interests involved.

Future cases brought before the courts may address various aspects of privacy, such as data protection, surveillance, bodily integrity, and the right to be forgotten, among others. These cases will provide opportunities for the judiciary to further clarify the scope and limitations of the right to privacy, and to establish guidelines for balancing this right with other legitimate concerns.

Additionally, the Supreme Court has called upon the Union Government to examine and put in place a robust regime for data protection, recognizing the importance of safeguarding informational privacy in the digital age. The formulation of such a regime will require extensive deliberation and consultation, taking into account international best practices and the unique challenges faced by India.

In conclusion, the Supreme Court's recognition of the right to privacy as a fundamental right is a significant milestone, but it is also the beginning of a complex journey. The impact on existing laws and regulations, the challenges in balancing privacy with other interests, and the future developments and case-by-case evolution will shape the practical implementation and interpretation of this right in the years to come.# VII. Conclusion

A. Significance of the Judgment

This landmark judgment by the Supreme Court of India is of profound significance for the constitutional jurisprudence of the country and the rights of citizens. By recognizing the right to privacy as a fundamental right emanating from Articles 14, 19, and 21 of the Constitution, the Court has reinforced the core values of human dignity, liberty, and autonomy that underpin India's democratic framework.

The judgment is a resounding affirmation of the individual's inviolable right to determine their personal affairs and make intimate decisions without unwarranted interference from the state or non-state actors. It acknowledges that privacy is not merely a privilege for the elite but an inalienable entitlement that cuts across social strata, enabling every individual to exercise their freedoms and liberties in a meaningful way.

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Furthermore, the Court's decision has far-reaching implications for various aspects of life, such as personal relationships, reproductive choices, gender identity, and data protection. It provides a robust constitutional foundation for safeguarding individual autonomy and preventing intrusions into the private sphere by the government or private entities.

By overruling the flawed precedents set in the ADM Jabalpur and Suresh Koushal cases, the Court has corrected historical wrongs and realigned the jurisprudence with the core principles of human rights and civil liberties enshrined in the Constitution.

B. Privacy as an Essential Aspect of Human Dignity and Liberty

The judgment eloquently articulates the intrinsic link between privacy, human dignity, and liberty. It recognizes that privacy is not merely a narrow concept but a multifaceted right that encompasses various aspects of an individual's life, including bodily integrity, personal autonomy, informational self-determination, and the freedom to make intimate choices.

The Court has emphasized that privacy is not an elitist construct but a fundamental condition for the full realization of human dignity and the exercise of personal liberty. It is an indispensable prerequisite for individuals to develop their personalities, nurture relationships, and pursue their legitimate goals without undue interference or scrutiny.

By acknowledging privacy as a natural and inalienable right that predates the Constitution, the Court has affirmed its primordial character and elevated its status to that of a core constitutional value. The judgment recognizes that privacy is not merely a derivative right but an essential facet of human existence, inextricably linked to the pursuit of happiness, self-fulfillment, and the realization of one's full potential.

The Court's recognition of privacy as a fundamental right is a testament to the evolving nature of constitutional interpretation and the need to adapt to the changing realities of society. It underscores the dynamic character of the Constitution and its ability to respond to contemporary challenges while upholding the cherished values of individual liberty and human dignity.

In essence, this landmark judgment represents a significant stride towards fortifying the constitutional foundations of personal freedom, safeguarding individual autonomy, and ensuring that the rights and liberties enshrined in the Constitution are not mere abstractions but living realities for every citizen of India.

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44. Common Cause (A Regd. Society) v. Union of India & Another

CHIEF JUSTICE DIPAK MISRA, JUSTICE A. K. SIKRI, JUSTICE DR. D. Y. CHANDRACHUD, JUSTICE ASHOK BHUSHAN AND JUSTICE A. M. KHANWILKARJUSTICE A. K. SIKRI AND JUSTICE N. V. RAMANA

Read the judgment here

I. Introduction

A. Brief background on the case (Common Cause v. Union of India)

The case of Common Cause v. Union of India arose from a writ petition filed by Common Cause, a registered society, under Article 32 of the Constitution of India. The petitioner sought a declaration that the "right to die with dignity" is a fundamental right within the ambit of the "right to live with dignity" guaranteed under Article 21 of the Constitution.

The petitioner argued that every individual is entitled to take a decision about the continuance or discontinuance of their life when the process of death has already commenced, and they have reached an irreversible, permanent, progressive state where death is imminent. The petitioner contended that the right to die sans pain and suffering is fundamental to one's bodily autonomy and integrity.

The petitioner also sought directions from the Supreme Court to the Union Government to adopt suitable procedures, in consultation with State Governments, to ensure that persons with deteriorated health or terminally ill patients can execute a document titled "My Living Will & Attorney Authorisation." This document could be presented to a hospital for appropriate action if the person is admitted with a serious illness that may threaten their life.

Alternatively, the petitioner requested the appointment of an expert committee consisting of doctors, social scientists, and lawyers to study and issue guidelines regarding living wills.

B. Significance of the issue (euthanasia and the right to die with dignity)

The case raised significant questions about the legality of euthanasia and the right to die with dignity in the context of Article 21 of the Constitution, which guarantees the right to life and personal liberty.

The issue of euthanasia is complex and multifaceted, involving social, legal, medical, and constitutional perspectives. It touches upon the fundamental rights of an individual, the sanctity of life, and the State's interest in protecting life.

The case also highlighted the need to address the prolongation of treatment despite irreversible prognosis and the dilemma faced by doctors due to penal laws in this field. It raised questions about patient autonomy, the right to self-determination, and the balance between individual rights and societal interests.

The case had far-reaching implications for end-of-life care, medical ethics, and the interpretation of the right to life and personal liberty under Article 21 of the Constitution.## Historical Context

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A. P. Rathinam v. Union of India (1994) - Unconstitutionality of Section 309 IPC

In the case of P. Rathinam v. Union of India (1994), a two-judge bench of the Supreme Court dealt with the constitutional validity of Section 309 of the Indian Penal Code (IPC), which criminalized attempted suicide. The court posed several questions, including whether Article 21 of the Constitution (the right to life) has a positive content or is merely negative in its reach, and whether a person residing in India has a right to die.

The court, after referring to various authorities under Article 21, took note of the decision in State of Himachal Pradesh v. Umed Ram Sharma, wherein it was observed that the right to life embraces not only physical existence but also the quality of life as understood in its richness and fullness within the ambit of the Constitution. Based on this, the court held that Section 309 IPC was unconstitutional as violative of Article 21 of the Constitution.

B. Gian Kaur v. State of Punjab (1996) - Unconstitutionality of Section 306 IPC

The decision in P. Rathinam did not remain a precedent for long. In Gian Kaur v. State of Punjab (1996), a Constitution Bench of the Supreme Court considered the correctness of the decision rendered in P. Rathinam. In this case, the appellants were convicted under Section 306 IPC (abetment of suicide) and assailed their conviction on the ground that Section 306 IPC is unconstitutional, relying on the decision in P. Rathinam.

The Constitution Bench disapproved of the foundation of P. Rathinam and held that the right to life under Article 21 does not include the right to die. The court observed that when a person commits suicide, they undertake certain positive overt acts, and the genesis of those acts cannot be traced to or included within the protection of the 'right to life' under Article 21. The court further stated that the 'right to life' is a natural right embodied in Article 21, but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of 'right to life'.

The Constitution Bench upheld the constitutional validity of Section 306 IPC while overruling the decision in P. Rathinam. It held that the right to live with human dignity cannot be construed to include within its ambit the right to terminate natural life, at least before the commencement of the process of certain natural death.## III. Aruna Shanbaug Case (2011)

A. Approach towards passive euthanasia

In the Aruna Shanbaug case, a two-judge bench of the Supreme Court discussed various aspects of euthanasia, including active and passive euthanasia, as well as voluntary and involuntary euthanasia. The court noted that while active euthanasia is illegal, passive euthanasia is legal in certain situations, provided certain conditions and safeguards are maintained.

The court defined passive euthanasia as the withholding or withdrawing of medical treatment necessary for the continuance of life, such as withholding antibiotics or removing a patient from artificial heart/lung support. It distinguished passive euthanasia from active euthanasia, which involves the administration of a lethal substance or force to end a person's life.

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The court observed that the general legal position worldwide seems to be that while active euthanasia is illegal unless permitted by legislation, passive euthanasia is legal even without legislation, provided certain conditions and safeguards are maintained.

The court held that passive euthanasia should be permitted in India in certain situations, such as when a person is in a persistent vegetative state (PVS) or is otherwise incompetent to take a decision, and there is no possibility of recovery. However, the court emphasized the need for safeguards to prevent misuse and laid down a detailed procedure for executing passive euthanasia.

B. Critique and inconsistencies

The Supreme Court's decision in Aruna Shanbaug has been subject to criticism and has been identified as having several inconsistencies:

1. **Incorrect interpretation of Gian Kaur case**: The two-judge bench in Aruna Shanbaug incorrectly interpreted the Constitution Bench decision in Gian Kaur v. State of Punjab (1996). It stated that the Constitution Bench in Gian Kaur had approved the decision of the House of Lords in Airedale NHS Trust v. Bland (1993) and observed that euthanasia could be made lawful only by legislation. However, a subsequent three-judge bench pointed out that this observation in Aruna Shanbaug was factually incorrect, as the Constitution Bench in Gian Kaur had merely made a brief reference to the Airedale case and did not approve it.

2. **Flawed distinction between active and passive euthanasia**: The decision in Aruna Shanbaug is based on the distinction between active and passive euthanasia, which has been criticized as suffering from jurisprudential incongruities. The distinction between an act and an omission, on which the active-passive divide is based, has been questioned by legal scholars and philosophers.

3. **Inadequate consideration of criminal law**: The decision in Aruna Shanbaug did not adequately dwell on the intersection between criminal law and passive euthanasia, beyond adverting to Sections 306 and 309 of the Indian Penal Code.

4. **Subordination of patient's interests**: The decision in Aruna Shanbaug has been criticized for subordinating the interests of the patient to the interests of others, including treating doctors and supporting caregivers.

5. **Violation of privacy**: The procedure followed by the Supreme Court in Aruna Shanbaug, where a CD showing Aruna Shanbaug's condition was screened in an open court, has been criticized as a fundamental violation of privacy.

6. **Inconsistent reasoning**: The decision in Aruna Shanbaug contains internal inconsistencies in its reasoning, such as stating that no final view was expressed in Gian Kaur beyond the right to life not including the right to die, while also construing Gian Kaur as allowing the premature termination of life in certain cases.

Due to these criticisms and inconsistencies, the Supreme Court, in the present reference, found it necessary to revisit the issues raised and independently arrive at a conclusion based on

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constitutional principles.## IV. The Reference to the Constitutional Bench

The matter was referred to a Constitutional Bench by a three-judge bench of the Supreme Court for the following reasons:

A. Reasons for the referral

1. **Inconsistencies in the Aruna Shanbaug judgment**: The three-judge bench observed inherent inconsistencies in the Aruna Shanbaug judgment, which dealt with the issue of passive euthanasia.
2. **Incorrect interpretation of Gian Kaur judgment**: The Aruna Shanbaug judgment incorrectly interpreted the Constitution Bench judgment in Gian Kaur case. It wrongly observed that the Gian Kaur judgment had approved the decision of the House of Lords in the Airedale case, which was merely a reference and not an approval.
3. **Contradictory observations**: The Aruna Shanbaug judgment made contradictory observations. In one paragraph, it stated that euthanasia could be made lawful only by legislation, while in another paragraph, it contradicted this interpretation and stated that the court had approved the Airedale case, which dealt with the discontinuation of life support for an incompetent person.

B. Key issues to be addressed

The Constitutional Bench was expected to address the following key issues:

1. **Validity of passive euthanasia**: Clarify the constitutional position on the validity of passive euthanasia, both voluntary and non-voluntary, in light of the right to life with dignity under Article 21 of the Constitution.
2. **Interpretation of Gian Kaur judgment**: Provide a correct interpretation of the Gian Kaur judgment concerning the right to die with dignity and the validity of euthanasia.
3. **Advance directives**: Examine the legal recognition and enforceability of advance directives or living wills, which allow individuals to express their wishes regarding medical treatment in the event of incapacitation.
4. **Comprehensive guidelines**: Lay down comprehensive guidelines on various aspects of passive euthanasia and advance directives, considering social, legal, medical, and constitutional perspectives.

The Constitutional Bench was expected to provide an authoritative opinion and clear enunciation of the law on these complex issues for the benefit of humanity as a whole.# Analysis of Gian Kaur Judgment

A. Interpretation of Article 21 (Right to Life)

The Constitution Bench in Gian Kaur v. State of Punjab interpreted Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The key points regarding the interpretation of Article 21 are:

1. **Right to Life does not include Right to Die**: The Court held that the "right to life" under Article 21 does not include the "right to die" or the right to terminate one's life. The Court distinguished the right to life from other fundamental rights like freedom of speech and expression, where the absence of compulsion

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to exercise the right is included within the right itself. However, the right to life cannot be construed to include the right to terminate life.

2. **Sanctity of Life**: The Court emphasized the sanctity of life and held that extinction of life is inconsistent with the continued existence of life, which is protected under Article 21.

3. **Natural Right**: The Court viewed the right to life as a natural right, and suicide was considered an unnatural termination of life, incompatible with the right to life.

4. **Dignity in Life and Death**: While rejecting the right to die, the Court observed that the right to live with human dignity may include the right to a dignified life up to the point of death, including a dignified procedure of death.

5. **Terminally Ill Patients**: The Court acknowledged that in cases of terminally ill patients or those in a persistent vegetative state (PVS), where death is imminent and the process of natural death has commenced, the debate on physician-assisted termination of life remains inconclusive. However, the Court held that the argument to support termination of life in such cases to reduce suffering during the process of natural death cannot be used to interpret Article 21 as including the right to curtail the natural span of life.

B. Distinction between Active and Passive Euthanasia

The Gian Kaur judgment discussed the distinction between active and passive euthanasia:

1. **Active Euthanasia**: This involves an intentional act to end a person's life, such as administering a lethal injection. The Court held that active euthanasia is illegal and falls under the purview of offenses like culpable homicide or murder under the Indian Penal Code.

2. **Passive Euthanasia**: This involves withholding or withdrawing life-sustaining treatment or medical intervention, allowing the patient to die naturally. The Court did not explicitly rule on the legality of passive euthanasia but acknowledged that in cases of terminally ill patients or those in PVS, where death is imminent, the withdrawal of life support may be permissible to reduce suffering during the process of natural death.

C. Role of the Legislature

The Gian Kaur judgment emphasized the role of the legislature in addressing the issue of euthanasia:

1. **Legislative Competence**: The Court observed that the desirability of bringing about a change in the law regarding euthanasia is a function of the legislature by enacting a suitable law with adequate safeguards to prevent any possible abuse.

2. **Reference to Airedale Case**: The Court referred to the decision of the House of Lords in the Airedale case, which stated that legalizing euthanasia could only be achieved by legislation expressing the democratic will and ensuring appropriate supervision and control.

3. **Inconclusive Debate**: The Court noted that the debate on physician-assisted termination of life in cases of terminally ill patients or those in PVS remains inconclusive, implying

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that the legislature may need to address this issue through appropriate legislation.

In summary, the Gian Kaur judgment interpreted Article 21 as not including the right to die, distinguished between active and passive euthanasia, and emphasized the role of the legislature in addressing the complex issue of euthanasia through appropriate legislation and safeguards.# VI. Passive Euthanasia and Article 21

A. Right to refuse medical treatment

The Supreme Court recognized that every adult human being of conscious mind has the right to refuse medical treatment or opt for withdrawal of life-sustaining treatment. This right stems from the individual's right to self-determination and autonomy, which is an integral part of the right to life and personal liberty enshrined in Article 21 of the Constitution.

The Court held that the right to refuse medical treatment is not an absolute right, but any restriction on this right must be reasonable and pass the test of constitutionality. An individual's choice to refuse treatment must be respected, as it is an expression of their personal autonomy and dignity.

B. Concept of individual dignity and autonomy

The Court emphasized that individual dignity is a core value of Article 21 and is an inviolable aspect of the right to life. Dignity is not lost in the process of dying or after death occurs. The right to die with dignity, in the case of a terminally ill patient or one in a persistent vegetative state, is an extension of the right to live with dignity.

Autonomy means the right of self-determination, where an informed patient has the right to choose the manner of their treatment. A competent person has the right to refuse specific treatment, opt for alternative treatment, or refuse all treatment, even if such a decision entails a risk of death.

The Court held that passive euthanasia, in the form of withdrawing or withholding life-sustaining treatment, would come within the ambit of Article 21, as it upholds the individual's dignity and autonomy. However, active euthanasia, involving positive steps to end life, would not be permissible under Article 21.

C. Social, moral, and ethical considerations

The Court acknowledged the social, moral, and ethical dilemmas surrounding euthanasia. While the State has an interest in preserving life, the individual's right to self-determination and dignity must be given priority in end-of-life situations.

The Court recognized that medical professionals might face ethical uncertainties when a patient is suffering unbearable pain and agony, and the decision to withdraw life support or hasten the process of death must be taken with utmost care and caution.

The Court also noted that the possibility of abuse or misuse of euthanasia cannot be a valid ground to reject the right to die with dignity. Appropriate safeguards and guidelines can be put in place to prevent any potential abuse.

In conclusion, the Supreme Court upheld the constitutional validity of passive euthanasia, subject to certain safeguards and procedures, as it upholds the individual's right to self-determination,

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autonomy, and dignity, which are integral facets of the right to life under Article 21 of the Constitution.# VII. Advance Medical Directives

A. Legal Permissibility and Safeguards

The Supreme Court has recognized the legal permissibility of Advance Medical Directives (AMD) in India. AMDs are instruments that allow individuals to express their wishes regarding future medical treatment when they are unable to make decisions due to incapacity or unconsciousness. The Court has held that the right to execute an AMD is an extension of the fundamental right to life and personal liberty under Article 21 of the Constitution.

However, the Court has also acknowledged the potential for misuse of AMDs and has laid down certain safeguards to protect vulnerable individuals. These safeguards include:

1. Only adults of sound mind can execute an AMD when they are capable of understanding the consequences.
2. The AMD must be in writing, signed by the executor in the presence of two witnesses, and countersigned by a Judicial Magistrate of First Class (JMFC).
3. The JMFC and witnesses must record their satisfaction that the AMD was executed voluntarily and with full understanding.
4. Copies of the AMD must be preserved with the JMFC, District Court Registry, local government authorities, and the executor's family physician.
5. A Medical Board must be constituted to verify the executor's terminal illness and the applicability of the AMD before acting upon it.
6. The Medical Board must obtain the consent of the executor or their nominated guardian, if possible, before withdrawing or refusing medical treatment.

The Court has emphasized that the safeguards are necessary to prevent the misuse of AMDs while still upholding the individual's right to a dignified life and death.

B. Execution, Recording, and Implementation

The Supreme Court has laid down detailed guidelines for the execution, recording, and implementation of AMDs:

1. **Execution**: The AMD must be executed by an adult of sound mind, voluntarily and without coercion, after being fully informed of the consequences. It should clearly state the circumstances in which medical treatment may be withdrawn or withheld, and the instructions must be unambiguous.
2. **Recording**: The AMD must be signed by the executor in the presence of two independent witnesses and countersigned by the jurisdictional JMFC. The JMFC and witnesses must record their satisfaction that the AMD was executed voluntarily and with full understanding. Copies of the AMD must be preserved with the JMFC, District Court Registry, local authorities, and the executor's family physician.
3. **Implementation**: If the executor becomes terminally ill and is undergoing prolonged treatment with no hope of recovery, the treating physician must ascertain the

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authenticity of the AMD from the JMFC. A Medical Board comprising the Head of the treating department and at least three experts must be constituted to certify whether the instructions in the AMD should be carried out.

If the Hospital Medical Board certifies that the AMD should be followed, the jurisdictional Collector must constitute another Medical Board comprising the Chief District Medical Officer and three experts. This Board must visit the hospital, ascertain the executor's wishes (if possible), and endorse the decision to withdraw or withhold treatment as per the AMD.

The Court has emphasized that the instructions in the AMD must be given due weight by the doctors, but only after being fully satisfied that the executor is terminally ill, undergoing prolonged treatment, and has no hope of recovery.

C. Revocation and Inapplicability

The Supreme Court has recognized that individuals have the right to revoke or modify their AMDs at any time when they have the capacity to do so. The guidelines state:

1. The AMD should mention that the executor may revoke the instructions or authority at any time.
2. If there are multiple valid AMDs and none have been revoked, the most recently signed AMD will be considered the last expression of the executor's wishes.
3. An AMD may become inapplicable if circumstances arise that the executor could not have reasonably anticipated and would have caused them to change their decision.
4. The Medical Board constituted by the Collector must ascertain if any such circumstances exist that would render the AMD inapplicable.

The Court has acknowledged that AMDs should not be treated as rigid instruments, as individuals may change their minds or new medical advancements may alter the circumstances. The guidelines aim to balance the executor's autonomy with the need to ensure that their wishes are accurately reflected and implemented.# VIII. International Perspective

A. Euthanasia laws and practices in other countries

The report provides an overview of euthanasia laws and practices in various countries around the world. It highlights that assisted suicide was traditionally considered an offense in most countries, but in recent times, some countries have legalized or decriminalized certain forms of euthanasia, subject to specific regulations and safeguards.

Netherlands

The Netherlands has the most experience with physician-assisted death. Both euthanasia and assisted suicide remain crimes under Dutch law, but doctors who end their patients' lives will not be prosecuted if they follow the legal guidelines. These guidelines include:

- The patient's request must be voluntary and well-considered.
- The patient's suffering must be unbearable and without prospect of improvement.

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- The patient must be fully informed about their condition and prospects.
- There must be no reasonable alternative solution for the patient's situation.
- Another independent doctor must be consulted.
- The termination of life must be performed with due medical care and attention.

Belgium

Belgium has legalized euthanasia with the enactment of the Belgium Act on Euthanasia of May 28th, 2002. Patients can request voluntary euthanasia if they are in a "futile medical condition of constant and unbearable physical or mental suffering that cannot be alleviated." Doctors who practice euthanasia commit no offense if the prescribed conditions and procedures are followed, and the patient has the legal capacity and has made the request voluntarily and repeatedly without external pressure.

Luxembourg

Luxembourg has also legalized euthanasia with the passing of the Law of 16th March, 2009 on Euthanasia and Assisted Suicide. The law permits euthanasia and assisted suicide for those with incurable conditions, subject to repeated requests, consent from two doctors, and approval from an expert panel.

Switzerland

In Switzerland, assisted suicide is allowed only for altruistic reasons. A person can be sentenced to imprisonment for assisting suicide if it is done for selfish reasons.

United States

In the United States, active euthanasia is illegal in most states. However, some states like Oregon, Washington, Montana, and California have legalized physician-assisted suicide with statutory regulations.

United Kingdom

Euthanasia is a criminal offense in the United Kingdom under Section 2(1) of the Suicide Act, 1961, which prohibits aiding, abetting, counseling, or procuring the suicide of another person. However, there has been parliamentary opposition to the current law, but no fundamental change has been made so far.

Canada

In Canada, Section 241(b) of the Criminal Code provides that everyone who aids or abets a person in committing suicide commits an indictable offense. However, in 2015, the Supreme Court of Canada struck down the prohibition on physician-assisted death for competent adults with a grievous and irremediable medical condition causing enduring and intolerable suffering.

The report also mentions that the predominant thought prevailing in other parts of the world is that assisted suicide is a crime, and no one is permitted to assist another person in committing suicide by injecting a lethal drug or by other means.

B. Decisions of the European Court of Human Rights

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The report discusses several decisions of the European Court of Human Rights (ECHR) regarding euthanasia and the right to life under Article 2 of the European Convention on Human Rights.

Pretty v. United Kingdom

In this case, the ECHR ruled that the decision of the applicant to avoid what she considered would be an undignified and distressing end to her life was part of the private sphere covered by Article 8 of the Convention (right to respect for private life). The Court recognized, with conditions, a sort of right to self-determination as to one's own death, subject to the free will of the person concerned and their capacity to take appropriate action.

Haas v. Switzerland

The ECHR explained that Article 2 (right to life) creates a duty for authorities to protect vulnerable persons, even against actions by which they endanger their own lives. The Court concluded that the right to life obliges States to establish a procedure capable of ensuring that a decision to end one's life corresponds to the free will of the individual concerned.

Lambert and others v. France

In this case, the ECHR considered whether the decision to withdraw artificial nutrition and hydration from a patient in a persistent vegetative state violated the right to life under Article 2. The Court found the legislative framework laid down by domestic law and the decision-making process to be compatible with the State's positive obligation under Article 2.

The ECHR noted that in dealing with end-of-life situations, States have some discretion in striking a balance between the protection of the patients' right to life and the protection of their right to respect for private life and personal autonomy.

In summary, the ECHR has recognized, with certain conditions and safeguards, a right to self-determination regarding one's own death, provided it corresponds to the free will of the individual concerned. However, the Court has also emphasized the State's obligation to protect vulnerable persons and establish appropriate procedures to ensure that such decisions are made in accordance with the law and respect for human rights.## IX. Conclusions and Recommendations

A. Summary of the Court's findings

The Supreme Court has arrived at several key conclusions and findings in this landmark judgment:

1. **Right to Die with Dignity**: The Court has reiterated and affirmed the fundamental right to die with dignity as part of the right to live with dignity under Article 21 of the Constitution, as previously recognized in the Gian Kaur case.

2. **Passive Euthanasia**: The Court has upheld the legality of passive euthanasia, both voluntary and non-voluntary, subject to certain safeguards and procedures. Passive euthanasia involves the withdrawal or withholding of life-sustaining treatment or support systems, allowing a person to die naturally.

3. **Active Euthanasia**: The Court has maintained the existing legal position that

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active euthanasia, which involves the use of lethal substances or forces to cause death, remains illegal and impermissible.

4. **Advance Directives**: The Court has recognized the validity and enforceability of advance directives or living wills, which allow individuals to express their wishes regarding medical treatment and end-of-life care in advance, in case they become incapacitated or unable to communicate their decisions.

5. **Safeguards and Procedures**: The Court has laid down detailed guidelines and safeguards to be followed in cases of passive euthanasia and the implementation of advance directives. These include the constitution of medical boards, involvement of judicial authorities, and a cooling-off period to prevent potential abuse.

6. **Revisiting Aruna Shanbaug**: The Court has revisited and clarified certain aspects of the earlier Aruna Shanbaug judgment, which had dealt with passive euthanasia. The Court has acknowledged and addressed certain flaws and inconsistencies in that judgment.

7. **Constitutional Values**: The Court's decision draws sustenance from the constitutional values of liberty, dignity, autonomy, and privacy, emphasizing the importance of individual self-determination and the right to make choices regarding one's own life and body.

B. Future implications and the need for legislation

While the Court has provided a comprehensive framework and guidelines, it has also recognized the need for comprehensive legislation by Parliament to govern the complex issues surrounding euthanasia and end-of-life care. The Court's directions are intended to hold the field until such legislation is enacted.

The judgment has far-reaching implications for medical practice, patient rights, and societal attitudes towards end-of-life decisions. It recognizes the evolving nature of medical science and the need for legal and ethical frameworks to keep pace with these advancements.

The Court has acknowledged the diversity of opinions, moral and ethical considerations, and the potential for misuse or abuse in this sensitive area. It has emphasized the need for robust safeguards, oversight mechanisms, and a balanced approach that respects individual autonomy while also protecting vulnerable sections of society.

The judgment is likely to have a significant impact on the ongoing debates and discussions surrounding euthanasia, advance directives, and end-of-life care in India. It may also influence and shape future legislative efforts to create a comprehensive legal framework in this area.# X. Epilogue

A. Significance of the judgment

This landmark judgment by the Supreme Court of India holds immense significance in recognizing the fundamental rights of individuals to have dignity in life as well as in death. By upholding the legality of passive euthanasia and recognizing the importance of advance directives, the Court has reinforced the constitutional values of liberty, dignity, autonomy, and privacy.

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The judgment acknowledges that the right to life enshrined in Article 21 of the Constitution encompasses the right to live with dignity, which includes the right to refuse medical treatment or to opt for an alternative treatment, even if such a decision entails a risk of death. This recognition of an individual's autonomy and self-determination is a crucial step towards empowering people to make informed choices about their lives and their end-of-life care.

Furthermore, the Court's directions regarding the regime of advance directives provide a legal framework for individuals to express their wishes regarding medical treatment in the event of incapacitation. This not only respects an individual's autonomy but also provides legal protection and guidance for healthcare professionals and caregivers in adhering to the patient's wishes.

The judgment also acknowledges the complexities surrounding end-of-life decisions and the potential for abuse or misuse. To address these concerns, the Court has mandated the setting up of committees to exercise a supervisory role and ensure that the decisions taken are in the best interests of the patient and free from any lack of bona fides.

Overall, this judgment represents a significant step towards recognizing the inherent dignity of human life and the right of individuals to make choices that align with their values, beliefs, and personal circumstances, even in the face of terminal illness or incapacitation.

B. Way forward for society and the legal system

While the judgment provides a legal framework and guidelines for passive euthanasia and advance directives, it also highlights the need for further legislative action to comprehensively address this complex issue. The Court has invited the Parliament to enact a suitable legislation that can provide a robust and comprehensive legal regime governing various aspects of end-of-life care and decision-making.

Such legislation should aim to strike a balance between respecting individual autonomy and protecting vulnerable individuals from potential abuse or coercion. It should also address issues related to medical ethics, professional standards, and the role of healthcare providers in facilitating end-of-life decisions.

Additionally, the judgment underscores the importance of public education and awareness campaigns to promote a better understanding of end-of-life care options, advance directives, and the legal and ethical considerations involved. This can help individuals make informed decisions and engage in open discussions with their families, healthcare providers, and legal professionals.

Furthermore, the legal system and healthcare institutions should develop protocols and guidelines to ensure the smooth implementation of the Court's directives and any future legislation. This may involve training healthcare professionals, establishing ethics committees, and developing robust record-keeping and monitoring systems.

Ultimately, the way forward for society and the legal system lies in fostering a culture of respect for individual autonomy, dignity, and compassion, while also ensuring adequate safeguards and oversight mechanisms to prevent potential abuse or misuse of end-of-life care options.

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45. Municipal Corporation, Ujjain and Anr. v. BVG India Limited and Ors.

JUSTICE RANJAN GOGOI, JUSTICE R. BANUMATHI AND JUSTICE MOHAN M. SHANTANAGOUDAR

Read the judgment here

1. Introduction

This is a summary of the Supreme Court's judgment in the case of Municipal Corporation, Ujjain & Anr. v. BVG India Limited and Ors. (Civil Appeal No. 3330 of 2018), delivered on March 27, 2018. The judgment deals with the principles governing judicial review of administrative decisions, particularly in the context of awarding contracts through a tender process.

2. Background

The Ujjain Municipal Corporation had issued a Notice Inviting Tender (NIT) for the appointment of an agency to carry out "Municipal Solid Waste Door to Door Collection and Transportation" for a period of 10 years. [Para 4] The technical bids were evaluated by a technical expert, M/s Eco Save System Pvt. Ltd. (respondent no. 2), and marks were awarded based on the specifications of the NIT. [Para 4]

Global Waste Management Cell Private Limited (GWMC) secured the highest score and was declared the successful bidder (L1). [Para 39] However, the unsuccessful bidder, BVG India Limited (respondent no. 1), filed a writ petition challenging the award of the contract. The High Court allowed the petition and set aside the contract awarded to GWMC. [Para 2] Aggrieved by the High Court's decision, the Municipal Corporation and GWMC filed appeals before the Supreme Court.

3. Scope of Judicial Review

The Supreme Court discussed the principles governing judicial review of administrative decisions, particularly in the context of awarding contracts through a tender process.

A. Limitations on Judicial Review

The Court emphasized that the judicial review of administrative action is intended to prevent arbitrariness, and its purpose is to check whether the decision is made lawfully, not to assess the soundness of the decision. [Para 10] The Court observed that if the decision-making process is not mala fide, not intended to favor someone, and not arbitrary or irrational, and if the public interest is not affected, there should be no interference under Article 226 of the Constitution. [Para 10]

The Court cited several precedents highlighting the need for judicial restraint in interfering with administrative decisions, particularly in commercial matters. [Paras 6-20] It noted that the authorities should be given latitude in making decisions on offers, and any judicial interference amounts to encroachment on the exclusive right of the executive to take a decision. [Para 32]

B. Public Interest Consideration

The Court emphasized that the public interest must be safeguarded in awarding contracts. [Para 48] It

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observed that the public is directly interested in the timely fulfillment of the contract, the quality of work undertaken, and the avoidance of public hardship and financial outlay due to poor quality of work. [Paras 9, 48] The Court held that if a bidder had faced numerous show-cause notices from various municipal corporations for non-performance, the Court cannot compel the authority to choose such an undeserving company to carry out the work. [Para 48]

4. Evaluation of Technical and Financial Bids

The Court examined the specific issues raised in the present case regarding the evaluation of technical and financial bids.

A. Technical Bid Evaluation

The Court held that the High Court erred in increasing the marks awarded to BVG India Limited under the heads of "number of years of experience and expertise" and "quantity of municipal solid waste handled per day through door to door collection." [Paras 40-41] It noted that BVG India Limited had relied upon an experience certificate issued in the name of a third party, BVG Kshitij Waste Management Services Pvt. Ltd., despite declaring in its bid that no other company or consortium was involved. [Para 40]

The Court also upheld the technical expert's decision to award lower marks to BVG India Limited for "responsiveness" due to the suppression of information regarding show-cause notices issued against it by various municipal corporations. [Paras 42-44] The Court observed that the High Court could not have increased the marks for responsiveness, as BVG India Limited had suppressed the fact that it had received 73 show-cause notices from different municipal corporations. [Para 44]

B. Financial Bid Evaluation

The Court found that the method adopted by the High Court for evaluating the financial bids was incorrect and illogical. [Para 45] It held that the High Court erred in not multiplying the ratio of financial bids with the prescribed marks of 20, leading to an unreasonable and unjust outcome. [Para 45]

5. Conclusion

The Supreme Court allowed the appeals, set aside the High Court's judgment, and upheld the decision of the Ujjain Municipal Corporation to award the contract to Global Waste Management Cell Private Limited. [Paras 51-52] The Court emphasized that unless the thresholds of mala fides, intention to favor someone, bias, arbitrariness, irrationality, or perversity are met, and where a decision is taken purely in the public interest, the Court should ordinarily exercise judicial restraint. [Para 50(c)]

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46. Shakti Vahini v. Union of India and Others

CHIEF JUSTICE DIPAK MISRA, JUSTICE A. M. KHANWILKAR AND JUSTICE DR. D. Y. CHANDRACHUD

Read the judgment here

Introduction

The Supreme Court of India delivered a landmark judgment in the case of Shakti Vahini v. Union of India and Others, addressing the issue of honour killings and providing guidelines to curb this social menace. The judgment emphasizes the importance of individual liberty, freedom of choice, and the protection of fundamental rights enshrined in the Constitution.

Honour Killings: A Violation of Constitutional Rights

The Court condemned honour killings as a grave violation of human rights and a manifestation of perverse thinking, egotism, and inhuman brutality. It stated that any kind of torture, torment, or ill-treatment in the name of honour that curtails an individual's choice regarding love and marriage is illegal and cannot be allowed to exist. [Para 40]

The Court emphasized that the consent of family, community, or clan is not necessary once two consenting adults agree to marry. Such a choice is a manifestation of their fundamental rights under Articles 19 and 21 of the Constitution, and it cannot succumb to the notion of class honour or group thinking. [Para 41, 42]

Role of Khap Panchayats and Assemblies

The Court criticized the role of Khap Panchayats or similar assemblies that take the law into their own hands and assume the character of law-implementing agencies. It stated that such assemblies cannot interfere with an individual's fundamental rights or impose punishments, as they have no legal authority to do so. [Para 47]

Recommendations for Legislative Action

The Court recommended that the legislature enact a law specifically covering the field of honour killings to protect human rights and uphold the constitutional values of freedom and justice. [Para 52]

Preventive, Remedial, and Punitive Measures

To combat the menace of honour crimes, the Court issued comprehensive guidelines for preventive, remedial, and punitive measures to be taken by the executive and law enforcement agencies of the concerned states.

Preventive Steps

The Court directed the state governments to identify areas where instances of honour killings or Khap Panchayat assemblies have been reported in the recent past. It also provided guidelines for police officers to interact with Khap Panchayats, prevent their gatherings, and take necessary legal action if required. [Para 53, I]

Remedial Measures

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The Court outlined remedial measures, including registering FIRs against those threatening couples, providing security and safe houses for couples, and ensuring effective investigation and prosecution of the offenders. It also directed the establishment of Special Cells in every district to receive complaints and provide assistance to couples facing harassment. [Para 53, II]

Punitive Measures

The Court directed disciplinary action against officials who fail to comply with the guidelines or prevent incidents of honour killings. It also mandated the creation of designated courts or fast-track courts to try cases of honour killings on a day-to-day basis and conclude the trials within six months. [Para 53, III]

Conclusion

The Supreme Court's judgment in Shakti Vahini v. Union of India and Others is a significant step towards protecting individual liberty, upholding constitutional rights, and eradicating the social evil of honour killings. The Court's comprehensive guidelines and recommendations aim to create a robust mechanism to prevent, remedy, and punish honour crimes, ensuring the safety and well-being of couples who exercise their fundamental right to choose their life partners.

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47. Navtej Singh Johar & Ors. v. Union of India Thr. Secretary Ministry of Law and Justice

CHIEF JUSTICE DIPAK MISRA, JUSTICE R. F. NARIMAN, JUSTICE A. M. KHANWILKAR, JUSTICE DR. D.Y. CHANDRACHUD AND JUSTICE INDU MALHOTRA

Read the judgment here

I. Introduction

A. Brief background on Section 377 of the Indian Penal Code

Section 377 of the Indian Penal Code (IPC) is a colonial-era law that criminalizes "carnal intercourse against the order of nature." This provision was introduced in 1860 during the British rule in India, and it was modeled after the Buggery Act of 1533, which was enacted in England during the reign of Henry VIII.

The language of Section 377 is broad and vague, and it does not explicitly define what constitutes "carnal intercourse against the order of nature." However, it has been interpreted to criminalize consensual sexual acts between individuals of the same sex, as well as other non-procreative sexual acts, regardless of gender or consent.

Over the years, Section 377 has been a subject of intense debate and controversy, with many arguing that it violates the fundamental rights of the LGBTQ+ community and perpetuates discrimination and stigma against them.

B. Overview of the legal case and the Supreme Court's judgment

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In 2009, the Delhi High Court, in the case of Naz Foundation v. Government of NCT of Delhi, struck down Section 377 insofar as it criminalized consensual sexual acts between adults in private. However, this decision was overturned by the Supreme Court in 2013 in the case of Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors.

In 2016, a fresh batch of petitions was filed in the Supreme Court challenging the constitutional validity of Section 377. These petitions were heard by a five-judge constitutional bench, which, on September 6, 2018, delivered a landmark judgment decriminalizing consensual same-sex relationships.

In a unanimous decision, the Supreme Court held that Section 377, insofar as it criminalized consensual sexual acts between adults in private, was unconstitutional and violated the fundamental rights to equality, non-discrimination, privacy, and dignity enshrined in Articles 14, 15, 19, and 21 of the Indian Constitution.

The Court recognized that members of the LGBTQ+ community are entitled to the full range of constitutional rights, including the right to choose their sexual orientation and partner, and the right to live with dignity and without discrimination. The judgment overruled the Court's earlier decision in the Suresh Kumar Koushal case and marked a significant step towards achieving equality and inclusivity for the LGBTQ+ community in India.## II. Historical Context

A. Origins and history of Section 377

Section 377 of the Indian Penal Code, which criminalizes "carnal intercourse against the order of nature," has its origins in the British colonial era. It was introduced in 1860 under the Indian Penal

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Code drafted by Lord Thomas Babington Macaulay, who was heavily influenced by the Judeo-Christian moral and ethical standards of the time. The language of Section 377 was derived from the Buggery Act of 1533, which was enacted during the reign of Henry VIII in England.

The law was a product of the Victorian era, with its attendant puritanical moral values. It reflected the imposition of a particular set of morals by the colonial power at that point in history. The rationale behind Section 377 was to criminalize and stigmatize non-procreative sexual activities, which were considered "unnatural" and "against the order of nature."

Despite the anti-colonial struggle and the formation of a democratic India, Section 377 managed to survive for over 158 years, impervious to the constitutional guarantees of fundamental rights to all citizens. It remained unchanged even after India's independence in 1947, reflecting the persistence of colonial-era laws and attitudes towards sexuality and gender.

B. Impact on the LGBTQ+ community in India

The existence of Section 377 has had a profound and detrimental impact on the LGBTQ+ community in India. It has perpetuated societal prejudice, discrimination, and violence against individuals based on their sexual orientation and gender identity. The law has been used as a tool for harassment, blackmail, and persecution of LGBTQ+ individuals by law enforcement agencies and others.

Section 377 has forced many LGBTQ+ individuals to lead closeted lives, denying them the freedom to express their identities openly and live with dignity. It has also had a chilling effect on their ability to access essential services, such as healthcare, due to the fear of prosecution and stigma associated with their sexual orientation.

The criminalization of consensual same-sex relationships has also had a significant impact on the mental health and well-being of LGBTQ+ individuals. They have faced higher rates of depression, anxiety, and suicidal tendencies due to the societal stigma and discrimination perpetuated by the law.

C. Societal attitudes and discrimination

Section 377 has perpetuated and reinforced societal attitudes of discrimination and prejudice against the LGBTQ+ community. It has sanctioned the notion that same-sex relationships are "unnatural" and "against the order of nature," leading to the marginalization and ostracization of LGBTQ+ individuals.

The law has also been used as a justification for denying equal rights and opportunities to LGBTQ+ individuals in various spheres of life, such as employment, housing, and access to public services. It has contributed to the creation of an environment where LGBTQ+ individuals are subjected to harassment, violence, and denial of basic human rights.

Despite the decriminalization of consensual same-sex relationships by the Supreme Court in 2018, societal attitudes and discrimination against the LGBTQ+ community persist in many parts of India. The legacy of Section 377 and the stigma it has perpetuated continue to have a lasting impact on the lives of LGBTQ+ individuals, highlighting the need for further efforts to promote acceptance,

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inclusivity, and equal rights for all.Here is a detailed explanation of the Constitutional Arguments section, with the relevant subheadings covered:

A. Violation of Fundamental Rights

The Supreme Court held that Section 377 of the Indian Penal Code, by criminalizing consensual sexual acts between adults in private, violated several fundamental rights guaranteed by the Indian Constitution:

1. **Right to Equality (Article 14)**: Section 377 was found to be manifestly arbitrary and discriminatory, as it singled out and targeted a specific group of citizens based solely on their sexual orientation, which is an inherent and inseparable part of their identity. The discrimination lacked any reasonable nexus with any legitimate state objective.
2. **Right to Non-Discrimination (Article 15)**: The Court held that the term 'sex' under Article 15 is not limited to just biological attributes, but also includes one's sexual identity and orientation. Therefore, discrimination on the basis of sexual orientation amounts to discrimination on the grounds of 'sex', which is prohibited by Article 15.
3. **Right to Life and Personal Liberty (Article 21)**: Section 377 was found to violate the right to life and personal liberty by criminalizing consensual sexual acts between adults in private. This impacted the dignity, autonomy, and freedom of LGBT individuals to make intimate personal choices relating to their sexuality.

B. Concept of Constitutional Morality

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The Court emphasized the importance of 'constitutional morality' over prevalent societal or public morality. Constitutional morality embraces the values of a pluralistic and inclusive society, and requires protecting the rights and dignity of even minority groups against majoritarian views.

The Court held that popular morality or public disapproval cannot justify curtailing fundamental rights. Constitutional morality must supersede any imposition of a particular view of social morality by shifting majoritarian regimes. The fundamental rights chapter exists to withdraw certain subjects like individual liberty and dignity from the reach of majoritarian governments.

C. Right to Privacy and Sexual Orientation

Relying on the landmark *Puttaswamy* judgment, which elevated the right to privacy as a fundamental right under Article 21, the Court held that sexual orientation is an integral part of one's right to privacy and dignity.

The Court recognized that members of the LGBT community have the same rights as others to full citizenship, including the right to sexual autonomy and freedom to choose their partners in consensual relationships. Criminalizing such relationships based on a narrow conception of social morality was held to be unconstitutional.

The right to privacy was interpreted to include a 'right to sexual privacy', protecting the rights of sexual minorities to enter into intimate relationships without state interference. Confronting the historical oppression and denial of rights faced by the LGBT community was deemed essential to upholding constitutional morality.

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In summary, the Court struck down Section 377 as violating multiple fundamental rights - equality, non-discrimination, life and personal liberty, privacy, and dignity - while emphasizing the primacy of constitutional morality over societal morality in protecting the rights of all citizens, including sexual minorities.# IV. Comparative Analysis

A. Decriminalization of same-sex relationships in other countries

The report provides a comprehensive overview of how various countries and international courts have dealt with the issue of decriminalization of same-sex relationships. It traces the evolution of legal perspectives towards homosexuality from a comparative law standpoint.

In 1967, England and Wales decriminalized consensual same-sex intercourse between adult males in private, followed by Scotland in 1980 and Northern Ireland in 1982. The European Court of Human Rights (ECtHR) played a significant role in this process through its landmark judgment in the case of Dudgeon v. The United Kingdom (1981). The ECtHR struck down laws in Northern Ireland that criminalized "private homosexual relations between adult males capable of valid consent," observing that such laws were a disproportionate interference with the right to respect for private life under Article 8 of the European Convention on Human Rights.

The United States Supreme Court initially upheld the constitutionality of sodomy laws in the case of Bowers v. Hardwick (1986). However, this decision was overturned in Lawrence v. Texas (2003), where the Court struck down the sodomy law in Texas, recognizing the right of consenting adults to engage in private sexual conduct.

Several other countries and jurisdictions have also decriminalized same-sex relationships through judicial interventions or legislative reforms. These include:

- South Africa (1998): The Constitutional Court declared the common law offence of sodomy and related laws unconstitutional, recognizing the right to equality and dignity of LGBTQ individuals.
- Nepal (2007): The Supreme Court of Nepal recognized the rights of LGBTQ persons to their sexuality within the right to privacy and directed the government to enact laws to protect their rights.
- Fiji (2005): The High Court of Fiji struck down provisions of the Penal Code that criminalized same-sex relationships, affirming the principles of equality, dignity, and respect for all citizens.
- Belize (2016) and Trinidad and Tobago (2018): The courts in these Caribbean countries decriminalized consensual same-sex acts between adults in private, recognizing the right to dignity and privacy.

The report highlights that the decriminalization of same-sex relationships has been a global trend, with courts and legislatures recognizing the fundamental rights of LGBTQ individuals to equality, privacy, and dignity.

B. International human rights perspectives

The report examines the issue of decriminalization of same-sex relationships from the perspective of

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international human rights law and India's obligations under various treaties and covenants.

It notes that international human rights treaties and jurisprudence impose obligations on States to protect individuals from discrimination based on sexual orientation. The report cites several international instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which India has ratified.

The report emphasizes that international law has evolved towards establishing that the criminalization of consensual sexual acts between same-sex adults in private contravenes the rights to equality, privacy, and freedom from discrimination. It refers to the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, which outline the rights that sexual minorities enjoy under international law.

The report concludes that there is a contradiction between India's international obligations and Section 377 of the Indian Penal Code, insofar as it criminalizes consensual same-sex acts between adults in private. It argues that the Indian Penal Code must be brought into conformity with both the Indian Constitution and the rules and principles of international law that India has recognized, in order to recognize the human rights of sexual and gender minorities.## V. Implications of the Judgment

A. Legal implications

The judgment has far-reaching legal implications. By decriminalizing consensual same-sex relationships, it has effectively struck down a colonial-era law that was a significant source of discrimination and stigma against the LGBTQ+ community. This judgment affirms the fundamental rights of the LGBTQ+ community, including the right to equality, non-discrimination, privacy, dignity, and autonomy.

The judgment also sets a precedent for future cases involving the rights of sexual minorities. It establishes that the Constitution protects the rights of all individuals, regardless of their sexual orientation or gender identity. This could pave the way for further legal recognition and protection of LGBTQ+ rights, such as same-sex marriage, adoption rights, and anti-discrimination laws.

Furthermore, the judgment emphasizes the importance of constitutional morality over societal morality. It reinforces the principle that the Constitution is a living document that must be interpreted in light of evolving societal values and changing times. This could have implications for other laws and policies that may be discriminatory or violative of fundamental rights.

B. Social and cultural impacts

The decriminalization of same-sex relationships is a significant step towards greater social acceptance and inclusion of the LGBTQ+ community in India. It challenges deep-rooted societal prejudices and stigma associated with non-heteronormative identities and relationships.

The judgment has the potential to foster a more inclusive and tolerant society, where individuals can freely express their sexual orientation and

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gender identity without fear of discrimination or persecution. It could also encourage more open discussions and awareness about LGBTQ+ issues, leading to a better understanding and acceptance of diversity.

However, it is important to note that legal changes alone may not be sufficient to address deeply ingrained social and cultural attitudes. Sustained efforts in education, awareness, and sensitization will be necessary to challenge existing biases and promote a more inclusive society.

C. Challenges and way forward

While the judgment is a significant milestone, there are still challenges that lie ahead in ensuring the full realization of LGBTQ+ rights in India.

One of the primary challenges will be the effective implementation of the judgment. Ensuring that the law enforcement agencies, government officials, and other stakeholders are adequately trained and sensitized to respect and uphold the rights of the LGBTQ+ community will be crucial.

Additionally, there is a need for comprehensive anti-discrimination laws and policies to protect the LGBTQ+ community from discrimination in various spheres of life, such as employment, education, housing, and healthcare.

Furthermore, addressing issues related to mental health, access to healthcare, and social welfare for the LGBTQ+ community will be essential. Efforts should be made to create a supportive and inclusive environment for individuals to freely express their identities without fear or stigma.

Lastly, continued advocacy, awareness campaigns, and education will be necessary to challenge deep-rooted societal biases and promote a more inclusive and accepting society. Collaboration between government, civil society organizations, and the LGBTQ+ community will be crucial in addressing these challenges and ensuring the full realization of the rights and dignity of the LGBTQ+ community in India.

VI. Conclusion

A. Significance of the judgment

This landmark judgment by the Supreme Court of India is a significant step towards ensuring equality, dignity, and non-discrimination for the LGBTQ+ community in India. By decriminalizing consensual same-sex relationships between adults, the Court has recognized the fundamental rights of the LGBTQ+ individuals to live with dignity, privacy, and autonomy. The judgment is a testament to the transformative power of the Constitution and its ability to address social conflicts and injustices.

The Court has acknowledged that the LGBTQ+ community has been subjected to discrimination, stigma, and oppression for far too long, and their fundamental rights have been denied. By striking down Section 377 of the Indian Penal Code, the Court has affirmed that members of the LGBTQ+ community are entitled to the full range of constitutional rights, including the liberties protected by the Constitution.

The judgment has far-reaching implications beyond just decriminalizing same-sex relationships. It recognizes the right to sexual orientation as an integral part of the right to life and personal liberty under Article 21 of the Constitution. It also affirms that discrimination

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based on sexual orientation is a form of discrimination based on sex, which is prohibited under Article 15.

B. Continuing efforts towards equality and non-discrimination

While the judgment is a significant milestone, the Court has acknowledged that it is not the end of the journey towards achieving true equality and non-discrimination for the LGBTQ+ community. The judgment calls for continued efforts to address the stigma, discrimination, and prejudices faced by the community in various spheres of life, such as employment, healthcare, education, and social acceptance.

The Court has directed the Union of India to take measures to ensure wide publicity of the judgment through various media channels and to initiate programs to reduce and ultimately eliminate the stigma associated with the LGBTQ+ community. It has also emphasized the need for periodic sensitization and awareness training for government officials, particularly police officials, to understand the plight of the LGBTQ+ community.

The judgment recognizes that the struggle for equality and non-discrimination is not just a battle for the LGBTQ+ community but a broader fight against all forms of social subordination and oppression based on gender, caste, class, religion, and community. It calls for a re-imagination of the "order of nature" and a recognition of the right to love and form fulfilling relationships without discrimination.

In conclusion, the judgment is a significant step towards achieving constitutional morality and upholding the values of equality, dignity, and non-discrimination enshrined in the Indian Constitution. However, it is not the end of the journey, and continued efforts are needed to address the deep-rooted societal prejudices and ensure that the LGBTQ+ community can truly exercise their fundamental rights and live with dignity and respect.

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48. Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.

CHIEF JUSTICE JAGDISH SINGH KHEHAR, JUSTICE J CHELAMESWAR, JUSTICE S A BOBDE, JUSTICE R K AGRAWAL, JUSTICE ROHINTON FALI NARIMAN, JUSTICE ABHAY MANOHAR SAPRE, JUSTICE DR D Y CHANDRACHUD, JUSTICE SANJAY KISHAN KAUL AND JUSTICE S ABDUL NAZEER

Read the judgment here

I. Introduction

A. Significance of the Right to Privacy in the Modern Digital Age

In today's digital age, the right to privacy has taken on immense significance. With the rapid advancement of technology and the ubiquitous presence of the internet, our personal information and data are more vulnerable than ever before. The ability to collect, store, and process vast amounts of data has made it easier for both state and non-state actors to intrude upon an individual's privacy.

The modern digital landscape has blurred the lines between public and private spheres, making it increasingly challenging to maintain control over our personal information. Activities that were once considered private, such as communication, browsing habits, and even physical movements, can now be tracked and monitored with relative ease.

The potential for misuse of personal data has far-reaching implications, ranging from identity theft and financial fraud to more insidious forms of surveillance and social control. The right to privacy, therefore, becomes a fundamental safeguard against such intrusions, protecting the autonomy, dignity, and freedom of individuals in the digital realm.

Moreover, the right to privacy is closely intertwined with other fundamental rights, such as freedom of expression, freedom of association, and the right to liberty. Without adequate privacy protections, the exercise of these rights can be severely compromised, as individuals may self-censor or refrain from engaging in certain activities out of fear of being monitored or scrutinized.

In this context, the recognition and protection of the right to privacy as a fundamental right become crucial for preserving individual liberty, fostering democratic values, and maintaining a healthy balance between the interests of the state and the rights of citizens in the digital age.

B. Overview of the Legal Case and the Questions Raised Before the Supreme Court

The legal case before the Supreme Court of India arose from a challenge to the Aadhaar card scheme, a biometric identification program initiated by the Indian government. The petitioners questioned the constitutionality of the scheme, arguing that the collection and storage of demographic and biometric data by the government violated the right to privacy.

The case raised several fundamental questions regarding the existence and scope of the right to privacy under the Indian Constitution. Specifically, the Supreme Court was tasked with addressing the following key issues:

1. **Existence of a Fundamental Right to Privacy**: The Court had to determine whether

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the Indian Constitution recognizes a fundamental right to privacy, either explicitly or implicitly, within the framework of the fundamental rights enshrined in Part III of the Constitution.

2. **Nature and Scope of the Right to Privacy**: If the Court recognized the existence of a fundamental right to privacy, it needed to define the nature and scope of this right, including its relationship with other fundamental rights and the limitations, if any, that could be imposed upon it.

3. **Overruling or Upholding Previous Judgments**: The Court was required to revisit and potentially overrule or uphold its previous judgments in M.P. Sharma and Kharak Singh cases, which had held that there was no explicit fundamental right to privacy under the Indian Constitution.

4. **Implications for the Aadhaar Scheme**: Depending on the Court's ruling on the existence and scope of the right to privacy, the constitutionality of the Aadhaar scheme and the collection of biometric data by the government would be evaluated.

The case presented a significant opportunity for the Supreme Court to clarify the constitutional status of the right to privacy in India and to provide guidance on the balance between individual privacy rights and the legitimate interests of the state in the digital age.## II. Historical Background

A. Early Supreme Court decisions: M.P. Sharma and Kharak Singh

The Supreme Court's early decisions in M.P. Sharma v. Satish Chandra (1954) and Kharak Singh v. State of Uttar Pradesh (1964) played a significant role in shaping the jurisprudence on the right to privacy in India. In M.P. Sharma, an 8-judge bench held that the Indian Constitution does not recognize a fundamental right to privacy analogous to the Fourth Amendment of the U.S. Constitution. The case dealt with the issue of whether search and seizure operations violated Article 20(3) of the Indian Constitution, which protects against self-incrimination.

The Court observed that since the Constitution does not explicitly provide for a right to privacy, there was no justification to import such a right into Article 20(3) through a strained interpretation. This observation, though confined to Article 20(3), was interpreted as a broader rejection of the right to privacy under the Indian Constitution.

In Kharak Singh, a 6-judge bench upheld the constitutionality of certain police regulations that allowed for surveillance and domiciliary visits. While striking down the provision allowing nocturnal domiciliary visits as violative of personal liberty under Article 21, the majority opinion stated that the right to privacy is not a guaranteed right under the Indian Constitution.

However, the majority opinion in Kharak Singh also recognized the importance of personal liberty and the dignity of the individual, suggesting an implicit recognition of the right to privacy. The dissenting opinion by Justice Subba Rao explicitly recognized the right to privacy as an essential ingredient of personal liberty.

B. Dissenting voices: Justices Fazl Ali, Subba Rao, and Khanna

Despite the majority opinions in M.P. Sharma and Kharak Singh, several dissenting voices emerged,

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laying the foundation for the eventual recognition of the right to privacy as a fundamental right.

In Kharak Singh, Justice Fazl Ali's dissenting opinion advocated for reading Articles 19 and 21 together, recognizing the interrelationship between fundamental rights and the need for a broader interpretation of personal liberty.

Justice Subba Rao's dissent in Kharak Singh explicitly recognized the right to privacy as an essential ingredient of personal liberty under Article 21. He argued that the right to privacy is an inalienable right that inheres in every person by virtue of being human.

Justice H.R. Khanna's dissenting opinion in the infamous ADM Jabalpur v. Shivakant Shukla case (1976) during the Emergency period also played a crucial role in upholding the sanctity of personal liberty and the rule of law. His dissent emphasized that the right to life and personal liberty cannot be surrendered to the state's mercy and that the rule of law imposes restraints on the state's power over individual liberties.

These dissenting voices laid the groundwork for the eventual recognition of the right to privacy as a fundamental right, paving the way for subsequent decisions that expanded the scope and interpretation of personal liberty and other fundamental rights.Here is a detailed explanation of the section on the Evolution of the Privacy Doctrine, covering the cases of Gobind v. State of Madhya Pradesh and subsequent cases affirming the right to privacy:

III. Evolution of the Privacy Doctrine

A. Gobind v. State of Madhya Pradesh

In the 1975 case of Gobind v. State of Madhya Pradesh, a three-judge bench of the Supreme Court considered a challenge to certain police regulations that allowed surveillance and domiciliary visits. While the regulations were not struck down, Justice Mathew made some important observations recognizing a right to privacy.

Justice Mathew stated that the right to privacy is not absolute and will necessarily go through case-by-case development. However, he assumed that the rights to personal liberty, freedom of movement, and freedom of speech create an independent right to privacy as an emanation from them, which can be characterized as a fundamental right.

He stated that any right to privacy must protect personal intimacies of the home, family, marriage, motherhood, procreation, and child-rearing. Privacy is essential for human dignity and autonomy. Though its definition may be vague, the right cannot be denied merely for that reason.

While not explicitly declaring it a fundamental right, Gobind provided a basis for recognizing a constitutional right to privacy, subject to reasonable restrictions for compelling state interests.

B. Subsequent cases affirming the right to privacy

Several subsequent Supreme Court decisions have affirmed and developed the right to privacy based on Gobind and other cases:

1. **R. Rajagopal v. State of Tamil Nadu (1994)**: The Court held that the right to privacy is implicit in the right to life and liberty under Article 21. It protects personal intimacies,

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family, marriage, procreation, motherhood, child-bearing, and education.

2. **People's Union for Civil Liberties v. Union of India (1997)**: The Court held that the right to privacy is part of the right to life and personal liberty under Article 21, including the right to hold a telephone conversation in private.

3. **District Registrar & Collector v. Canara Bank (2005)**: Referring to Gobind, the Court held that the right to privacy has been implied under Articles 19(1)(a) and 21, though subject to reasonable restrictions.

4. **Selvi v. State of Karnataka (2010)**: While discussing the right against self-incrimination, the Court recognized the right to privacy as part of Article 21, referring to earlier cases.

These cases have consistently interpreted the right to privacy as emanating from the rights to life, personal liberty, freedom of speech and expression, and the dignity of the individual under Articles 19 and 21 of the Constitution. The right is not absolute but subject to reasonable restrictions for compelling state interests.# IV. Constitutional Foundations and Interpretations

A. Preamble and Fundamental Rights

The Preamble to the Indian Constitution lays down the foundational principles and values that guide the interpretation and application of the Constitution. It declares that the people of India have resolved to constitute India into a Sovereign, Socialist, Secular, Democratic Republic and to secure to all its citizens:

- Justice (social, economic, and political)
- Liberty (of thought, expression, belief, faith, and worship)
- Equality (of status and opportunity)
- Fraternity (assuring the dignity of the individual and the unity and integrity of the Nation)

The Preamble reflects the vision and aspirations of the framers of the Constitution and serves as a guiding light for interpreting the provisions of the Constitution, including the Fundamental Rights enshrined in Part III.

The Fundamental Rights are not mere statutory rights but are deeply rooted in the principles of human dignity, liberty, and equality. They are not granted by the Constitution but are recognized and protected by it. The Constitution aims to secure these rights for all citizens and places them beyond the reach of ordinary legislative processes, ensuring their inviolability.

B. Article 21: Right to Life and Personal Liberty

Article 21 of the Indian Constitution is a cornerstone of the Fundamental Rights chapter. It states: "No person shall be deprived of his life or personal liberty except according to procedure established by law."

The interpretation of Article 21 has evolved significantly through judicial pronouncements, expanding its scope and recognizing various facets of the right to life and personal liberty.

1. **Expansive Interpretation**: Initially, in the case of A.K. Gopalan v. State of Madras (1950), the Supreme Court adopted a narrow interpretation of Article 21, confining it to the mere physical existence of a person. However,

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this view was overruled in the landmark case of Maneka Gandhi v. Union of India (1978), where the Court held that the right to life and personal liberty is not merely a right to physical existence but encompasses the right to live with human dignity.

2. **Dignity and Quality of Life**: The Court has recognized that the right to life is not limited to mere animal existence but includes the right to live with human dignity and the bare necessities of life, such as adequate nutrition, clothing, shelter, and facilities for reading, writing, and expressing oneself in diverse forms.

3. **Procedural and Substantive Aspects**: Article 21 has both procedural and substantive aspects. The procedural aspect requires that any deprivation of life or personal liberty must be in accordance with a fair, just, and reasonable procedure established by law. The substantive aspect ensures that the law itself must be fair, just, and reasonable and not arbitrary or oppressive.

4. **Interrelationship with Other Fundamental Rights**: The right to life and personal liberty under Article 21 has been interpreted in conjunction with other Fundamental Rights, such as the right to freedom of speech and expression (Article 19(1)(a)), the right to education, the right to a clean environment, the right to privacy, and the right against cruel and degrading treatment.

5. **Expanding Horizons**: Through a series of judgments, the Supreme Court has recognized various rights as integral to the right to life and personal liberty under Article 21, including the right to livelihood, the right to health, the right to shelter, the right to privacy, the right to education, the right to a clean environment, the right against custodial violence, and the right to speedy trial, among others.

The interpretation of Article 21 has been a dynamic process, reflecting the evolving values and aspirations of society. The Supreme Court has played a crucial role in expanding the scope of this fundamental right, ensuring that it remains a vibrant and effective guarantee against arbitrary deprivation of life and liberty by the State.# V. International Law and Comparative Jurisprudence

A. India's commitments under international human rights instruments

India is a responsible member of the international community and has acceded to various international human rights instruments. The right to privacy finds recognition in several of these instruments that India has committed itself to.

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, recognizes the right to privacy in Article 12:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

India played an important role in the drafting of the UDHR and was one of the 48 countries that voted in favor of the Declaration in 1948.

The International Covenant on Civil and Political Rights (ICCPR), adopted by the UN General Assembly in 1966 and ratified by India in 1979, also enshrines the right to privacy in Article 17:

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"1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

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

The Protection of Human Rights Act, 1993, enacted by the Indian Parliament, recognizes the rights embodied in the ICCPR as "human rights" enforceable by courts in India. Section 2(1)(d) of the Act defines "human rights" as the rights relating to life, liberty, equality, and dignity guaranteed by the Constitution or embodied in the international covenants.

Furthermore, Section 12(f) of the Act empowers the National Human Rights Commission to study international treaties and instruments on human rights and make recommendations for their effective implementation.

B. Jurisprudence from other jurisdictions

The right to privacy has been recognized and developed in various jurisdictions around the world, reflecting the universal nature of this right. A comparative analysis of jurisprudence from other countries can provide valuable insights and perspectives on the scope and interpretation of the right to privacy.

United States

The right to privacy has been recognized by the United States Supreme Court as a fundamental right, although it is not explicitly mentioned in the US Constitution. In the landmark case of Griswold v. Connecticut (1965), the Supreme Court recognized a right to privacy in the "penumbras" and "emanations" of other constitutional protections, such as the First, Third, Fourth, Fifth, and Ninth Amendments.

Subsequent cases like Roe v. Wade (1973) and Lawrence v. Texas (2003) further expanded the scope of the right to privacy, recognizing it as encompassing personal autonomy and decision-making in matters of family, marriage, procreation, and intimate relationships.

European Union

The right to privacy is enshrined in various legal instruments of the European Union (EU). Article 8 of the European Convention on Human Rights (ECHR), to which all EU member states are parties, guarantees the right to respect for private and family life, home, and correspondence.

The Charter of Fundamental Rights of the European Union, which has the same legal value as the EU treaties, also recognizes the right to respect for private and family life (Article 7) and the protection of personal data (Article 8).

The Court of Justice of the European Union (CJEU) has played a significant role in interpreting and upholding the right to privacy in various contexts, such as data protection, surveillance, and online privacy.

South Africa

The Constitution of South Africa explicitly recognizes the right to privacy in Section 14, which states: "Everyone has the right to privacy, which includes the right not to have their person or home

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searched, their possessions seized, or the privacy of their communications infringed."

The Constitutional Court of South Africa has interpreted the right to privacy broadly, encompassing aspects such as personal autonomy, dignity, and the right to make decisions concerning intimate matters.

Canada

The Canadian Charter of Rights and Freedoms does not explicitly mention the right to privacy. However, the Supreme Court of Canada has recognized privacy as a constitutionally protected right derived from the broader rights to life, liberty, and security of the person under Section 7 of the Charter.

In cases like R. v. Dyment (1988) and R. v. Tessling (2004), the Supreme Court has established a reasonable expectation of privacy as the touchstone for determining the scope of the constitutional right to privacy.

These examples from various jurisdictions demonstrate the global recognition of the right to privacy as a fundamental human right, albeit with varying interpretations and applications based on the specific legal and cultural contexts of each country or region.# VI. Criticisms and Counterarguments

A. Thomson's Reductionism

Judith Jarvis Thomson, in an article published in 1975, noted that while there is little agreement on the content of privacy, ultimately privacy is a cluster of rights which overlap with property rights or the right to bodily security. In her view, the right to privacy is derivative in the sense that a privacy violation is better understood as a violation of a more basic right.

B. Posner's Economic Critique

Richard Posner, in 'The Economics of Justice' published in 1981, argued that privacy is protected in ways that are economically inefficient. In his view, privacy should be protected only when access to information would reduce its value, such as when a student is allowed access to a letter of recommendation for admission, rendering such a letter less reliable. According to Posner, privacy, when manifested as control over information about oneself, is utilized to mislead or manipulate others.

C. Bork's Critique

Robert Bork, in 'The Tempting of America: The Political Seduction of the Law', has been severe in his criticism of the protection of privacy by the US Supreme Court. In his view, Justice Douglas in Griswold did not derive privacy from some pre-existing right but sought to create a new right which has no foundation in the Bill of Rights, thereby overstepping the bounds of a judge by making new law and not by interpreting it. Many theorists urge that the constitutional right to privacy is more correctly regarded as a right to liberty.

D. Feminist Critique

Many writers on feminism express concern over the use of privacy as a veneer for patriarchal domination and abuse of women. Patriarchal notions still prevail in several societies, including our own, and are used as a shield to violate core constitutional rights of women based on gender and

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autonomy. As a result, gender violence is often treated as a matter of "family honor," resulting in the victim of violence suffering twice over – the physical and mental trauma of her dignity being violated and the perception that it has caused an affront to "honor." Privacy must not be utilized as a cover to conceal and assert patriarchal mindsets.

The powerful counterargument to these criticisms is that while individuals possess multiple liberties under the Constitution, read in isolation, many of them are not related to the kinds of concerns that emerge in privacy issues. In this view, liberty is a broader notion, and privacy is essential for protecting liberty. Recognizing a constitutional right to privacy is a reaffirmation of the individual interest in making certain decisions crucial to one's personality and being.

VII. Significance and Implications

A. Privacy as an inalienable and natural right

Privacy is recognized as an inalienable and natural right that is inherent to every human being. It is not a right that is granted by the state or any external authority, but rather a fundamental aspect of human existence and dignity. The recognition of privacy as a natural right stems from the understanding that every individual has the right to control their personal information, thoughts, and actions, and to be free from unwarranted interference or intrusion.

The normative case for privacy is rooted in the idea that nature has endowed human beings with dignity and liberty, allowing them to develop their faculties and pursue their aspirations without undue interference. Privacy is an essential condition for the exercise of many other fundamental rights and freedoms, such as freedom of thought, freedom of expression, and freedom of association.

B. Limitations and the compelling state interest test

While privacy is recognized as a fundamental right, it is not an absolute right. Like other rights, it can be subject to reasonable restrictions and limitations in certain circumstances. However, any limitation or infringement of the right to privacy must be justified by a compelling state interest and must be proportionate to the legitimate aim being pursued.

The state may have legitimate interests in areas such as national security, public safety, prevention and investigation of crime, and the protection of public health. In such cases, the state may need to collect and process personal data, subject to appropriate safeguards and oversight mechanisms.

The test for determining the validity of any restriction on the right to privacy involves a three-fold requirement:

1. The existence of a law: Any infringement of privacy must be based on a valid law that is clear, accessible, and foreseeable in its application.

2. Legitimate aim: The restriction must pursue a legitimate aim, such as national security, public safety, or the protection of the rights and freedoms of others.

3. Proportionality: The means adopted by the law must be proportionate to the legitimate aim being pursued, and the infringement on privacy must be the minimum necessary to achieve that aim.

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C. Impact on personal autonomy, dignity, and freedom

Privacy is closely linked to the concepts of personal autonomy, dignity, and freedom. It is an essential aspect of human development and self-determination, allowing individuals to make choices about their lives and relationships without undue interference or scrutiny.

The recognition of privacy as a fundamental right reinforces the constitutional values of dignity and liberty enshrined in the Indian Constitution. It acknowledges that individuals have a sphere of personal autonomy and decision-making that should be protected from unwarranted intrusion, whether by the state or by non-state actors.

Privacy also plays a crucial role in enabling the exercise of other fundamental rights and freedoms, such as freedom of speech and expression, freedom of association, and freedom of religion. Without the ability to communicate and associate in private, these rights would be significantly undermined.

D. Privacy in the digital age and the need for data protection laws

The digital age has brought new challenges and threats to individual privacy. The proliferation of digital technologies, the internet, and the collection and processing of vast amounts of personal data by both state and non-state actors have heightened the need for robust data protection laws and regulations.

The recognition of privacy as a fundamental right has significant implications for the regulation of data collection, processing, and storage practices. It underscores the need for a comprehensive legal framework that balances the legitimate interests of the state and private entities with the fundamental right to privacy of individuals.

Data protection laws should aim to ensure that personal data is collected and processed in a fair, transparent, and lawful manner, with appropriate safeguards and mechanisms for individuals to exercise control over their personal information. Principles such as data minimization, purpose limitation, and consent should be enshrined in these laws to protect individual privacy and prevent misuse or unauthorized access to personal data.

Furthermore, the digital age has blurred the boundaries between state and non-state actors in terms of their ability to collect and process personal data. As such, data protection laws should apply to both public and private entities, ensuring that individual privacy is protected from infringement by any entity, regardless of its nature.

In conclusion, the recognition of privacy as a fundamental right has far-reaching implications for personal autonomy, dignity, and freedom, as well as for the regulation of data collection and processing practices in the digital age. It underscores the need for a robust legal framework that strikes a balance between legitimate state interests and the protection of individual privacy, while also ensuring that non-state actors are subject to appropriate regulations and oversight mechanisms.

VIII. Conclusion

A. Summary of the Supreme Court's ruling and its implications

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This summary has been prepared using technology alone. Please be advised to read the judgment for accuracy and verify.

The Supreme Court's landmark judgment in Justice K.S. Puttaswamy v. Union of India has affirmed that the right to privacy is a fundamental right protected under the Indian Constitution. This ruling has far-reaching implications for the citizens of India and the government.

The Court unanimously held that privacy is an intrinsic part of the right to life and personal liberty enshrined in Article 21 of the Constitution. It recognized that privacy is not an elitist concept but a core value that protects the dignity of human life. The judgment overruled the earlier decisions in M.P. Sharma and Kharak Singh, which had held that the right to privacy was not a constitutionally protected right.

The Court's ruling establishes that the right to privacy is a multidimensional concept that extends beyond the spatial control of one's person or things. It encompasses informational privacy, which protects an individual's interest in preventing the disclosure of personal matters. The judgment also recognizes that privacy is not an absolute right and can be subjected to reasonable restrictions based on legitimate state interests.

The implications of this judgment are far-reaching. It will have a significant impact on various laws and government policies that involve the collection, processing, and dissemination of personal data. The government will need to ensure that any such measures are proportionate, have adequate safeguards, and do not disproportionately infringe upon an individual's right to privacy.

Furthermore, the judgment will likely influence the ongoing debate on data protection laws in India. The Court has emphasized the need for a robust data protection regime and has called upon the government to take necessary steps in this direction.

B. Future challenges and the role of the judiciary in protecting fundamental rights

While the Supreme Court's judgment is a significant step in recognizing and protecting the right to privacy, it also presents several challenges for the future.

One of the primary challenges will be to strike a balance between the right to privacy and other competing interests, such as national security, law enforcement, and public interest. The Court has acknowledged that the right to privacy is not absolute and can be subject to reasonable restrictions. However, determining the appropriate boundaries and safeguards for such restrictions will be a complex task.

Another challenge will be to address the rapid advancements in technology and their impact on privacy. The Court has recognized that the Constitution must be interpreted in a manner that adapts to changing times and circumstances. As new technologies emerge, the judiciary will play a crucial role in interpreting and applying the right to privacy in these evolving contexts.

The judiciary will also be responsible for ensuring that the government and other entities comply with the principles and guidelines set forth in the judgment. This may involve reviewing and scrutinizing laws, policies, and practices that potentially infringe upon an individual's right to privacy.

Furthermore, the Court's emphasis on the need for a robust data protection regime highlights the

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importance of the judiciary's role in shaping and interpreting future data protection laws. The judiciary will be tasked with interpreting and applying these laws in a manner that upholds the constitutional principles of privacy and individual liberty.

In conclusion, the Supreme Court's judgment in Justice K.S. Puttaswamy v. Union of India has established the right to privacy as a fundamental right in India. While this ruling is a significant step forward, it also presents several challenges for the future. The judiciary will play a crucial role in addressing these challenges, striking a balance between competing interests, and ensuring the protection of fundamental rights in an ever-changing world.

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49. Jarnail Singh & Others v. Lachhmi Narain Gupta & Others

CHIEF JUSTICE DIPAK MISRA, JUSTICE KURIAN JOSEPH, JUSTICE R. F. NARIMAN, JUSTICE SANJAY KISHAN KAUL AND JUSTICE INDU MALHOTRA

Read the judgment here

Introduction

The Supreme Court of India delivered a significant judgment in the case of Jarnail Singh & Others v. Lachhmi Narain Gupta & Others, addressing crucial issues related to reservations for Scheduled Castes (SCs) and Scheduled Tribes (STs) in public employment. The case stemmed from two reference orders, one by a two-Judge Bench and another by a three-Judge Bench, which referred the correctness of the decision in M. Nagaraj v. Union of India to a Constitution Bench. (Paragraph 1)

Key Issues

The controversy revolved around the interpretation of certain Articles of the Constitution of India related to reservation in public employment for SCs and STs. (Paragraph 2) The primary points of contention were:

1. The interpretation of the M. Nagaraj judgment and its potential conflict with the Indra Sawhney (1) case and Articles 341 and 342 of the Constitution. (Paragraph 3)
2. The application of the "creamy layer" principle to SCs and STs and its relationship with Articles 14 and 16 of the Constitution. (Paragraph 4)
3. The requirement for quantifiable data to demonstrate the backwardness of SCs and STs, as stated in the M. Nagaraj judgment. (Paragraph 5)

Revisiting the M. Nagaraj Judgment

The Court carefully considered the guidelines set out in the Keshav Mills case for revising earlier decisions, taking into account the impact on the general administration of law and public good. (Paragraph 6)

Principles from Indra Sawhney (1) Case

The Court extensively discussed the principles laid down in the landmark Indra Sawhney (1) case, which dealt with the Mandal Commission Report and the reservation of civil service vacancies for socially and economically backward classes. (Paragraph 7)

1. The "creamy layer" principle was applied by eight out of nine judges as part of the larger equality principle. (Paragraph 8)
2. The judgments emphasized the relevance of caste and stated that a member of a backward class reaching an "advanced social level" would no longer belong to that class. (Paragraph 14)
3. The imposition of an income limit to exclude those above it from the backward class was deemed permissible. (Paragraph 16)
4. The "creamy layer" of the backward classes should be excluded from reservations based on social advancement rather than just economic status. (Paragraph 17)

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5. Social advancement was judged by the capacity to compete with forward castes, and once members of the backward class reached that level, they were no longer entitled to be called part of the backward class. (Paragraph 18)

6. Once members of a backward class achieved financial stability, they should no longer receive reservation benefits. (Paragraph 19)

7. An economic ceiling should be implemented to identify and exclude the affluent sections of the backward classes. (Paragraph 20)

8. Individuals with social status or economic affluence cannot claim reservation benefits. (Paragraph 21)

Chinnaiah Case

The Court also discussed the Chinnaiah case, which dealt with a different issue from M. Nagaraj. Chinnaiah upheld the validity of the Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act, 2000, and rejected the subdivision of SCs into groups. (Paragraph 9) The Court emphasized the need for a uniform yardstick for providing benefits to members of SCs in accordance with the Constitution. (Paragraph 40)

Creamy Layer Principle and SCs/STs

The Court held that the creamy layer principle does not affect the Presidential List of SCs and STs. (Paragraph 15) The application of the creamy layer principle to SCs and STs does not change the Presidential List but only excludes those who are no longer considered untouchable or backward. (Paragraph 15)

Parliament has the power to exclude the creamy layer from the Presidential Lists under Articles 341 and 342, and Constitutional Courts can also apply the principle of reservation to exclude the creamy layer based on the principles of equality under Articles 14 and 16 of the Constitution. (Paragraph 16)

Quantifiable Data on Backwardness

The Court held that the conclusion in the M. Nagaraj judgment, which required the State to collect quantifiable data showing the backwardness of SCs and STs, is invalid. (Paragraph 21) This requirement was found to be contrary to the nine-Judge Bench decision in Indra Sawhney. (Paragraph 14)

Reservation and Adequate Representation

The Court acknowledged that the determination of adequate representation of SCs and STs in promotional posts under Article 16(4-A) should be left to the States, as higher-level posts may require a reduction in the number of SCs and STs for the sake of administrative efficiency. (Paragraph 20)

Conclusion

The Supreme Court clarified that the M. Nagaraj judgment does not need to be referred to a seven-Judge Bench, but the conclusion regarding the requirement for quantifiable data on the backwardness of SCs and STs is held to be invalid. (Paragraph 21) The Court also provided guidance on the application of the creamy layer principle and the relationship between Articles 14, 16, 341, and 342 of the Constitution in the context of reservations for SCs and STs.

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50. Joseph Shine v. Union of India

CHIEF JUSTICE DIPAK MISRA, JUSTICE R.F. NARIMAN, JUSTICE A.M. KHANWILKAR, JUSTICE DR. D.Y. CHANDRACHUD AND JUSTICE INDU MALHOTRA

Read the judgment here

Introduction

The judgment deals with the constitutional validity of Section 497 of the Indian Penal Code (IPC) and Section 198(2) of the Code of Criminal Procedure (CrPC), which criminalize adultery. The Supreme Court has examined whether these provisions violate the fundamental rights enshrined in the Constitution, particularly Articles 14, 15, and 21, which guarantee equality, non-discrimination, and the right to life and personal liberty, respectively.

Historical Background

Adultery as an Offense

The concept of adultery as an offense has its roots in various ancient civilizations and religions. In Judaism, the Seventh Commandment prohibits adultery, and the punishment prescribed in the Old Testament is death. [Para 2] Christianity also condemns adultery for both men and women, although Jesus taught forgiveness. [Para 3] In Hinduism, the Manusmriti and Dharmasutras prescribe varying punishments for adultery, depending on the caste or class of the individuals involved. [Para 4] In Islam, the Qur'an addresses adultery and its punishment in Chapter 24, Verses 2 and 6 to 9. [Para 5]

Adultery in English Common Law

In sixth-century Anglo-Saxon England, complex payment schemes were created for husbands whose wives committed adultery. However, with the spread of Christianity, adultery became a moral wrong. After 1066, adultery was no longer seen as a crime against the State but as an ecclesiastical offense. [Para 6] The Divorce and Matrimonial Causes Act, 1857, in England abolished the common law action for criminal conversation and allowed husbands to claim damages for adultery committed by their wives. [Para 7] In 1923, the Matrimonial Causes Act gave both spouses the right to divorce on grounds of adultery, and the husband's right to claim damages for adultery was abolished in 1970. [Para 7]

Adultery in the United States

Puritans brought Cromwell's criminal law to the United States, making adultery a capital offense in some states. However, the American Law Institute has since removed adultery from its Model Penal Code due to vague, archaic, and sexist statutes. Adultery laws were rarely enforced and seen as a potential source of abuse. [Para 8]

Adultery in India

Lord Macaulay, while drafting the Indian Penal Code (IPC), initially refused to make adultery a penal offense because the existing laws for punishment were ineffective, and he was reluctant to punish the infidelity of wives due to the societal conditions. [Para 9] However, the Law Commissioners disagreed with Macaulay's view and recommended limiting the punishment for adultery to the male offender only. [Para 10] This

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led to the enactment of Section 497 of the IPC, which criminalizes adultery but exempts women from liability. [Para 11]

Challenges to Section 497

Yusuf Abdul Aziz v. State of Bombay

In this case, a challenge was made to Section 497 on the grounds of contravening Articles 14 and 15 of the Constitution. However, the Constitution Bench of the Supreme Court upheld the section as a special provision for the benefit of women. [Para 1]

Sowmithri Vishnu v. Union of India & Anr.

The Court addressed a challenge to Section 497, which denied women the right to prosecute their husbands for adultery. The Court rejected the challenge, stating that it is for the legislature to consider whether Section 497 should be amended to take note of changes in society. [Para 2]

V. Revathi v. Union of India and Ors.

The Court upheld the constitutional validity of Section 497 of the IPC and Section 198(2) of the CrPC, stating that women cannot prosecute their adulterous husbands. [Para 3]

Current Challenges

Petitioners' Arguments

The petitioners argued that Section 497 is unconstitutional as it criminalizes adultery and violates the right to privacy. They also argued that it discriminates based on marital status and sex. [Para 1]

Union of India's Arguments

The Union of India argued that Section 497 is valid and not discriminatory. They emphasized the importance of family and marriage rights and suggested that if any part of the section is found to be unconstitutional, the Court should amend it rather than remove it entirely. [Para 2]

Constitutional Validity of Section 497

Violation of Article 14

The Court examined whether Section 497 violates Article 14 of the Constitution, which guarantees equality before the law and equal protection of the law. The provision makes two discriminatory classifications based on historical context, which are no longer relevant or valid and are therefore liable to be struck down. [Para 12]

The Court noted that laws can become outdated and discriminatory over time, and Section 497 fails to consider men and women as equals in society. [Para 13] Discrimination based on outdated laws is a violation of fundamental rights, and Section 497 should be repealed. [Para 26]

Violation of Article 15

The Court also considered whether Section 497 violates Article 15 of the Constitution, which prohibits discrimination on the grounds of sex. The petitioners argued that Section 497 discriminates against women and perpetuates gender stereotypes. [Para 40]

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The Court observed that Section 497 treats a married woman as the property of her husband and does not include extramarital relationships with unmarried women or widows. [Para 23] It also does not consider the wife of the adulterer as an aggrieved person, making the provision arbitrary and violating Article 14. [Para 23]

The Court further noted that Section 497 criminalizes the conduct of a man having sexual intercourse with the wife of another without his consent and exempts women from criminal liability, perpetuating the gender stereotype that men are the seducers and women are the seduced. [Para 42] This is deeply offensive to the principle of equality.

Violation of Article 21

The Court examined whether Section 497 violates Article 21 of the Constitution, which guarantees the right to life and personal liberty. The Court observed that the provision deprives women of their autonomy, dignity, and privacy by adopting a notion of marriage that subverts true equality. [Para 21]

The Court emphasized that individual sexual autonomy and privacy make it unjust for the State to criminalize adultery, as it is not always the cause of marital breakdown. [Para 60] The complexities of human relationships cannot be categorized as right or wrong, and inappropriate behavior should not always be treated as criminal. [Para 60]

The Court also noted that the State has a legitimate interest in regulating aspects of marriage, but certain legislation, such as criminalizing adultery, is offensive to the dignity of women and does not fit the paradigm of protecting fundamental rights. [Para 61]

Conclusion

The Court concluded that Section 497 of the IPC and Section 198(2) of the CrPC are unconstitutional as they violate Articles 14, 15, and 21 of the Constitution. [Para 7] The Court overturned the judgments in Sowmithri Vishnu and V. Revathi, which had upheld the constitutional validity of these provisions. [Para 28]

The Court emphasized that criminal law must align with constitutional morality, and the law on adultery violates constitutional guarantees of liberty, dignity, and equality. [Para 67] Section 497 lacks a determining principle, perpetuates gender stereotypes, and denies dignity, liberty, and sexual autonomy, rendering it unconstitutional. [Para 67]

The Court allowed the writ petition filed by Kalpana K. Tripathy, challenging the constitutional validity of Section 497 of the IPC and Section 198(2) of the CrPC. [Para 18]

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51. Competition Commission of India v. Bharti Airtel Limited and Others

JUSTICE A. K. SIKRI AND JUSTICE ASHOK BHUSHAN

Read the judgment here

Introduction

This judgment by the Supreme Court of India deals with a jurisdictional conflict between the Competition Commission of India (CCI) and the Telecom Regulatory Authority of India (TRAI) concerning alleged anti-competitive practices in the telecom sector. The case arose from a dispute between Reliance Jio Infocomm Limited (RJIL), a new entrant in the telecom market, and incumbent telecom operators like Bharti Airtel, Vodafone, and Idea Cellular (collectively referred to as Incumbent Dominant Operators or IDOs).

Background

RJIL's Allegations and CCI's Investigation Order

In 2016, RJIL filed information with the CCI alleging that the IDOs, along with the Cellular Operators Association of India (COAI), had formed a cartel and indulged in anti-competitive practices. The allegations included delaying the provision of Point of Interconnection (POI) and denying Mobile Number Portability (MNP) requests, among others. [Para 17]

After considering the information, the CCI found a prima facie case of contravention of Section 3(3)(b) of the Competition Act, 2002, which deals with anti-competitive agreements. The CCI directed the Director General (DG) to investigate the matter. [Para 14, 24]

Writ Petitions and High Court Judgment

The IDOs and COAI challenged the CCI's order before the Bombay High Court through writ petitions. They argued that the CCI lacked jurisdiction in the telecom sector, which is regulated by the TRAI Act, 1997. [Para 18]

The High Court allowed the writ petitions and quashed the CCI's order, holding that the CCI cannot intervene in the telecom sector without TRAI's determination of jurisdictional issues. [Para 4, 21]

Arguments before the Supreme Court

CCI's Arguments

The CCI, represented by Mr. P.S. Narasimha, argued that the High Court's judgment was contrary to law and made the following submissions:

1. The CCI has jurisdiction in this case, and it need not wait for TRAI Act proceedings to conclude. [Para 22]
2. The High Court erred in interfering under Article 226 of the Constitution. [Para 22]
3. The CCI's order was not perverse, and the High Court erred in giving findings on merits. [Para 22]

Mr. Narasimha emphasized that the issues before the CCI (anti-competitive agreements) were different from those before TRAI (compliance with

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regulations and license conditions). He argued that the CCI was better equipped to deal with competition analysis and that the TRAI Act did not oust the CCI's jurisdiction. [Para 23, 35]

RJIL's Arguments

RJIL, represented by senior advocates like Mr. Harish Salve and Dr. A.M. Singhvi, made arguments similar to those of the CCI. They contended that the COAI had actively colluded with the IDOs to hinder RJIL's entry, violating Section 3 of the Competition Act. [Para 41-43]

IDOs' and COAI's Arguments

The IDOs and COAI, represented by senior advocates like Mr. Darius J. Khambata, Mr. Gopal Jain, Mr. Navroz Seervai, and Mr. P. Chidambaram, argued that:

1. The TRAI Act ousts the CCI's jurisdiction in the telecom sector. [Para 46]
2. TRAI's jurisdiction prevails over the CCI's jurisdiction. [Para 46]
3. The CCI's order for investigation was premature. [Para 46]
4. The CCI's order was amenable to judicial review. [Para 46]
5. The CCI did not consider the material submitted by the IDOs. [Para 46]

They contended that the TRAI Act was a complete code regulating the telecom sector, including competition-related issues, and that the TDSAT (Telecom Disputes Settlement and Appellate Tribunal) had exclusive jurisdiction over disputes between licensees. [Para 47-51]

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Supreme Court's Observations and Findings

Role of CCI and TRAI

The Supreme Court observed that both the CCI and TRAI have distinct roles and jurisdictions. While TRAI is responsible for regulating the telecom sector, ensuring compliance with license conditions, and promoting competition, the CCI is responsible for addressing anti-competitive practices, protecting consumer interests, and ensuring freedom of trade in India. [Para 89-90]

Jurisdictional Conflict Resolution

The Court held that the CCI's jurisdiction is not entirely ousted in the telecom sector. However, TRAI should first carry out the necessary exercise of determining jurisdictional facts, such as whether the IDOs complied with license conditions and regulations. Once TRAI has made these determinations, the CCI can then investigate whether there have been any anti-competitive practices. [Para 91-92]

Maintainability of Writ Petitions

The Court upheld the maintainability of the writ petitions filed before the Bombay High Court under Article 226 of the Constitution. However, the High Court should not have adjudicated the validity of the CCI's order on merits. [Para 97-98]

Nature of CCI's Order

The Court held that the CCI's order under Section 26(1) of the Competition Act was administrative and not quasi-judicial in nature. The order was a

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prima facie view, and the CCI was expected to provide minimal reasons at this stage. [Para 94, 97]

Conclusion

The Supreme Court dismissed the appeals and upheld the High Court's order quashing the CCI's investigation order. The Court held that the CCI's exercise was premature, and TRAI should first determine the jurisdictional facts related to compliance with license conditions and regulations. Once TRAI has made these determinations, the CCI can investigate any alleged anti-competitive practices. [Para 99]

In-text citations:

[Para 17]: "The RJIL alleges that the respondent service providers, along with COAI, formed a cartel and acted anti-competitively. RJIL approached the CCI to initiate an inquiry into these practices. Allegations include delay in provisioning POIs and denial of MNP requests."

[Para 14, 24]: "The CCI ordered an investigation under Section 19 of the Competition Act after hearing from service providers and COAI, based on allegations of anti-competitive agreement and abuse of dominant position." "The Commission directs the DG to investigate the matter under the provisions of COMPETITION COMMISSION OF INDIA v. BHARTI AIRTEL LIMITED AND ORS. A B C D E F G H 512 SUPREME COURT REPORTS [2018] 14 S.C.R. Section 26(1) of the Act."

[Para 18]: "The writ petitions challenge CCI's jurisdiction as it relates to complaints filed under Section 19 of the Competition Act."

[Para 4, 21]: "The High Court concluded that the CCI cannot proceed in the matter until jurisdictional issues are addressed by the TRAI. The TRAI has authority over certain aspects of the sector and must determine jurisdictional facts before the CCI can consider whether there has been a violation of the TRAI Act." "The Bombay High Court held that the CCI had no jurisdiction due to the TRAI Act, and that the CCI's order was not administrative but quasi-judicial."

[Para 22]: "Mr. P.S. Narasimha, representing the CCI, argued that the judgment is contrary to the law and made three main points: (i) The CCI has jurisdiction in this case and doesn't need to wait for TRAI Act proceedings. (ii) The High Court was wrong to interfere under Article 226. (iii) The CCI's order was not perverse and the High Court erred in giving findings on merits. The High Court erroneously exercised writ jurisdiction."

[Para 23, 35]: "His argument was that the High Court had failed to appreciate that the issues before the CCI are different from the issues before the TRAI and must be treated differently." "Mr. Narasimha compared the investigative regime under the TRAI Act and the Competition Act, stating that the Director General under the Competition Act is better equipped for detecting and investigating anti-competitive agreements."

[Para 41-43]: "M/s. Harish Salve, Dr. A.M. Singhvi, Ramji Srinivasan and Amit Sibal, argued on behalf of RJIL, similar to Mr. Narasimha's arguments for the CCI." "The COAI was actively involved in colluding with three IDOs to delay and hinder the entry of a new operator, violating Section 3 of the Act."

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[Para 46]: "The respondents' submissions can be summarized as (i) TRAI Act ousts CCI's jurisdiction in telecom sector, (ii) TRAI's jurisdiction prevails over CCI's, (iii) CCI's order for investigation is premature, (iv) CCI's order is amenable to judicial review, (v) CCI's order did not consider material submitted by IDOs."

[Para 47-51]: "The respondents argue that the TRAI Act is a complete code and CCI's jurisdiction is totally ousted." "The submission was that the TRAI Act is a complete code with exclusive jurisdiction to regulate the telecom sector, including competition-related issues. TDSAT has exclusive jurisdiction to examine disputes between licensees, and CCI has no jurisdiction to decide telecom sector disputes."

[Para 89-90]: "The CCI has the authority to deal with anti-competitive practices, protect consumer interests, and ensure freedom of trade in India. The CCI is also responsible for determining if certain actions are anti-competitive and can impose penalties accordingly." "The functions mentioned fall under the domain of the CCI, not TRAI. TRAI's powers are limited to the TRAI Act. The CCI is experienced in competition analysis and plays an important role in promoting genuine competition. The jurisdiction of the CCI cannot be completely ousted. Comity between TRAI and the CCI must be maintained."

[Para 91-92]: "The conclusion is to prioritize the objections of the two regulators under the two Acts, with TRAI handling jurisdictional aspects in the telecom sector first, followed by CCI investigating anti-competitive practices." "We do not agree with the appellants or the respondents. The High Court's decision is justified. The CCI can investigate alleged cartels without impinging on TRAI's jurisdiction. However, TRAI should carry out the necessary exercise first. This is not the appropriate comment for TRAI. The CCI's jurisdiction is not barred altogether but should be pushed to a later stage after TRAI's necessary exercise. The writ petitions before the High Court of Bombay were maintainable."

[Para 97-98]: "The High Court had the power to entertain the writ petitions under Article 226 of the Constitution and the writ petitions were maintainable." "The High Court should not judge the validity of the Competition Act order on merits. COMPETITION COMMISSION OF INDIA v. BHARTI AIRTEL LIMITED AND ORS. [A. K. SIKRI, J.] A B C D E F G H 584 SUPREME COURT REPORTS [2018] 14 S.C.R."

[Para 94, 97]: "The Court held that the order passed by the CCI was administrative, not quasi-judicial, and it must be supported by reasons." "We adopt the reasoning and principles consistent with settled law. The Act requires the Commission to issue various directions and make decisions, which must be supported by reasoning. The Commission is expected to form a prima facie view with minimal reasons at the initial stage, but all other decisions and orders must be well reasoned."

[Para 99]: "We are upholding the High Court order regarding the CCI's jurisdiction. The CCI's exercise was premature, so the High Court's decision to quash their order stands. The appeals are dismissed."

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52. Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors.

JUSTICE R. F. NARIMAN AND JUSTICE NAVIN SINHA

Read the judgment here

Introduction

The Supreme Court of India, in its judgment, upheld the constitutional validity of the Insolvency and Bankruptcy Code, 2016 (IBC). The Court addressed various challenges raised against different provisions of the IBC and provided a detailed analysis of the rationale behind the legislation. [Paragraph 1]

Background and Enactment of the IBC

The Court acknowledged the need for a comprehensive legal framework to address the issue of insolvency and bankruptcy in India. The erstwhile regime was found to be inadequate, leading to poor outcomes and one of the lowest credit-to-GDP ratios. [Paragraph 6] The IBC aimed to consolidate and amend the existing laws related to reorganization and insolvency resolution, with the objective of maximizing the value of assets, promoting entrepreneurship, and ensuring the availability of credit. [Paragraphs 2, 9, 10, 11]

Appointment of NCLT and NCLAT Members

The Court addressed the challenge regarding the appointment of members to the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). It noted that the selection process had been reconstituted, and all current members were appointed through the revised process, eliminating the need to address the initial objection. [Paragraph 14] However, the Court directed the establishment of circuit benches for the NCLAT within six months and mandated that administrative support for the tribunals should come from the Ministry of Law and Justice, not the Ministry of Corporate Affairs. [Paragraphs 15, 16, 18, 19]

Classification of Financial and Operational Creditors

One of the key challenges was the differentiation between financial creditors and operational creditors under the IBC. The Court found an intelligible differentia between the two categories, citing the nature of their loan agreements, their involvement in assessing the viability of the corporate debtor, and their ability to engage in restructuring and reorganization. [Paragraphs 23, 24, 25, 26, 27, 28, 29]

The Court highlighted that financial creditors, such as banks and financial institutions, are better equipped to assess the viability and feasibility of a business, as they already conduct detailed market studies before granting loans. On the other hand, operational creditors are typically unable to assess viability and feasibility. [Paragraph 44]

Role of the Committee of Creditors

The IBC establishes a committee of creditors comprising all financial creditors of the corporate debtor, with voting shares determined by the financial debts owed to each creditor. [Paragraph 39] The committee plays a crucial role in the corporate insolvency resolution process, including

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approving certain actions, requesting financial information, and evaluating resolution plans. [Paragraphs 40, 41, 43]

The Court upheld the decision not to grant operational creditors voting rights in the committee of creditors, citing their existing rights to attend meetings and receive at least the liquidation value under the resolution plan. [Paragraph 42]

Treatment of Operational Creditors

While operational creditors do not have voting rights in the committee of creditors, the Court noted that the NCLAT ensures that resolution plans give equal treatment to operational and financial creditors. [Paragraph 46] Additionally, the Insolvency and Bankruptcy Board of India (Insolvency and Bankruptcy Board of India) Regulations prioritize the payment to operational creditors over financial creditors. [Paragraph 47]

Withdrawal of Applications and Section 12A

The Court upheld the constitutionality of Section 12A, which allows for the withdrawal of applications admitted under Sections 7, 9, or 10 with the approval of 90% of the voting share of the committee of creditors. [Paragraph 48] The high threshold of 90% approval was justified as necessary for all financial creditors to reach an agreement, and the NCLT and NCLAT can set aside the committee's decision under Section 60 of the IBC. [Paragraph 53]

Information Utilities and Resolution Professionals

The Court addressed the challenges regarding private information utilities and the lack of proper norms governing them. It noted that the Information Utilities Regulations require swift verification of default information and communication to all involved parties, and the evidence of default is only prima facie and can be rebutted by the debtor. [Paragraphs 54, 55, 56, 57]

Regarding the role of resolution professionals, the Court clarified that they have administrative, not adjudicatory, powers and are overseen by the committee of creditors and the Adjudicating Authority. [Paragraphs 58, 59, 60, 61]

Eligibility Criteria for Resolution Applicants (Section 29A)

Section 29A of the IBC outlines the eligibility criteria for submitting resolution plans, with the purpose of preventing undesirable persons from gaining control of a corporate debtor during the insolvency process. [Paragraph 62, 63] The Court upheld the constitutional validity of Section 29A, stating that a resolution applicant has no vested right for consideration or approval of its resolution plan. [Paragraph 64, 65]

The Court also addressed the challenges related to the disqualification of individuals based on their connection to the business of the resolution applicant, as defined in Section 5(24A) of the IBC. [Paragraph 75]

Micro, Small, and Medium Enterprises (MSMEs)

The Court acknowledged the importance of MSMEs in the economy and the efforts made by the government to exempt them from certain

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provisions of the IBC to prevent their liquidation. [Paragraphs 77, 78, 79, 80] The government has made amendments to the IBC based on committee reports to address issues and exempt certain enterprises from its provisions, demonstrating its awareness of and efforts to address anomalies in the application of the Code. [Paragraph 81]

Distribution of Assets in Liquidation (Section 53)

The Court rejected the challenge to Section 53 of the IBC, which deals with the distribution of assets in the event of liquidation. It recognized the distinction between secured financial debts and unsecured operational debts, and the importance of repaying financial debts to infuse capital into the economy, while also prioritizing workmen's dues as unsecured debts. [Paragraph 84]

Success of the IBC and Monitoring by the Government

The Court acknowledged the success of the IBC in increasing the flow of financial resources to the commercial sector in India, with over 3,300 cases resolved and a significant increase in credit flow. [Paragraph 86] It also noted that the government is monitoring the working of the Code and making necessary amendments to address any anomalies. [Paragraph 85]

Conclusion

In conclusion, the Supreme Court upheld the constitutional validity of the Insolvency and Bankruptcy Code, 2016, finding that the classification between financial and operational creditors is not discriminatory and that the provisions of the Code are aimed at achieving the objectives of maximizing the value of assets, promoting entrepreneurship, and ensuring the availability of credit.

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53. Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India(NHAI)

JUSTICE R. F. NARIMAN AND JUSTICE VINEET SARAN

Read the judgment here

Introduction

This is a summary of the Supreme Court's judgment in the case of Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI). The case revolves around a dispute over price adjustments in a construction contract for a national highway project. The key issues addressed in the judgment include the applicability of the Arbitration and Conciliation (Amendment) Act, 2015, the grounds for challenging arbitral awards, and the interpretation of the "public policy of India" principle.

Background

Contract and Dispute

The NHAI invited bids for a construction project on National Highway 26, which was awarded to Ssangyong Engineering & Construction Co. Ltd., a company from Korea. The contract included provisions for price adjustments for certain components based on the Wholesale Price Index (WPI) published by the Ministry of Industrial Development. [¶2]

Initially, Ssangyong received monthly price adjustments based on the Old Series of the WPI. However, when the Ministry switched to the New Series, Ssangyong adjusted their bills accordingly. Despite receiving payments based on the New Series, the NHAI issued a Policy Circular with a new formula for determining indices. [¶3]

The NHAI insisted on applying the Circular to the contract, but Ssangyong challenged its validity in the High Court. The High Court dismissed the petition, stating that there was a dispute resolution mechanism in place, which Ssangyong should follow. [¶4]

Arbitration Proceedings

The dispute was referred to the Dispute Adjudicating Board, as required by the contract. On 31.10.2013, the Board recommended a linking factor for price adjustment in four materials, but one member dissented, leading to the dispute being referred to an arbitral tribunal. [¶6]

The majority of the tribunal upheld the use of the linking factor, rejecting Ssangyong's claim. They based their decision on government guidelines and applied a specific arithmetic conversion method to determine the linking factor. [¶7] However, one member of the tribunal issued a dissenting award, stating that the Circular and guidelines could not be applied, and awarded Ssangyong's claim in full. [¶6]

Challenges to the Arbitral Award

Ssangyong's Arguments

Ssangyong challenged the majority award, arguing that it contained decisions on matters beyond the

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scope of the arbitration submission, which was a jurisdictional error. They also contended that the award was in conflict with the public policy of India and violated the principles of natural justice. [¶8]

NHAI's Arguments

The NHAI argued that applying the new formula with the base index of 2004-05 would make the contract unworkable, and it was imperative to have a linking factor. They cited judgments in support of this proposition and stated that the appeal should be dismissed. [¶9]

Applicability of the Arbitration and Conciliation (Amendment) Act, 2015

The Court addressed the question of whether the changes made to the Arbitration and Conciliation Act in 2015, particularly regarding the grounds for challenging arbitral awards, apply to applications filed under Section 34 after the amendment date. [¶10]

The Court held that the amended Section 34 will apply only to applications made to the Court on or after 23.10.2015, regardless of when the arbitration proceedings commenced. [¶12] This was based on the principle that the Amendment Act made fundamental changes to the law, including introducing a new ground of "patent illegality" for setting aside domestic awards. [¶11]

Grounds for Challenging Arbitral Awards

Public Policy of India

The Court surveyed the law relating to setting aside an award if it is in conflict with the public policy of India before the Amendment Act, 2015. [¶13]

The Court referred to the judgment in Associate Builders v. Delhi Development Authority, which held that an award contrary to the fundamental policy of Indian law, the interest of India, justice or morality, or the provisions of the Foreign Exchange Regulation Act, would be set aside. [¶13]

The Court also discussed the interpretation of "public policy of India" in the context of foreign awards and international commercial arbitrations, citing various authorities and the New York Convention. It emphasized that the court's scope of inquiry is limited to the grounds mentioned in the relevant legislation and does not allow a party to challenge the award on merits. [¶33-¶37]

The Court clarified that the expression "public policy of India" in Section 34 or Section 48 now means the "fundamental policy of Indian law" as explained in Associate Builders, and the Western Geco expansion has been done away with. [¶23]

Principles of Natural Justice

The Court highlighted that the principles of natural justice continue to be grounds for challenging an award. [¶23] It emphasized the importance of providing each party with a full opportunity to present its case, communicating all information and expert reports to both parties, and ensuring that all documents and property in the possession of an expert are made available to any party who requests them. [¶34-¶37]

Patent Illegality

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The Court discussed the new ground of "patent illegality" introduced by the Amendment Act, 2015, for setting aside domestic awards. It clarified that an award can only be set aside for patent illegality that goes to the root of the matter, not just for an erroneous application of the law. [¶26-¶30]

Jurisdictional Issues

The Court addressed the appellant's argument that the majority award dealt with matters beyond the scope of the arbitration submission, which was a jurisdictional error. The Court held that misinterpretation of the contract does not make the arbitral award beyond the scope of arbitration, and grounds related to Section 28(3) of the 1996 Act cannot be brought in as matters beyond the scope of arbitration under Section 34(2)(a)(iv). [¶43]

Violation of Fundamental Principles of Justice

The Court examined the appellant's argument that the government guidelines relied upon by the majority award were never presented as evidence before the Tribunal, and therefore, the Tribunal had no jurisdiction to rely on these guidelines. [¶45]

The respondent's counsel agreed that the guidelines were not disclosed during arbitration, which would directly affect the appellant's ability to present its case. [¶46]

The Court held that the majority award breached fundamental principles of justice by relying on undisclosed guidelines, which deprived the appellant of the opportunity to present its case. [¶46]

Conclusion and Judgment

The Court set aside the judgments of the Single Judge and Division Bench of the Delhi High Court, as well as the majority award. [¶49]

The Court upheld the minority award, which awarded Ssangyong its claim, and ordered it to be executed with interest. The disputes decided by the majority award were referred to another arbitration. [¶49]

Ssangyong was awarded the principal sum of INR 2,01,42,827/- towards price adjustment and interest at the rate of 10%, compounded monthly from the due date of payment to the date of the award, i.e., 02.05.2016, plus future interest at the rate of 12% per annum (simple) till the date of payment. [¶12]

The Court did not award costs to either party. [¶12]

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54. Dr. Ashwani Kumar v. Union of India and Another

CHIEF JUSTICE RANJAN GOGOI, JUSTICE DINESH MAHESHWARI AND JUSTICE SANJIV KHANNA

Read the judgment here

Introduction

This judgment by the Supreme Court of India deals with a Miscellaneous Application filed by Dr. Ashwani Kumar, seeking a direction from the Court to the Central Government to enact a comprehensive legislation against custodial torture based on the 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' adopted by the United Nations General Assembly. (Para 1, 2)

Background

Dr. Ashwani Kumar had previously filed a Writ Petition (Civil) No. 738 of 2016 under Article 32 of the Constitution, seeking an effective legislative framework based on the UN Convention. The writ petition was disposed of in 2017 based on the statement of the Attorney General that the government was considering the recommendations of the Law Commission on the matter. (Para 3)

Applicant's Contentions

The applicant argued that custodial torture is a violation of the fundamental right to life and liberty under Article 21 of the Constitution. He cited various Supreme Court judgments that have recognized custodial torture as a gross human rights violation and emphasized the need for a comprehensive legislation to address this issue. The applicant contended that the Court should exercise its jurisdiction under Articles 141 and 142 to direct the Parliament to enact such a law, given the delay and inaction by the government despite recommendations from various bodies. (Para 4)

Doctrine of Separation of Powers

The Court extensively discussed the doctrine of separation of powers, which is a part of the basic structure of the Indian Constitution. It highlighted the distinct roles and functions of the legislature, executive, and judiciary, and the need for each branch to respect the constitutional division of powers. (Para 9-13)

Legislative Function

The Court emphasized that legislating or law-making involves prioritizing certain political, moral, and social values, and is a balancing exercise representative of diverse viewpoints. The legislature, as an elected and representative body, enacts laws to give effect to the democratic aspirations of the people. (Para 11, 23)

Executive Function

The executive has the primary responsibility of formulating government policies and proposing legislations. It exercises wide powers under Articles 73 and 162 of the Constitution, including making subordinate legislation. The executive is accountable to the legislature and holds office based on its confidence. (Para 12)

Judicial Function

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The judiciary's role is to interpret and apply the law, safeguard the supremacy of the Constitution, and exercise the power of judicial review to check violations of the Constitution or fundamental rights by the government. However, the courts cannot encroach upon the legislative domain or direct the enactment of laws, as this would violate the separation of powers doctrine. (Para 13, 21-24)

Judicial Restraint and Judicial Legislation

The Court acknowledged that in exceptional cases of gross human rights violations or environmental degradation, it has laid down guidelines or directions to fill the vacuum until the legislature enacts a law. However, a mere allegation of human rights violation cannot be the basis for judicial legislation. The Court must exercise judicial restraint and decide cases within the defined limits of its power. (Para 27, 29, 30)

Ratification of International Conventions

The Court rejected the applicant's prayer to direct the executive to ratify the UN Convention, as it would amount to directing the enactment of laws, which is beyond the Court's power. The ratification of international conventions is a political act that requires consultation with state governments and subsequent deliberation. (Para 33, 34)

Protection of Fundamental Rights

While rejecting the prayer for directing legislation, the Court affirmed that it can issue appropriate guidelines or directions in individual cases of alleged custodial torture to protect fundamental rights under Article 21 of the Constitution. (Para 41)

Conclusion

The Court dismissed the Miscellaneous Application, holding that it cannot direct the Parliament to enact a specific law, as it would violate the doctrine of separation of powers and the constitutional scheme of law-making. However, the Court clarified that this does not affect its jurisdiction to deal with individual cases of custodial torture and pass appropriate orders in accordance with the law. (Para 40, 41)

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55. Rojer Mathew v. South Indian Bank Limited and Ors.

CHIEF JUSTICE RANJAN GOGOI, JUSTICE N. V. RAMANA, JUSTICE DR D. Y. CHANDRACHUD, JUSTICE DEEPAK GUPTA AND JUSTICE SANJIV KHANNA

Read the judgment here

Introduction

This judgment by the Supreme Court of India addresses several crucial issues related to the functioning of tribunals in the country. The primary focus is on the constitutional validity of the Finance Act, 2017, which introduced significant changes to the appointment process, qualifications, and service conditions of members of various tribunals. The Court also delves into broader concerns regarding the independence, efficiency, and accessibility of tribunals, as well as their role in the judicial system.

Constitutional Validity of the Finance Act, 2017

Money Bill Certification (Paragraphs 92-99, 31-41, 47-56)

One of the central issues in this case is whether the Finance Act, 2017, which amended provisions related to tribunals, was validly enacted as a Money Bill under Article 110 of the Constitution. The Court examines the scope of judicial review over the Speaker's certification of a Bill as a Money Bill, considering the constitutional history and previous judgments.

The majority view, expressed by Justices Chandrachud and Bhushan, is that the Speaker's decision to certify a Bill as a Money Bill is subject to judicial review if it violates constitutional provisions. However, the Court acknowledges the limited scope of such review, given the Speaker's high office and the presumption of constitutional validity.

Ultimately, the Court concludes that Part XIV of the Finance Act, 2017, which deals with the merger of tribunals and the conditions of service for their members, does not meet the criteria for a Money Bill under Article 110(1). The provisions go beyond financial matters and encroach upon the administration of justice, rendering the special procedure for Money Bills unnecessary. The Court refers this issue to a larger Bench for further consideration.

Excessive Delegation of Legislative Power (Paragraphs 19-32, 99)

The Court also examines whether Section 184 of the Finance Act, 2017, which empowers the Central Government to make rules regarding the qualifications, appointment, and service conditions of tribunal members, constitutes an excessive delegation of legislative power.

Justice Deepak Gupta, in his separate opinion, concludes that Section 184 suffers from excessive delegation, as it fails to provide essential legislative guidelines and qualifications for tribunal members. The Court holds that the qualifications and attributes of tribunal members are crucial for delivering justice and maintaining an independent judiciary, and these should be determined by the legislature, not delegated to the executive.

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Consequently, Section 184 of the Finance Act, 2017, is struck down as unconstitutional.

Evaluation of the Tribunal Rules, 2017 (Paragraphs 3-22, 90-98)

The Court scrutinizes the Tribunal, Appellate Tribunal and Other Authorities (Qualifications, Experience and Other Conditions of Service of Members) Rules, 2017, framed under Section 184 of the Finance Act, 2017. The Rules outline the qualifications, appointment process, removal procedures, tenure, and service conditions for various tribunals.

The Court finds several issues with the Rules, including:

1. **Composition of Search-cum-Selection Committees**: The Rules provide for Search-cum-Selection Committees predominantly nominated by the Central Government, which violates the principle of judicial independence and amounts to excessive executive interference. (Paragraph 93)

2. **Tenure of Tribunal Members**: The Rules prescribe a tenure of three years for tribunal members, contradicting the Court's previous directions for longer tenures to cultivate adjudicatory experience. (Paragraph 94)

3. **Reappointment Provisions**: The Rules allow for reappointment of tribunal members, which goes against the Court's earlier rulings aimed at ensuring independence. (Paragraph 95)

4. **Relaxation of Rules**: The Rules grant the Central Government the power to relax the rules, which is deemed unconstitutional. (Paragraph 95)

5. **Dilution of Judicial Character**: The Rules dilute the judicial character of tribunals by appointing members without adjudicatory experience, contrary to the Court's previous decisions. (Paragraph 22)

In light of these issues, the Court declares the Tribunal Rules, 2017, unconstitutional and destructive of judicial independence.

Recommendations and Directions

Single Nodal Agency for Tribunals (Paragraphs 35-37, 46)

The Court emphasizes the need for a single nodal agency or ministry to oversee the administration of all tribunals in the country. This agency would address issues such as lack of manpower, vacancies, and financial dependence on parent ministries, ensuring standardization and a uniform approach to the needs of each tribunal.

The Court directs the Union Government to establish such a nodal agency within six months, with the Ministry of Law and Justice being the most appropriate ministry for this purpose until the agency is set up.

Judicial Impact Assessment (Paragraphs 38-45, 52-53)

Recognizing the importance of assessing the impact of tribunals on the judicial system, the Court calls for a Judicial Impact Assessment of all tribunals in India. This assessment would evaluate whether tribunals have helped in the timely disposal of cases, particularly in smaller states that lack permanent benches, leading to delays in access to justice.

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The Court recommends the formation of a Judicial Impact Assessment Committee, consisting of two retired Supreme Court judges, one retired Chief Justice of a High Court (all nominated by the Chief Justice of India), and two members of the Executive (not below the rank of Secretary, appointed in consultation with the Chief Justice of India).

Amalgamation and Establishment of Benches (Paragraphs 46-51)

To address the imbalance in caseload distribution and inconsistencies among tribunals, the Court directs the Union Government to consider amalgamating existing tribunals and establishing an adequate number of benches. This would ensure effective resource utilization, facilitate access to justice, and prevent a metropolis-centric justice system.

The Court also suggests exploring a two-tier tribunal system, similar to the United Kingdom, to lessen the burden on higher courts.

Statutory Appeals to the Supreme Court (Paragraph 51)

The Court acknowledges the concern that direct statutory appeals from tribunals to the Supreme Court could undermine the essence of tribunalization and burden the Supreme Court. It suggests that the Union Government consider removing such provisions for direct appeals, allowing High Courts to handle cases within the limited scope of their writ jurisdiction.

Selection and Appointment of Tribunal Members (Paragraphs 47-50, 54-56)

Recognizing the importance of an independent and competent tribunal system, the Court emphasizes the need for a transparent and merit-based selection process for tribunal members. It recommends the following:

1. Recruitment to lower tribunals should be based on objective criteria, such as written tests for District Judges, with the possibility of promotion to higher tribunals.

2. Establishing a common service for multiple tribunals, allowing for better talent and a committed workforce with aspirations for advancement.

3. Minimizing the appointment of retired judges and bureaucrats, except in the short term, and gradually increasing the representation of tribunal service personnel.

4. Appointing retired judges only for certain specialized positions, such as Lokpal and Chairperson of the Human Rights Commission, but not as a routine practice.

5. Constituting an independent Commission, led by the Chief Justice of India or their nominees, to oversee the selection and appointment of tribunal members, ensuring their independence, integrity, and competence.

The Court suggests a smaller committee, comprising two retired Supreme Court Judges, one retired Chief Justice of a High Court, one member representing the executive, and one expert member with relevant expertise, to handle the selection process.

Conclusion

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In conclusion, the Supreme Court's judgment addresses critical issues related to the functioning of tribunals in India. It strikes down certain provisions of the Finance Act, 2017, and the Tribunal Rules, 2017, as unconstitutional, citing concerns over judicial independence, excessive delegation of legislative power, and dilution of the judicial character of tribunals.

The Court emphasizes the need for a single nodal agency, judicial impact assessments, amalgamation of tribunals, establishment of benches, and a transparent and merit-based selection process for tribunal members. These recommendations aim to enhance the efficiency, accessibility, and independence of tribunals, ensuring that they serve as effective alternatives to traditional courts while upholding the principles of the rule of law and constitutional supremacy.

This summary has been prepared using technology alone. Please be advised to read the judgment for accuracy and verify.

56. Central Public Information Officer Supreme Court of India v. Subhash Chandra Agarwal

CHIEF JUSTICE RANJAN GOGOI, JUSTICE N.V. RAMANA, JUSTICE DR. DHANANJAYA Y. CHANDRACHUD, JUSTICE DEEPAK GUPTA AND JUSTICE SANJIV KHANNA

Read the judgment here

Introduction

This judgement by the Supreme Court of India addresses three appeals filed by the Central Public Information Officer (CPIO) of the Supreme Court against orders of the Central Information Commission (CIC) directing disclosure of certain information under the Right to Information (RTI) Act, 2005. The appeals raise significant constitutional questions concerning the right to information, the right to privacy, and the transparency, accountability, and independence of the judiciary. [Paragraph 1]

Background

Appeal 1: Correspondence with the Chief Justice

The first appeal (Civil Appeal No. 10045 of 2010) concerns a request by Subhash Chandra Agarwal for correspondence between the then Chief Justice of India and Justice R. Reghupati regarding an alleged attempt by a Union Minister to influence a judicial decision. The CPIO initially denied the information, but the CIC directed its disclosure. [Paragraph 2]

Appeal 2: Appointment of Judges

The second appeal (Civil Appeal No. 10044 of 2010) arises from Agarwal's application seeking information on the appointment of three Justices to the Supreme Court. The CPIO denied the information, but the CIC allowed the appeal and directed disclosure. [Paragraph 3]

Appeal 3: Declaration of Judges' Assets

The third appeal (Civil Appeal No. 2683 of 2010) relates to Agarwal's request for information on the declaration of assets made by Supreme Court Judges to the Chief Justices of their respective High Courts. The CPIO denied the information, but the CIC directed its disclosure. The CPIO challenged this order before the Delhi High Court, which upheld the CIC's decision. [Paragraph 4]

Substantial Questions of Law

On November 26, 2010, a two-judge bench of the Supreme Court framed the following substantial questions of law for consideration by a larger bench: [Paragraph 5]

1. Whether the Supreme Court of India and the Chief Justice of India are two separate public authorities under the RTI Act. [Paragraph 10]

2. Whether the information sought can be withheld to maintain the credibility and encourage honest opinions from constitutional functionaries for effective decision-making. [Paragraph 2]

3. Whether the information sought is exempt under Section 8(1)(j) of the RTI Act, which exempts personal information from disclosure

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unless the larger public interest justifies it. [Paragraph 3]

Rival Submissions

The Attorney General for India, Mr. K.K. Venugopal, argued that the RTI Act does not cover the disclosure of judges' assets and information related to their appointments, as it would violate their privacy and affect their functioning. He emphasized the independence of the judiciary and the need for self-regulation in disclosing such information. [Paragraph 7]

On the other hand, Mr. Prashant Bhushan contended that the observations made by a previous court are binding, and that the disclosure of information regarding the appointment process is essential for transparency and good governance. He stated that the independence of the judiciary would not be affected by such disclosure. [Paragraph 8]

Analysis and Findings

Supreme Court and Chief Justice as Public Authorities

The Court held that the Supreme Court of India, including the office of the Chief Justice and the judges, is a single 'public authority' under Article 124 of the Constitution and cannot be interpreted otherwise. [Paragraph 14]

Definition of 'Information' under the RTI Act

The Court examined the broad definition of 'information' under Section 2(f) of the RTI Act, which includes any material in any form, including information relating to private bodies accessible by a public authority under other laws. The right to access information must fall within the scope of the Act and be under the control of the public authority. [Paragraph 17]

Overriding Effect of the RTI Act

Section 22 of the RTI Act gives priority to its objectives over other laws, ensuring that information held by a public authority must be provided to the applicant, even if there are legal restrictions in other laws. However, it does not give the public authority the ability to erase restrictions on their own access to information. [Paragraph 19]

Exemptions under the RTI Act

The Court analyzed the exemptions to the disclosure of information under Sections 8 and 11 of the RTI Act, which include confidential information, fiduciary relationships, and personal information. The Court emphasized the need to balance disclosure with other public interests. [Paragraph 24]

Fiduciary Relationship

The Court examined the concept of a 'fiduciary relationship' under Section 8(1)(e) of the RTI Act and concluded that the Chief Justice of India does not act in a fiduciary capacity when holding asset declaration information of the judges. The disclosure of this information is in the larger public interest and does not breach any duty. [Paragraph 68]

Right to Privacy

The Court recognized the constitutional right to privacy as a fundamental right under Article 21 of

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the Constitution, as established in the K.S. Puttaswamy case. The RTI Act allows for the disclosure of personal information but has checks and balances in place to protect privacy rights. [Paragraph 84]

Personal Information and Public Interest Test

Section 8(1)(j) of the RTI Act requires the Information Officer to determine if the information sought falls within the meaning of 'personal information'. If it does, and there is no public interest, it is exempt from disclosure. However, if there is a 'public interest' in the disclosure, the Information Officer must balance the individual's privacy with the public's right to know, applying the principle of proportionality. [Paragraph 89]

The Court provided guidance on the factors to be considered in determining whether information is 'personal information' and the application of the 'public interest' test. It emphasized the need to balance transparency, judicial independence, and the RTI Act to protect the Constitution and the judiciary from interference. [Paragraphs 90-99]

Third-Party Information

Section 11 of the RTI Act deals with the disclosure of third-party information and requires the Information Officer to notify the third party and give them an opportunity to object before making a decision. The Court held that the information sought in the appeals falls within the category of 'third-party information', and the procedure under Section 11 must be complied with. [Paragraph 77]

Judicial Independence and Accountability

The Court acknowledged the importance of judicial independence but emphasized that it should not be used to avoid accountability and transparency, which are crucial for maintaining public trust in the judiciary. The Court recognized the need for accountability reforms to uphold the judiciary's integrity and impartiality. [Paragraph 45]

The Court also discussed the interplay between judicial independence and judicial accountability, stating that they are not conflicting values. Judicial independence is crucial for ensuring fair and impartial decisions, but it must be balanced with accountability mechanisms that promote transparency and uphold constitutional values. [Paragraphs 46-53]

Disclosure of Judges' Asset Declarations

Regarding the disclosure of judges' asset declarations (Civil Appeal No. 2683 of 2010), the Court held that the information does not constitute 'personal information' and does not engage the right to privacy. The Court upheld the judgment of the Delhi High Court directing the CPIO to furnish the information. [Paragraph 57]

Appointment of Judges and Correspondence

For the appeals concerning the appointment of judges (Civil Appeal Nos. 10044 and 10045 of 2010), the Court remanded the matter to the CPIO, Supreme Court of India, for re-examination and determination according to the principles laid down in the present judgment. The Court emphasized the need for transparency in the judicial appointment process while balancing confidentiality concerns. [Paragraph 58]

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Conclusion

The Supreme Court dismissed Civil Appeal No. 2683 of 2010 and upheld the judgment of the Delhi High Court directing the disclosure of judges' asset declarations. Civil Appeal Nos. 10045 of 2010 and 10044 of 2010 were partially allowed, and the matter was remitted to the CPIO, Supreme Court of India, for re-examination in accordance with the principles laid down in the judgment. [Paragraphs 89, 90]

The Court emphasized the need to balance transparency, judicial independence, and the RTI Act to protect the Constitution and the judiciary from interference. It recognized the importance of judicial accountability and the need for accountability reforms to uphold the judiciary's integrity and impartiality. [Paragraphs 42, 45]

Overall, the judgment provides guidance on the interpretation and application of the RTI Act, particularly concerning the disclosure of personal information, the public interest test, and the procedure for dealing with third-party information. It also highlights the delicate balance between the right to information, the right to privacy, and the independence and accountability of the judiciary.

This summary has been prepared using technology alone. Please be advised to read the judgment for accuracy and verify.

57. Committee of Creditors of Essar Steel India Limited Through Authorised Signatory v. Satish Kumar Gupta and Others

JUSTICE R. F. NARIMAN, JUSTICE SURYA KANT AND JUSTICE V. RAMASUBSRAMANIAN

Read the judgment here

Introduction

This judgment by the Supreme Court of India deals with a group of appeals and writ petitions arising from the insolvency resolution process of Essar Steel India Limited under the Insolvency and Bankruptcy Code, 2016 (the "Code"). The key issues addressed in the judgment relate to the role and powers of various stakeholders involved in the insolvency resolution process, the treatment of different classes of creditors, and the constitutional validity of certain amendments made to the Code. [Paragraph 1]

Background

On August 2, 2017, the National Company Law Tribunal (NCLT), Ahmedabad, admitted a petition filed by Standard Chartered Bank and the State Bank of India under Section 7 of the Code, initiating the Corporate Insolvency Resolution Process (CIRP) for Essar Steel India Limited. Satish Kumar Gupta was appointed as the Resolution Professional (RP). [Paragraph 2]

After inviting expressions of interest and receiving resolution plans, the Committee of Creditors (CoC) initially declared ArcelorMittal and Numetal as ineligible resolution applicants. However, the Supreme Court gave them an opportunity to clear their non-performing assets (NPAs) within two weeks. ArcelorMittal subsequently submitted a resolution plan, which was approved by the CoC on October 25, 2018. [Paragraphs 2, 3]

Role of the Resolution Professional and the Committee of Creditors

The judgment clarifies the roles and responsibilities of the Resolution Professional and the Committee of Creditors in the insolvency resolution process.

Resolution Professional

The Resolution Professional manages the affairs of the corporate debtor and convenes meetings of the Committee of Creditors to decide on resolution plans. They also collect and admit claims of creditors for negotiation and decision by the Committee. Their role is administrative, not adjudicatory. [Paragraph 1]

The Resolution Professional is responsible for preserving assets, maintaining a list of claims, preparing an information memorandum, and presenting resolution plans to the Committee of Creditors for approval. Once approved, the Resolution Professional must submit the plan to the Adjudicating Authority (NCLT). [Paragraph 22]

Committee of Creditors

The Committee of Creditors (CoC) is constituted under Section 21 of the Code and consists of financial creditors as defined in Section 5(7). The CoC is responsible for deciding on the resolution

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plan, with the final approval requiring a 66% vote. [Paragraphs 31, 36]

The judgment emphasizes the commercial wisdom of the CoC in approving resolution plans and states that the Adjudicating Authority's jurisdiction is limited to scrutinizing the approved resolution plan based on the grounds specified in Section 30(2) of the Code. [Paragraphs 39, 40, 41, 42, 45]

The CoC has the discretion to accept resolution plans only with financial creditors, as operational creditors have no vote. The CoC can also appoint sub-committees for negotiations with resolution applicants, but the ultimate decisions must be approved and ratified by the CoC. [Paragraphs 57, 62]

Treatment of Creditors

The judgment addresses the treatment of different classes of creditors in the insolvency resolution process.

Equitable Treatment of Creditors

The judgment refers to the UNCITRAL Legislative Guide, which emphasizes the principle of equitable treatment of creditors with similar legal rights. However, it clarifies that equitable treatment is required only for similarly situated creditors, and the amended Regulation 38 does not require equal payment for different types of creditors. [Paragraphs 48, 56]

Secured and Unsecured Creditors

The judgment upholds the distinction between secured and unsecured creditors, as envisaged in the Code and the BLRC Report of 2015. It states that the commercial wisdom of the CoC is critical in negotiating and accepting a resolution plan, which may involve differential payments to different classes of creditors. [Paragraphs 55, 57]

Operational Creditors

The judgment discusses the minimum payment required to be made to operational creditors under a resolution plan, as set out in Section 30(2)(b) of the Code. It also refers to the Insolvency Committee Report, 2018, which deliberated upon objections to this provision but ultimately decided to retain it. [Paragraph 44]

Regulation 38(1A) requires a resolution plan to address the interests of all stakeholders, including operational creditors, and states that operational creditors should be paid before financial creditors. [Paragraph 46]

Constitutional Validity of Amendments

The judgment addresses the constitutional validity of certain amendments made to the Code through the Insolvency and Bankruptcy Code (Amendment) Act, 2019.

Extension of Timelines

The Amending Act of 2019 extended the timeline for completing the Corporate Insolvency Resolution Process to 330 days, including the time taken in legal proceedings. It also provided a further grace period of 90 days to complete the process if the initial 330-day period had passed by the date of the Amending Act. [Paragraphs 71, 12, 75]

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The judgment upholds the validity of these amendments, stating that the timely resolution of stressed assets is crucial for the successful working of the Code, and the only argument against the amendment is the time taken in legal proceedings. [Paragraph 78]

Minimum Payment to Operational and Dissentient Financial Creditors

Section 6 of the Amending Act of 2019 substituted Section 30(2)(b) of the Code, providing operational creditors and dissentient financial creditors with a minimum amount to be paid, which the judgment finds more beneficial to them than the previous provision. [Paragraph 80]

The judgment clarifies that Explanation 1 to the amended Section 30(2)(b) prevents the Adjudicating Authority and the Appellate Tribunal from interfering in the business decisions of the Committee of Creditors. [Paragraph 81]

Retrospective Application

The judgment addresses the argument that the amendments introduced by the Amending Act of 2019 were designed to overturn the judgment of the National Company Law Appellate Tribunal (NCLAT) in the present case. The Court holds that the legislature has the authority to lay down laws of general application to all persons affected, and bad faith cannot be ascribed to a legislature making laws. Therefore, the amendments cannot be struck down. [Paragraph 73]

Resolution Plan for Essar Steel India Limited

The judgment provides details of the resolution plan approved by the CoC for Essar Steel India Limited.

ArcelorMittal's Resolution Plan

ArcelorMittal's resolution plan proposed an upfront payment of INR 35,000 crores toward the debt of INR 49,213 crores for financial creditors, along with a capital infusion of INR 8,000 crores for the corporate debtor. The plan also addressed the distribution of proceeds to secured financial creditors, with an upfront payment on the effective date. [Paragraphs 84, 85]

The final resolution plan approved on October 23, 2018, included a payment of INR 42,000 crores, with the CoC deciding how it would be distributed to secured financial creditors. It also provided for payments to unsecured financial creditors and operational creditors. [Paragraph 86]

Additional Payment to Operational Creditors

On March 27, 2019, the CoC discussed and approved an additional payment of INR 1,000 crores to operational creditors, subject to appeals. This decision was based on the opinion of retired Justice B.N. Srikrishna, who stated that the Approved Resolution Plan would be justified in classifying between secured and unsecured financial creditors and apportioning amounts payable to them in a reasonable manner. [Paragraph 87]

Challenges to the Resolution Plan

The judgment addresses various challenges and arguments raised by parties, including Standard

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Chartered Bank, regarding the distribution of payments under the resolution plan.

Standard Chartered Bank argued that the offer made by ArcelorMittal was lower than initially proposed and that the distribution methodology was inequitable. The Court rejected these arguments, stating that the commercial wisdom of the CoC must prevail in such cases. [Paragraphs 89, 90, 91]

The Court also rejected the argument that Section 53 of the Code, which deals with the order of priority of payments during liquidation, should apply at the insolvency resolution stage. The judgment clarifies that Section 30(2)(b) refers to Section 53 only for the minimum payment to operational creditors but does not limit the CoC's discretion in classifying and paying creditors. [Paragraph 92]

Conclusion

The judgment upholds the primacy of the Committee of Creditors' commercial wisdom in approving resolution plans and the limited scope of judicial review by the Adjudicating Authority and the Appellate Tribunal. It also affirms the constitutional validity of the amendments made to the Insolvency and Bankruptcy Code through the Amending Act of 2019.

The NCLAT judgment, which had re-distributed payments to financial and operational creditors under the resolution plan, was set aside. The CIRP of Essar Steel India Limited will proceed according to ArcelorMittal's resolution plan, as amended and accepted by the Committee of Creditors on March 27, 2019. [Paragraph 99]

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58. M/s Shanti Conductors Private Limited v. Assam State Electricity Board and Others

JUSTICE ASHOK BHUSHAN, JUSTICE S. ABDUL NAZEER AND JUSTICE NAVIN SINHA

Read the judgment here

Introduction

This is a summary of the judgment delivered by the Supreme Court of India in the case of M/s Shanti Conductors (P) Ltd. v. Assam State Electricity Board and Ors. The judgment deals with the review petitions filed against the common judgment dated 23.01.2019 passed in Civil Appeal Nos. 8442-8443 of 2016, Civil Appeal No.8450 of 2016, and Civil Appeal No.8445 of 2016.

Background

The Assam State Electricity Board (respondent) issued two supply orders to M/s Shanti Conductors (P) Ltd. (petitioner) for the supply of aluminum electrical conductors. The petitioner completed the supply between June 1992 and October 4, 1993. [Para 2.1]

On September 23, 1992, the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (Act, 1993) came into force. [Para 2.1]

The petitioner filed a money suit on January 10, 1997, seeking a decree for interest on the delayed payment of the principal amount, which had already been received. [Para 2.2]

After a series of legal proceedings, the matter reached the Supreme Court, which dismissed the appeals filed by the petitioner vide its judgment dated 23.01.2019. [Para 2.4, 2.5]

Grounds for Review

The petitioner filed review petitions against the judgment dated 23.01.2019, raising the following grounds:

1. **Limitation Period**: The petitioner contended that there was an error in holding that the suit was barred by limitation. It was argued that since the last payment was made on 05.03.1994, a fresh period of limitation should begin from that date under Section 19 of the Limitation Act, 1963. [Para 5]

2. **Benefit of Section 14**: The petitioner claimed that it was entitled to the benefit of Section 14 of the Limitation Act, 1963, as a writ petition was filed by the Assam Conductors Manufacturers Association, of which the petitioner was a member. [Para 5]

3. **Retroactive Application of Act, 1993**: The petitioner argued that the Act, 1993 should be applied retroactively, and any outstanding amount at the time of its commencement should attract interest under the Act. [Para 5]

4. **Error in Observation**: The petitioner contended that there was an error in the Court's observation that no supply was made after the enforcement of the Act, 1993, as some supplies were made after September 23, 1992. [Para 23]

5. **Maintainability of Appeal**: The petitioner claimed that the Court erred in dismissing its appeal as not maintainable. [Para 26]

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Court's Findings

Limitation Period and Section 19

The Court rejected the petitioner's claim for the benefit of Section 19 of the Limitation Act, 1963, for the following reasons:

- The petitioner did not plead any exception to the limitation period based on Section 19 in the plaint. [Para 13]
- The petitioner specifically pleaded that the Limitation Act did not apply due to the overriding effect of the Act, 1993. [Para 13]
- The cause of action in the plaint was not claimed from the date of the last payment (05.03.1994), which was necessary to invoke Section 19. [Para 19]
- The petitioner did not plead or bring necessary facts to enable the Court to consider the claim under Section 19. [Para 19]

The Court held that there was no error in its earlier judgment, which concluded that the suit was barred by limitation. [Para 19]

Benefit of Section 14

The Court rejected the petitioner's claim for the benefit of Section 14 of the Limitation Act, 1963, for the following reasons:

- The writ petition filed in the High Court was by the Assam Conductors Manufacturers Association, a different entity from the petitioner. [Para 20]
- The writ petition was dismissed after the petitioner had filed the suit, and the Association had filed a writ appeal challenging the dismissal. [Para 20]

The Court found no error in its earlier judgment denying the benefit of Section 14. [Para 20]

Retroactive Application of Act, 1993

The Court held that the petitioner could not re-agitate the issue of the retroactive application of the Act, 1993, as it had already been considered and decided in the earlier judgment. The scope of review is limited, and the petitioner cannot re-argue settled issues under the guise of review. [Para 21]

Error in Observation

The Court rejected the petitioner's contention that there was an error in the observation that no supply was made after the enforcement of the Act, 1993. The Court noted that the date of September 29, 1992, mentioned in the judgment, was the date of the bill for payment, not the date of supply. [Para 24, 25]

Maintainability of Appeal

The Court found no error in its earlier judgment dismissing the petitioner's appeal as not maintainable. The maintainability of the appeal had been specifically considered and decided against the petitioner. [Para 28]

Conclusion

The Supreme Court dismissed all the review petitions filed by the petitioner, finding no error apparent on the record in its earlier judgment dated 23.01.2019. The Court reiterated the limited scope of review and held that the petitioner could not re-

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agitate or re-argue settled issues under the guise of review.

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59. Keisham Meghachandra Singh v. The Hon'ble Speaker Manipur Legislative Assembly & Ors.

JUSTICE R. F. NARIMAN, JUSTICE ANIRUDDHA BOSE AND JUSTICE V. RAMASUBRAMANIAN

Read the judgment here

Introduction

This Supreme Court judgment deals with an important issue concerning the Tenth Schedule of the Constitution of India, which relates to the disqualification of members of Parliament and state legislatures on the ground of defection. The case arose from the events following the 2017 Manipur Legislative Assembly elections, where no single party secured a majority. The key parties involved were the Indian National Congress (INC) and the Bharatiya Janata Party (BJP).

Background

Election Results and Government Formation

- In the 2017 Manipur Legislative Assembly elections, no party secured a majority (31 seats out of 60). The INC emerged as the single largest party with 28 seats, while the BJP secured 21 seats. [Para 2]
- The Respondent No. 3, who was elected as an INC candidate, met with BJP members on March 12, 2017, and staked a claim to form a BJP-led government. [Para 2]
- On March 15, 2017, the Governor invited the BJP to form the government, and Respondent No. 3 was sworn in as a Minister in the BJP-led government. [Para 2]

Disqualification Petitions

- Between April and July 2017, thirteen applications were filed before the Speaker of the Manipur Legislative Assembly, seeking the disqualification of Respondent No. 3 under Paragraph 2(1)(a) of the Tenth Schedule for defecting from the INC. [Para 3]
- The Speaker did not take any action on these petitions. [Para 3]

Proceedings in the High Court

- A writ petition (W.P. (C) No. 70 of 2018) was filed in the High Court of Manipur, seeking directions to the Speaker to decide the disqualification petitions within a reasonable time. [Para 5]
- The High Court, in its judgment dated July 23, 2019, declined to grant any relief, citing the pendency of a related matter before a Constitution Bench of the Supreme Court. [Para 7]

Issues Before the Supreme Court

The key issues before the Supreme Court were:

1. Whether the Speaker's failure to decide the disqualification petitions within a reasonable time attracted judicial review under Articles 226 and 227 of the Constitution. [Para 22, 23]
2. The scope of judicial review concerning the Speaker's decision under the Tenth Schedule, as laid down in the judgments of *Kihoto*

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Hollohan and *Rajendra Singh Rana*. [Para 22, 23]

3. Whether the Court could issue a writ of quo warranto against Respondent No. 3, declaring his appointment as a Minister illegal. [Para 31]

Supreme Court's Observations and Directions

Failure to Decide Disqualification Petitions

- The Court relied on its previous judgment in *Rajendra Singh Rana* ^[Para 22, 40, 41], which held that a Speaker's failure to exercise jurisdiction vested in them cannot be covered by the shield of Paragraph 6 of the Tenth Schedule.
- When a Speaker refrains from deciding a disqualification petition within a reasonable time, it attracts the jurisdiction of the High Court for judicial review. [Para 22]

Scope of Judicial Review

- The Court interpreted the judgment in *Kihoto Hollohan* ^[Para 23, 110, 111] to mean that the finality clause in Paragraph 6 of the Tenth Schedule protects the Speaker's exclusive jurisdiction to decide disqualification petitions, but it does not interdict judicial review in aid of the Speaker arriving at a prompt decision.
- The Court clarified that *Kihoto Hollohan* does not prohibit judicial review to ensure that the Speaker decides disqualification petitions within a reasonable time. [Para 23]

Reasonable Time for Deciding Disqualification Petitions

- The Court held that the Speaker, acting as a Tribunal under the Tenth Schedule, is bound to decide disqualification petitions within a reasonable period. [Para 28]
- Absent exceptional circumstances, a period of three months from the date of filing the petition is the outer limit within which the Speaker must decide disqualification petitions. This is to uphold the constitutional objective of disqualifying defectors promptly. [Para 28]

Writ of Quo Warranto

- The Court declined to issue a writ of quo warranto against Respondent No. 3, as a disqualification under the Tenth Schedule must first be decided by the Speaker. [Para 31]
- The Court distinguished the present case from *Rajendra Singh Rana*, where the Court had decided the disqualification petition due to the impending end of the Assembly's term. [Para 31]

Directions to the Speaker

- The Court directed the Speaker of the Manipur Legislative Assembly to decide the disqualification petitions pending before him within four weeks from the date of intimation of this judgment. [Para 31]
- If no decision is forthcoming even after four weeks, any party to the proceedings can apply to the Supreme Court for further directions or reliefs. [Para 31]

Suggestions for Reform

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The Court suggested that Parliament may consider amending the Constitution to substitute the Speaker as the arbiter of disputes concerning disqualification under the Tenth Schedule with a permanent Tribunal headed by a retired Supreme Court Judge or a retired Chief Justice of a High Court, or some other independent mechanism. This would ensure that such disputes are decided swiftly and impartially, giving real teeth to the provisions of the Tenth Schedule. [Para 30]

In summary, the Supreme Court upheld the principle of judicial review over the Speaker's inaction in deciding disqualification petitions within a reasonable time, while also recognizing the Speaker's exclusive jurisdiction in such matters. The Court directed the Speaker to decide the pending petitions promptly and suggested reforms to ensure impartial and timely adjudication of disqualification disputes.

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60. Sushila Aggarwal and Others v. State (NCT of Delhi) and Another

JUSTICE ARUN MISHRA, JUSTICE INDIRA BANERJEE, JUSTICE VINEET SARAN, JUSTICE M. R. SHAH AND JUSTICE S. RAVINDRA BHAT

Read the judgment here

Introduction

This judgment by the Supreme Court of India addresses the scope and interpretation of Section 438 of the Code of Criminal Procedure, 1973 (CrPC), which deals with the provision of anticipatory bail. The case arose due to conflicting views among different benches of the Supreme Court regarding the duration and conditions that can be imposed while granting anticipatory bail. (Paragraph 1)

Background and Contentions

Meaning of Anticipatory Bail

The term "anticipatory bail" is not defined in the CrPC, but it refers to the provision of bail to a person in anticipation of their arrest for a non-bailable offense. The power to grant anticipatory bail lies with the High Court and the Court of Session. (Paragraph 2, 40, 42)

Recommendations of the Law Commission

The Law Commission of India, in its 41st Report, recommended the inclusion of a provision for anticipatory bail in the CrPC to protect individuals from potential false implication in cases and arbitrary arrests. The Commission suggested that this power should be vested only in the High Courts and Courts of Session. (Paragraph 5, 9, 41)

Conflicting Judgments

The Supreme Court's Constitution Bench in the case of Gurbaksh Singh Sibbia v. State of Punjab (1980) held that the power to grant anticipatory bail should be interpreted broadly and should not be subject to unnecessary restrictions. However, subsequent judgments, such as Salauddin Abdulsamad Shaikh v. State of Maharashtra (1996) and Siddharam Satlingappa Mhetre v. State of Maharashtra (2011), imposed limitations on the duration and conditions of anticipatory bail, leading to conflicting interpretations. (Paragraph 3, 8, 9, 10, 11)

Arguments by Parties and Amici Curiae

Petitioners' Arguments

The petitioners argued that anticipatory bail should not be time-limited and should continue until the end of the trial. They emphasized the importance of personal liberty and the presumption of innocence, citing the Sibbia case. (Paragraph 14, 17)

State's Arguments

The State, represented by the Solicitor General and Additional Solicitor General, contended that anticipatory bail should be subject to conditions and time limits to ensure fair investigation and prevent interference with the investigative process. They argued that the Mhetre decision, which held that no conditions could be imposed on anticipatory bail, should be overruled. (Paragraph 32, 36)

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Amici Curiae Arguments

The amici curiae (friends of the court) presented diverse perspectives on the issue. Some argued for unconditional and unlimited anticipatory bail, while others suggested imposing time limits and conditions based on the stage of the investigation and the nature of the offense. They also discussed the court's power to modify or revoke anticipatory bail orders in light of new circumstances. (Paragraph 28, 29, 30, 31)

Court's Observations and Findings

Importance of Personal Liberty

The Court emphasized the fundamental importance of personal liberty and the presumption of innocence in criminal jurisprudence. It recognized anticipatory bail as a safeguard against arbitrary arrests and a means to protect the rights enshrined in Article 21 of the Constitution. (Paragraph 15, 16, 49, 50)

Discretionary Power of Courts

The Court held that the power to grant anticipatory bail under Section 438 of the CrPC should be interpreted broadly and should not be subject to rigid or inflexible guidelines. The High Court and the Court of Session should exercise their discretion judiciously based on the specific facts and circumstances of each case. (Paragraph 13, 33, 56, 60, 65)

Duration of Anticipatory Bail

Overruling previous judgments that imposed time limits or event-based limitations on the duration of anticipatory bail, the Court held that anticipatory bail can continue until the end of the trial, subject to compliance with any conditions imposed by the court. (Paragraph 69, 76, 77)

Conditions for Anticipatory Bail

The Court acknowledged the power of the High Court and the Court of Session to impose conditions while granting anticipatory bail, as provided under Section 438(2) of the CrPC. However, it overruled the view that restrictive conditions, such as those mentioned in Section 437(3), should be mandatorily imposed. The imposition of conditions should be based on the specific circumstances of each case. (Paragraph 59, 61, 69)

Cooperation with Investigation

The Court clarified that the grant of anticipatory bail does not limit the rights or duties of the police or investigating agency. If the accused violates any conditions or fails to cooperate with the investigation, the investigating agency can approach the court for a direction to arrest the accused under Section 439(2) of the CrPC. (Paragraph 61, 66, 71, 78)

Surrender and Regular Bail

The Court held that an accused granted anticipatory bail is not required to surrender and apply for regular bail upon the filing of a charge sheet. The grant of anticipatory bail implies that there is no need for custodial interrogation, provided the accused has cooperated with the investigation. (Paragraph 70)

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Addition of Graver Offenses

In cases where graver offenses are added after the grant of anticipatory bail, the Court clarified that it is not necessary to cancel the existing bail order before seeking the arrest and custody of the accused. The Court has the power to direct the arrest and commit the accused to custody without necessarily canceling the earlier bail order. (Paragraph 72, 73, 74)

Conclusion and Overruling of Previous Judgments

The Court reiterated the conclusions of the Gurbaksh Singh Sibbia case and overruled the interpretations in Salauddin Abdulsamad Shaikh and Siddharam Satlingappa Mhetre, which imposed restrictive conditions and time limits on anticipatory bail. The Court held that the protection under Section 438 of the CrPC should not be limited to a fixed period and can continue until the end of the trial, with the possibility of imposing specific conditions based on the circumstances of the case. (Paragraph 81)

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61. Dheeraj Mor v. Hon'ble High Court of Delhi

JUSTICE ARUN MISHRA, JUSTICE VINEET SARAN AND JUSTICE S. RAVINDRA BHAT

Read the judgment here

Introduction

This judgment by the Supreme Court of India deals with the interpretation of Article 233 of the Constitution, which governs the appointment of District Judges in the country. The case arose from a reference made to a three-judge bench regarding the eligibility of members of the subordinate judicial service to apply for the post of District Judge, which is typically reserved for practicing advocates with at least seven years of experience. [Paragraph 2]

The Controversy

The primary controversy revolved around whether state judicial officers below the rank of District Judge could compete with experienced lawyers for direct recruitment to the post of District Judge. [Paragraph 3] The petitioners, who were members of the judicial service, fell into three categories based on their experience at the Bar:

1. Those who argued that the Constitution allows them to participate in the recruitment process for District Judges, citing relevant court rulings. [Paragraph 4]
2. Those who had less than seven years of experience at the Bar but claimed that their combined experience as a judicial officer and advocate should make them eligible. [Paragraph 5]
3. A hybrid category of candidates with experience as both a judicial officer and an advocate, who also claimed eligibility for appointment. [Paragraph 4]

Arguments of the Petitioners

The petitioners put forth several arguments in support of their claim:

1. Articles 233(1) and 233(2) operate in different fields, with Article 233(1) conferring the power upon the Governor to make judicial appointments. They argued that the experience of seven years at the Bar applies only to those in practice and not to those already in the judicial service of the State. [Paragraph 6]
2. The provision for quotas in the judicial service and the Bar is discriminatory and arbitrary, as it restricts members of the judicial service from applying. [Paragraph 7]
3. The Constitution makers intended to recruit only those with talent, and experience as a judge is relevant for the position of District Judge. The absolute restriction on members of the judicial service from competing with lawyers in the quota is deemed unconstitutional and void. [Paragraph 7]
4. The literal interpretation of Article 233(2) is unduly narrow and defeats the Constitution's broad objective to bring in the best minds and those with talent, regardless of their prior legal experience. [Paragraph 8]

Arguments of the Respondents

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The respondents, on the other hand, argued:

1. Neither the Rameshwar Dayal nor the Chandra Mohan cases held that members of the judicial service had a right to apply for selection as District Judges based on their prior experience as advocates. [Paragraph 9]

2. Article 233(1) indicates that the appointment to the post of District Judge is to be made by the Governor, on the recommendation of the High Court. The Chandra Mohan case decisively held that the recommendation of the High Court is binding, and those in the State's services were barred from consideration for the post of District Judge. [Paragraph 9]

Constitutional Provisions and Case Law

The judgment extensively discussed the relevant constitutional provisions and case law:

1. **Article 233**: This article deals with the appointment of District Judges in any State. It provides for two sources of recruitment: (1) from the judicial service through promotion, and (2) direct recruitment from advocates or pleaders with at least seven years of practice, as recommended by the High Court. [Paragraph 6]

2. **Rameshwar Dayal v. State of U.P.**: This case dealt with the interpretation of Article 233 in relation to the qualifications for appointment as a District Judge. The court held that the period of practice in pre-partition India had to be included in reckoning the seven-year requirement. [Paragraph 13]

3. **Chandra Mohan v. State of U.P.**: This case established that only advocates can be appointed as direct recruits, and members of the civil services or holders of civil posts of the State are ineligible for appointment as District Judges under Article 233(2). [Paragraph 15]

4. **Satya Narain Singh v. High Court of Judicature of Allahabad**: This case held that disqualifying those holding judicial posts from applying as advocates did not violate Article 14 (the right to equality). [Paragraph 23]

5. **Deepak Aggarwal v. State of Uttar Pradesh**: This case dealt with the eligibility of public prosecutors and government advocates for direct recruitment as District Judges. The court held that those who continued to appear as advocates before the court were eligible. [Paragraph 18]

6. **Vijay Kumar Mishra & Anr. v. High Court of Judicature at Patna & Ors.**: This case held that Article 233(2) only prohibits the appointment of a person already in the service of the Union or the State, but not their participation in the selection process. However, this decision was overruled by the present judgment. [Paragraph 20]

The Court's Interpretation

After considering the arguments and the relevant case law, the Supreme Court arrived at the following interpretation:

1. The Constitution makers intended to make a clear distinction between the sources of appointment to the post of District Judge. Advocates needed at least seven years of practice, while judicial officers had no such eligibility condition. [Paragraph 27]

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2. Judicial officers could only be appointed as District Judges through promotion according to rules framed by the High Court. They were not eligible for the quota reserved for advocates with seven years of practice. [Paragraph 27]

3. The decision in Satya Narain Singh correctly appreciated the relevant provisions and held that those in the judicial service cannot compete for vacancies in the advocate quota. [Paragraph 28]

4. The argument that excluding judicial officers from the advocate quota does not serve the recruitment goal of selecting the best candidates is flawed. The distinction between advocates and judicial officers is constitutionally sanctioned. [Paragraph 30]

5. The exclusion of judicial officers from consideration for the post of District Judges in the quota earmarked for advocates conforms to the mandate of Articles 233-235. [Paragraph 31]

6. Allowing judicial officers to compete in the appointment quota for District Judges could result in advocates with seven or more years of practice not being selected, which goes against the text and mandate of Article 233(2). [Paragraph 32]

7. The Constitution makers emphasized the importance of an independent and diverse judiciary, which is reflected in the eligibility conditions for appointments at all levels of the judicial branch, including the appointment of practicing advocates. [Paragraph 33]

Overruling of Vijay Kumar Mishra

The Supreme Court overruled the decision in Vijay Kumar Mishra & Anr. v. High Court of Judicature at Patna & Ors. regarding the distinction between "selection" and "appointment" in the context of eligibility. The court held that the right to participate in the selection process is guaranteed only if the candidate fulfills the requisite eligibility criteria on the stipulated date. [Paragraph 36]

Conclusion

In conclusion, the Supreme Court upheld the constitutional scheme of having separate sources of recruitment for District Judges – one from the judicial service through promotion and the other from advocates or pleaders with at least seven years of practice. Judicial officers cannot apply for the posts reserved for advocates, and they can only be appointed as District Judges by way of promotion or merit promotion. The decision in Vijay Kumar Mishra was overruled, and the court noted that in-service candidates have opportunities to pursue the post of District Judge through other channels. [Paragraph 47]

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62. Internet and Mobile Association of India v. Reserve Bank of India

JUSTICE R. F. NARIMAN, JUSTICE ANIRUDDHA BOSE AND JUSTICE V. RAMASUBRAMANIAN

Read the judgment here

A. Brief overview of virtual currencies (VCs) and their growing popularity

Virtual currencies (VCs), also known as cryptocurrencies or crypto assets, are digital representations of value that are not issued or backed by any central authority or government. They operate on decentralized networks using blockchain technology, which allows for secure peer-to-peer transactions without the need for intermediaries like banks.

The first and most well-known virtual currency is Bitcoin, which was introduced in 2009 by an anonymous individual or group using the name Satoshi Nakamoto. Since then, thousands of other virtual currencies have emerged, such as Ethereum, Litecoin, and Ripple, each with its own unique features and use cases.

Virtual currencies have gained significant popularity in recent years, driven by factors such as the desire for decentralization, anonymity, and the potential for high returns on investment. They have been adopted by individuals, businesses, and even some governments for various purposes, including as a means of payment, a store of value, and a speculative investment.

However, the rise of virtual currencies has also raised concerns among regulators and financial authorities regarding their potential risks, such as their use in illegal activities, money laundering, and their impact on financial stability and monetary policy.

B. RBI's circular prohibiting regulated entities from dealing with VCs

In April 2018, the Reserve Bank of India (RBI), the country's central banking authority, issued a circular prohibiting entities regulated by it from dealing with or providing services to individuals or businesses involved in virtual currency transactions.

The circular directed banks, non-banking financial companies (NBFCs), and other regulated entities to stop providing services to individuals or businesses dealing in virtual currencies or facilitating any transactions related to virtual currencies. It also instructed these entities to exit any existing relationships with such individuals or businesses within a specified time frame.

C. Legal challenge by industry bodies and companies involved in VC trading

The RBI's circular faced legal challenges from various industry bodies and companies involved in virtual currency trading and exchange platforms. Two separate writ petitions were filed in the Supreme Court of India, challenging the validity and legality of the RBI's circular.

The first writ petition was filed by the Internet and Mobile Association of India (IAMAI), a specialized industry body representing the interests of online and digital services companies. The

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second writ petition was filed by several companies running online crypto asset exchange platforms, their shareholders, founders, and individual crypto asset traders.

The petitioners argued that the RBI lacked the statutory power to prohibit or regulate virtual currencies, as they are not legal tender but tradable commodities or digital goods. They contended that virtual currencies do not fall within the regulatory framework of the Reserve Bank of India Act, 1934, or the Banking Regulation Act, 1949, and therefore, the RBI's circular was ultra vires (beyond its legal power or authority).

The petitioners also challenged the circular on various other grounds, including violation of fundamental rights, lack of proportionality, and the absence of a reasoned decision-making process by the RBI.

The Supreme Court's judgment in these writ petitions addressed the complex legal and regulatory issues surrounding virtual currencies and the scope of the RBI's powers to regulate or prohibit activities related to them.## II. Background

A. History of RBI's stance on virtual currencies

The Reserve Bank of India (RBI) has been monitoring the developments related to virtual currencies (VCs) or cryptocurrencies for several years. As early as June 2013, RBI's Financial Stability Report took note of the technology risks posed by the proliferation of virtual currencies globally. In December 2013, RBI issued its first public notice cautioning users, holders, and traders of virtual currencies about the potential financial, operational, legal, customer protection, and security-related risks associated with dealing in such virtual currencies.

Over the next few years, RBI continued to issue periodic warnings and press releases highlighting the risks involved with virtual currencies. In February 2017 and December 2017, RBI reiterated its concerns through additional public notices. The central bank's stance was that virtual currencies were not authorized by any central bank or monetary authority and posed several risks, including their anonymous nature, lack of underlying assets, and potential use for illicit activities.

B. Efforts to regulate virtual currencies in India

In April 2017, the Indian government constituted an Inter-Disciplinary Committee to study the status of virtual currencies in India and globally, examine existing regulatory frameworks, and suggest measures for dealing with virtual currencies. This committee submitted its report in July 2017, recommending visible public warnings against the use of cryptocurrencies and advising entities involved in trading or facilitating virtual currencies to cease such activities.

In November 2017, the government formed an Inter-Ministerial Committee chaired by the Secretary of Economic Affairs to propose specific actions related to virtual currencies. This committee initially considered a ban on virtual currencies but later explored the option of regulating them through a proposed "Crypto-token Regulation Bill, 2018."

However, in February 2019, the Inter-Ministerial Committee submitted a final report recommending a complete ban on private cryptocurrencies through

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a new legislation called the "Banning of Cryptocurrency and Regulation of Official Digital Currency Bill, 2019." This draft bill proposed prohibiting the mining, generation, holding, selling, dealing in, issuing, transferring, disposing of, or using cryptocurrencies in India.

Amidst these developments, RBI issued the impugned Statement on Developmental and Regulatory Policies on April 5, 2018, and the subsequent Circular on April 6, 2018, directing regulated entities not to deal with or provide services to individuals or businesses dealing with virtual currencies. These decisions by RBI were challenged by the petitioners in the present case, leading to the Supreme Court's examination of the matter.## III. The Legal Battle

A. Petitioners' arguments

The petitioners, comprising a specialized industry body representing the interests of online and digital services, companies running online crypto assets exchange platforms, shareholders/founders of these companies, and individual crypto assets traders, put forth several arguments challenging the Reserve Bank of India's (RBI) circular dated April 6, 2018.

1. **Lack of Power**: The petitioners contended that RBI has no power to prohibit the activity of trading in virtual currencies (VCs) through Virtual Currency Exchanges (VCEs). They argued that VCs are not legal tender but tradable commodities/digital goods, not falling within the regulatory framework of the RBI Act, 1934, or the Banking Regulation Act, 1949. Furthermore, they claimed that VCs do not even fall within the credit system of the country, which would enable RBI to operate the currency and credit system to its advantage under the Preamble to the RBI Act, 1934.
2. **Violation of Fundamental Rights**: The petitioners argued that a total prohibition, especially through a subordinate legislation such as a directive from RBI, of an activity not declared by law to be unlawful, is violative of Article 19(1)(g) of the Constitution, which guarantees the right to carry on any profession, trade, or business.
3. **Disproportionate Restriction**: The petitioners contended that the impugned decision is manifestly arbitrary, based on non-reasonable classification, and imposes disproportionate restrictions. They argued that the circular fails to take note of the difference between various VC schemes, such as closed VC schemes, unidirectional flow VC schemes, and bidirectional flow VC schemes, and unreasonably differentiates between unidirectional and bidirectional flow schemes by targeting only the latter.
4. **Lack of Legislative Policy**: The petitioners argued that a decision to prohibit an article as res extra commercium (outside the realm of commerce) is a matter of legislative policy and must arise out of an Act of the legislature, not by a notification issued by an executive authority.
5. **Precautionary Steps**: The petitioners claimed that the VC exchanges run by them have already put in place certain best practices, such as avoidance of cash transactions, enhanced KYC norms, and confining their services only to persons within India. Therefore, they contended that all the issues flagged by RBI have already been addressed, and there was no necessity to

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disconnect the trade from the regular banking channels.

6. **Differential Treatment**: The petitioners argued that while some virtual currencies, such as Dash and Monero, are fully anonymous, others, such as Bitcoin, are pseudo-anonymous. They contended that banning transactions only in fully anonymous VCs could have been a better and less intrusive measure.

B. RBI's defense

RBI, represented by Shri Shyam Divan, learned Senior Counsel, put forth the following arguments in defense of its circular:

1. **Lack of Characteristics of Currency**: RBI contended that virtual currencies do not satisfy the criteria such as store of value, medium of payment, and unit of account, required for being acknowledged as currency.

2. **Lack of Dispute Resolution Mechanism**: RBI argued that virtual currency exchanges do not have any formal or structured mechanism for handling consumer disputes or grievances.

3. **Anonymity and Illegal Activities**: RBI claimed that virtual currencies are capable of being used for illegal activities due to their anonymity or pseudo-anonymity.

4. **Erosion of Monetary Stability**: RBI contended that increased use of virtual currencies would eventually erode the monetary stability of the Indian currency and the credit system.

5. **Legislative Character and Economic Policy**: RBI argued that its impugned decision is legislative in character and falls within the realm of an economic policy decision taken by an expert body, warranting a hands-off approach from the Court.

6. **Wide Powers**: RBI asserted that the impugned decision is within the range of wide powers conferred upon it under the Banking Regulation Act, 1949, the RBI Act, 1934, and the Payment and Settlement Systems Act, 2007.

7. **No Unfettered Right**: RBI contended that no one has an unfettered fundamental right to do business on the network of the entities regulated by RBI.

8. **No Violation of Fundamental Rights**: RBI argued that the impugned decisions do not violate any of the rights guaranteed by Articles 14, 19, and 21 of the Constitution of India.

9. **Proportionate Measure**: RBI claimed that the impugned decisions are not excessive, confiscatory, or disproportionate, as it gave three months' time to the affected parties to sever their relationships with the banks, apart from the repeated cautions issued to the stakeholders since 2013.

10. **Public Interest**: RBI contended that the impugned decisions were necessitated in public interest to protect the interests of consumers, the payment and settlement systems of the country, and regulated entities against exposure to the high volatility of virtual currencies.

RBI further argued that it is empowered and duty-bound to take such pre-emptive measures in public interest, and the power to regulate includes the power to prohibit.# IV. Key Issues and Arguments

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A. Defining the nature of virtual currencies

Virtual currencies (VCs) or cryptocurrencies have been a subject of debate and differing perspectives regarding their true nature. The petitioners argue that VCs are not legal tender but rather tradable commodities or digital goods, falling outside the regulatory framework of the Reserve Bank of India (RBI) Act, 1934, and the Banking Regulation Act, 1949. They contend that VCs do not form part of the credit system of the country, which would enable RBI to regulate them under the mandate to operate the currency and credit system to its advantage.

On the other hand, RBI and various international bodies have recognized that while VCs may not be recognized as legal tender, they possess certain characteristics of currency. They can function as a medium of exchange, unit of account, and store of value. The International Monetary Fund (IMF) report acknowledges that VCs perform poorly in terms of the three basic functions of currencies but notes their potential impact on monetary policies if their adoption increases significantly.

The court observes that there is a lack of consensus on the precise identity of VCs, with different jurisdictions classifying them as property, commodity, non-traditional currency, payment instrument, money, or funds, depending on the context and statutory framework. The court concludes that it is impossible to accept the petitioners' contention that VCs are merely goods or commodities and can never be regarded as real money, given their capability to perform some or most functions of real currency.

B. Scope of RBI's regulatory powers

The petitioners argue that RBI lacks the power to prohibit the activity of trading in VCs through Virtual Currency Exchanges (VCEs) since VCs are not legal tender. They contend that VCs do not fall within the credit system of the country, which would enable RBI to regulate them under the Preamble to the RBI Act, 1934.

However, the court finds that the RBI Act, 1934, the Banking Regulation Act, 1949, and the Payment and Settlement Systems Act, 2007, cumulatively confer wide powers upon RBI to operate the currency and credit system, regulate the financial system, issue directions to payment systems or system participants, and regulate payment systems in public interest.

The court holds that RBI has the requisite power to regulate or prohibit an activity involving VCs, as they have the potential to interfere with matters that RBI has the power to restrict or regulate. The court rejects the petitioners' contention that the impugned circular is ultra vires, stating that RBI's role and power can extend beyond what has acquired the status of legal tender, encompassing anything capable of playing the role of currency.

C. Reasonableness and proportionality of the circular

The petitioners challenge the reasonableness and proportionality of the impugned circular, arguing that it imposes a disproportionate restriction on their activities. They contend that the circular fails to consider alternative measures, such as regulating only anonymous VCs or adopting a risk-based approach.

The court acknowledges that while RBI has wide powers, the availability of power is different from

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the manner and extent to which it can be exercised. The court notes that RBI has not found the activities of VCEs to have adversely impacted the entities it regulates and that its consistent stand has been that it has not banned VCs in the country.

Additionally, the court observes that the Inter-Ministerial Committee initially recommended a specific legal framework, including a new law to regulate crypto-tokens, suggesting that a ban might be an extreme measure and that regulatory measures could achieve the same objectives.

Based on these considerations, the court concludes that the impugned circular dated 06.04.2018 is disproportionate and sets it aside on the ground of proportionality, while upholding RBI's power to regulate or prohibit activities involving VCs.## V. The Supreme Court's Verdict

A. Summary of the Court's reasoning

The Supreme Court allowed the writ petitions and set aside the RBI Circular dated 06-04-2018 on the ground of proportionality. The key points in the Court's reasoning are as follows:

1. **RBI has the power to regulate virtual currencies (VCs)**: The Court rejected the petitioners' contention that RBI has no power to regulate VCs. The RBI Act, 1934, the Banking Regulation Act, 1949, and the Payment and Settlement Systems Act, 2007 confer wide powers upon RBI to operate the currency and credit system, regulate the financial system, and issue directions to payment systems or system participants.
2. **Application of mind and relevant considerations**: The Court held that RBI cannot be accused of non-application of mind or failing to consider relevant factors. RBI had been deliberating on the issue of VCs since 2013 and had issued several warnings and press releases, indicating a careful and cautious approach.
3. **Malice in law and colorable exercise of power**: The Court rejected the arguments that the Circular was vitiated by malice in law or was a colorable exercise of power. RBI has the power to issue directions in public interest, and the Circular aimed to protect regulated entities and the public.
4. **Proportionality**: The Court found that the Circular failed to meet the test of proportionality. While RBI has wide powers, the availability of power is different from the manner and extent to which it can be exercised. The Court noted the following:
    1. RBI has not found that VC exchanges have adversely impacted regulated entities.
    2. RBI's consistent stand is that it has not banned VCs.
    3. The government is unable to take a call on VCs despite several committees recommending different approaches.
    4. The Circular has almost wiped out VC exchanges from the industrial map of the country, despite RBI not finding anything wrong with their functioning.

B. Implications of the verdict

1. **Validation of RBI's power**: The Court has affirmed RBI's power to regulate virtual currencies, recognizing their potential to

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interfere with the matters that RBI has the power to restrict or regulate.

2. **Proportionality as a check**: While upholding RBI's power, the Court has emphasized the need for proportionality in exercising such power. The Circular was found to be disproportionate, as it effectively crippled VC exchanges without adequate justification.

3. **Regulatory uncertainty**: The verdict leaves the regulatory framework for virtual currencies in a state of uncertainty. While the Circular has been set aside, the Court has not provided specific guidance on how RBI should regulate VCs.

4. **Potential for future regulation**: The Court's recognition of RBI's power to regulate VCs opens the door for future regulatory measures, provided they meet the test of proportionality and are based on adequate justification.

5. **Revival of VC exchanges**: The setting aside of the Circular paves the way for the revival of VC exchanges in India, as they can now access banking services without restrictions imposed by the Circular.

Overall, the verdict strikes a balance between acknowledging RBI's regulatory authority over virtual currencies and ensuring that such authority is exercised in a proportionate manner, considering the potential impact on the industry and the public interest.

VI. Conclusion

A. Significance of the case

This case holds immense significance as it addresses the legal status and regulatory framework surrounding virtual currencies (VCs) in India. The Supreme Court's decision has far-reaching implications for the future of cryptocurrencies and blockchain technology in the country. It provides much-needed clarity on the Reserve Bank of India's (RBI) powers to regulate VCs and the extent to which such regulation can be imposed.

The Court's ruling upholds the RBI's authority to regulate VCs, recognizing their potential to interfere with the central bank's mandate to operate and regulate the country's currency, credit, and financial systems. This affirmation of RBI's powers sets a precedent for future regulatory actions concerning emerging technologies that may impact the financial sector.

Furthermore, the case highlights the ongoing debate surrounding the classification of VCs as currencies, commodities, or assets. The Court's analysis of how different jurisdictions have defined and treated VCs underscores the complexity of this issue and the need for a comprehensive legal framework to address the unique challenges posed by these digital assets.

B. Outlook for virtual currencies in India

The Court's decision leaves the door open for the potential regulation of virtual currencies in India, rather than an outright ban. While the RBI's circular prohibiting banks from dealing with VC exchanges was struck down, the Court acknowledged the central bank's concerns regarding consumer protection, market integrity, and the potential for illicit activities involving VCs.

Moving forward, the Indian government and regulatory authorities may consider introducing a

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comprehensive legal framework to govern the use and trade of virtual currencies. This could involve measures such as licensing requirements for VC exchanges, Know Your Customer (KYC) norms, and anti-money laundering (AML) regulations, among others.

However, any future regulation must strike a balance between addressing legitimate concerns and fostering innovation in the rapidly evolving VC and blockchain space. A well-designed regulatory framework could provide much-needed clarity and consumer protection while allowing responsible players in the industry to operate legally.

C. Potential for further legal battles and regulatory changes

While the Supreme Court's decision provides some clarity, it is unlikely to be the final word on the legal status and regulation of virtual currencies in India. As the VC ecosystem continues to evolve, new challenges and issues may arise, necessitating further legal and regulatory interventions.

There is a possibility of further legal battles as stakeholders in the VC industry, such as exchanges and traders, may challenge any future regulations or restrictions imposed by the government or regulatory bodies. Conversely, consumer protection groups or law enforcement agencies may seek stricter regulations or even bans on certain aspects of VC transactions if concerns over illicit activities persist.

Additionally, as more countries adopt comprehensive regulatory frameworks for virtual currencies, India may need to align its policies with international standards and best practices. This could lead to further regulatory changes and potential legal challenges as the country navigates the complex landscape of VC regulation.

In conclusion, the Supreme Court's decision in this case is a significant milestone in the ongoing journey to establish a clear legal and regulatory framework for virtual currencies in India. While it provides some clarity, it also highlights the need for continued dialogue, careful policymaking, and a balanced approach that fosters innovation while addressing legitimate concerns surrounding this emerging technology.

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63. Indore Development Authority v. Manoharlal and Others Etc.

JUSTICE ARUN MISHRA, JUSTICE INDIRA BANERJEE, JUSTICE VINEET SARAN, JUSTICE M. R. SHAH AND JUSTICE S. RAVINDRA BHAT

Read the judgment here

A. Brief background on the Land Acquisition Act of 1894 and its problems

The Land Acquisition Act of 1894 was a general law relating to the acquisition of land for public purposes and for companies. It also determined the amount of compensation to be paid for such acquisitions. However, over time, several issues and inadequacies were identified with this Act:

1. **Inadequate Compensation**: The provisions of the Act were found to be inadequate in addressing issues related to the exercise of statutory powers by the State for involuntary acquisition of private land and property. The Act did not provide for fair compensation to the landowners whose land was acquired.

2. **Lack of Rehabilitation and Resettlement**: The Act did not address the issues of rehabilitation and resettlement of the affected persons and their families who were displaced due to land acquisition.

3. **Outdated Definition of Public Purpose**: The definition of "public purpose" given in the Act was very wide, leading to acquisition of land for purposes that may not have been truly in the public interest.

4. **Misuse for Private Companies**: The provisions of the Act were also used for acquiring private lands for companies, raising questions about the desirability of such State intervention when land could have been arranged through private negotiations on a "willing seller-willing buyer" basis.

5. **Repeated Litigation**: The Act resulted in several rounds of repeated litigation on various aspects, such as payment of compensation, lack of legislatively mandated timelines for completion of acquisition proceedings, etc.

As a result, there was growing public concern, especially regarding the acquisition of multi-cropped irrigated land, and a need for a central law to adequately deal with the issues of rehabilitation and resettlement of displaced persons.

B. The need for the new Act of 2013 and its objectives

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act of 2013) was enacted to address the concerns of farmers and those whose livelihoods were dependent on the land being acquired, while also facilitating land acquisition for industrialization, infrastructure, and urbanization projects in a timely and transparent manner.

The key objectives of the Act of 2013 were:

1. **Fair Compensation**: To provide just and fair compensation to the landowners whose land is acquired.

2. **Rehabilitation and Resettlement**: To make adequate provisions for the rehabilitation and

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resettlement of affected persons and their families.

3. **Transparent Process**: To introduce transparency in the land acquisition process through measures such as Social Impact Assessment (SIA) and seeking consent from affected families.

4. **Restricted Grounds for Acquisition**: To restrict the grounds on which land may be acquired under the urgency clause and redefine the term "public purpose" to limit acquisition for strategic purposes vital to the State and infrastructure projects where benefits accrue to the general public.

5. **Safeguards for Vulnerable Sections**: To provide adequate safeguards for protecting the rights of vulnerable sections of the displaced persons, such as members of Scheduled Castes, Scheduled Tribes, and forest dwellers.

6. **Streamlined Process**: To streamline the provisions of the earlier Act, causing less hardship to the landowners and other persons dependent on the acquired land.

The Act of 2013 represented a significant departure from the colonial approach of the Land Acquisition Act of 1894 and aimed to strike a balance between facilitating land acquisition for development projects and protecting the interests of affected persons and communities.## Understanding Section 24 of the Act of 2013

A. Purpose and scope of Section 24

Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Act of 2013) is a transitional provision that deals with land acquisition proceedings that were initiated under the previous Land Acquisition Act of 1894 (the Act of 1894) but were pending at the time when the Act of 2013 came into force on January 1, 2014. The purpose of Section 24 is to provide a framework for handling these pending cases and determining whether they should continue under the old Act of 1894 or be governed by the new Act of 2013.

The scope of Section 24 is broad, and it overrides all other provisions of the Act of 2013, including the repeal and saving provisions under Section 114. Section 24(1) deals with cases where no award had been made under Section 11 of the Act of 1894 before the commencement of the Act of 2013. In such cases, the provisions of the new Act of 2013 relating to the determination of compensation would apply.

Section 24(1)(b) covers cases where an award had been made under Section 11 of the Act of 1894 before the commencement of the Act of 2013. In such cases, the proceedings would continue under the provisions of the old Act of 1894 as if it had not been repealed.

However, Section 24(2) carves out an exception to Section 24(1)(b). It deals with cases where an award had been made five years or more before the commencement of the Act of 2013 (i.e., on or before January 1, 2009), but physical possession of the land had not been taken, or compensation had not been paid. In such cases, the acquisition proceedings shall be deemed to have lapsed, and the appropriate government would have to initiate fresh proceedings if it desires to acquire the land.

B. Interpretation of the terms 'paid' and 'physical possession'

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The interpretation of the terms 'paid' and 'physical possession' in Section 24(2) is crucial for determining the applicability of the lapse provision.

The term 'paid' in Section 24(2) has been interpreted to mean that the compensation has been tendered or made unconditionally available to the landowners. It does not necessarily require actual receipt of the compensation by the landowners. If the landowners refuse to accept the tendered compensation, it would still be considered 'paid' for the purposes of Section 24(2).

The term 'physical possession' in Section 24(2) refers to the actual physical possession of the land by the acquiring authority. Mere issuance of a notice or award is not sufficient to constitute 'physical possession' under this provision.

C. The significance of the word 'or' between the two conditions

The interpretation of the word 'or' between the two conditions in Section 24(2) – "physical possession of the land has not been taken or the compensation has not been paid" – is crucial in determining the applicability of the lapse provision.

The Supreme Court has held that the word 'or' in this context should be read as 'nor' or 'and', making the two conditions cumulative rather than alternative. This means that for the lapse provision to apply, both conditions must be satisfied – physical possession of the land must not have been taken, and compensation must not have been paid.

If the word 'or' is interpreted disjunctively (as an alternative), it would lead to an anomalous situation where the acquisition proceedings would lapse even if one of the conditions is satisfied (e.g., compensation has been paid but physical possession has not been taken). This could result in unjust enrichment of the landowners and was never the legislative intent behind Section 24(2).

Therefore, the Supreme Court's interpretation of the word 'or' as conjunctive ('nor' or 'and') is consistent with the purpose of Section 24(2), which is to punish the acquiring authority for its lethargy in not taking physical possession nor paying compensation after making an award five years or more before the commencement of the Act of 2013 in pending proceedings.

III. Judicial Interpretation of Section 24

A. The decision in Pune Municipal Corporation v. Harakchand Misrimal Solanki

In the case of Pune Municipal Corporation v. Harakchand Misrimal Solanki, a three-judge bench of the Supreme Court interpreted Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Act of 2013). The Court held that for the purposes of Section 24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court where a reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the Land Acquisition Act, 1894 (the LA Act).

In other words, the compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or the Land Acquisition Officer) has discharged their obligation and deposited the amount of compensation in court, making that amount available to the interested

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person to be dealt with as provided in Sections 32 and 33 of the LA Act.

The Court further held that the deposit of the amount of compensation in the Government treasury cannot amount to the said sum being "paid" to the landowners or persons interested.

B. Subsequent cases following the Pune Municipal Corporation judgment

Several subsequent decisions of the Supreme Court followed and applied the law declared in the Pune Municipal Corporation case. These cases include Bharat Kumar v. State of Haryana, Bimla Devi v. State of Haryana, Union of India v. Shiv Raj, Sree Balaji Nagar Residential Association v. State of Tamil Nadu, State of Haryana v. Vinod Oil and General Mills, Sita Ram v. State of Haryana, Ram Kishan v. State of Haryana, Velaxan Kumar v. Union of India, Karnail Kaur v. State of Punjab, Rajive Chowdhrie HUF v. State (NCT) of Delhi, Competent Automobiles Co. Ltd. v. Union of India, Govt of NCT of Delhi v. Jagjit Singh, Karan Singh v. State of Haryana, Shashi Gupta & Ors. v. State of Haryana, and Delhi Development Authority v. Sukhbir Singh.

C. The reference to the larger bench and the framing of questions

However, in the case of Indore Development Authority v. Shailendra (dead) through LRs. & Ors., a three-judge bench of the Supreme Court was of the view that the judgment in Pune Municipal Corporation did not consider several aspects relating to the interpretation of Section 24 of the Act of 2013. Since Pune Municipal Corporation was a judgment by a bench of coordinate strength, two learned judges in Indore Development Authority opined prima facie that the decision appeared to be per incuriam.

Subsequently, in several other cases, such as Indore Development Authority v. Shyam Verma & Ors., State of Haryana v. Maharana Pratap Charitable Trust (Regd) & Anr., and others, the matter was referred to the Hon'ble Chief Justice of India to constitute an appropriate bench for consideration of the larger issue.

Ultimately, these batch appeals were referred to a five-judge bench, which, after hearing counsel, framed the following questions for consideration:

1. What is the meaning of the expressions "paid" and "tender" in Section 24 of the Act of 2013 and Section 31 of the LA Act? Whether non-deposit of compensation in court under Section 31(2) of the LA Act results in lapse of acquisition under Section 24(2) of the Act of 2013?

2. Whether the word "or" should be read as conjunctive or disjunctive in Section 24(2) of the Act of 2013?

3. What is the true effect of the proviso to Section 24(2)? Does it form part of sub-Section (2) or the main Section 24 of the Act of 2013?

4. What is the mode of taking possession under the LA Act, and what is the true meaning of the expression "the physical possession of the land has not been taken" occurring in Section 24(2) of the Act of 2013?

5. Whether the period covered by an interim order of a Court concerning land acquisition proceedings ought to be excluded for the

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purpose of applicability of Section 24(2) of the Act of 2013?

6. Whether Section 24 of the Act of 2013 revives barred and stale claims? In addition, the question of per incuriam and other incidental questions were also to be gone into.# IV. Arguments by the Parties

A. Contentions by the acquiring authorities and the State

The acquiring authorities and the State made the following key arguments:

1. **Interpretation of "or" in Section 24(2)**: They contended that the word "or" used between the two conditions in Section 24(2) – "compensation has not been paid" and "possession has not been taken" – should be read as "and" to limit the lapsing of acquisition only to cases where both conditions are not met. Reading "or" disjunctively would lead to disastrous consequences, divesting the State and innocent third parties of their titles and properties. ([Para 43-48])

2. **Vesting of land under Section 16**: They argued that under Section 16 of the Land Acquisition Act, 1894, once an award is made and possession is taken, the land vests absolutely with the Government, free from all encumbrances. Divesting the Government of such vested land could not have been the intention of Parliament. ([Para 47])

3. **Consequences of non-payment of compensation**: They submitted that non-payment of compensation does not prevent the vesting of land in the State under Section 16. The obligation to pay compensation is separate, and provisions exist for payment with interest if not paid initially. ([Para 133])

4. **Proviso to Section 24(2)**: The proviso to Section 24(2) was argued to be applicable only when the twin conditions of non-payment of compensation and non-taking of possession are met. It provides for enhanced compensation under the 2013 Act but does not lead to lapsing of acquisition. ([Para 45])

5. **Delay and laches**: They contended that allowing landowners to raise claims of lapsing under Section 24(2) after decades of delay and after the creation of third-party rights would be contrary to principles of equity and public policy. ([Para 353-355])

B. Contentions by the landowners

The landowners made the following key arguments:

1. **Interpretation of "or" in Section 24(2)**: They argued that the word "or" in Section 24(2) should be given its plain, disjunctive meaning. If either of the two conditions – non-payment of compensation or non-taking of possession – is met, the acquisition should lapse. Reading "or" as "and" would go against the plain language of the provision. ([Para 53, 73-74])

2. **Beneficial legislation**: They contended that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is a beneficial and welfare legislation, intended to confer significant benefits on landowners. It should be interpreted in their favor. ([Para 53-55])

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3. **Proviso to Section 24(2)**: The proviso to Section 24(2) was argued to be a separate provision, not limited to the main part of Section 24(2). It provides for higher compensation to all landowners in cases where compensation was not deposited for the majority of holdings, regardless of whether the acquisition lapsed or not. ([Para 75-76])

4. **Meaning of "paid"**: They argued that the expression "compensation has not been paid" in Section 24(2) should be interpreted strictly. Mere tendering of compensation or depositing it in the treasury is not sufficient; it must be actually paid to the landowners or deposited in court. ([Para 75])

5. **Stare decisis**: They contended that the Court should follow the principle of stare decisis and not depart from the consistent line of decisions beginning with Pune Municipal Corporation, which gave a disjunctive interpretation to "or" in Section 24(2). ([Para 74])

The landowners essentially argued for a broad and beneficial interpretation of Section 24(2) in their favor, while the acquiring authorities sought to limit its scope to avoid disrupting already concluded acquisition proceedings.## V. The Court's Observations and Findings

A. Interpretation of 'paid' and 'physical possession'

The Court observed that the expressions "paid" and "deposited" used in Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Act of 2013) carry different meanings. The word "paid" cannot include "deposit", as Parliament has consciously used different expressions in the main sub-section and its proviso. The Court cannot add or subtract any word in the statute and has to give plain meaning to the words used. When compensation has not been "paid" under Section 24(2), it cannot mean compensation has not been "deposited" as used in the proviso.

The Court held that when two different expressions are used in the same provision of a statute, there is a presumption that they are not used in the same sense. The word "paid" means actual payment made to the landowner, while "deposit" refers to the amount deposited in the court. Deposit in court may discharge the liability of payment of interest but does not amount to payment made to the landowner.

Regarding the expression "physical possession", the Court observed that it comprises the right to possess and exclude others, with the essential element being the animus possidendi (intention to possess). Possession depends on the character of the thing possessed. If the land is not capable of any use, mere non-user does not lead to the inference that the owner is not in possession. The established principle is that possession follows title, and it comprises control over the property with the intention or will to exercise that power.

B. Exclusion or non-exclusion of the period of interim court orders

The Court held that any court's interim order cannot be considered inaction by the authorities or agencies. Therefore, the time period covered by an interim order should be excluded when counting the 5-year period envisaged in Section 24(2) of the Act of 2013.

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The Court observed that in cases where landowners have obtained interim orders on taking possession or orders of status quo, it is practically impossible for the authorities or State officials to take possession or make payment of compensation. Such interim orders also impeded the making of an award. The Court stated that those who had obtained such interim orders cannot benefit from their own action in filing litigation, which may or may not be meritorious.

C. Retrospective application of Section 24(2)

The Court held that Section 24(2) of the Act of 2013 does not give rise to a new cause of action to question the legality of concluded land acquisition proceedings. It does not revive stale and time-barred claims or allow landowners to question the legality of the mode of taking possession or the mode of deposit of compensation in the treasury to invalidate the acquisition.

The Court observed that Section 24 contemplates pending proceedings and not concluded ones where possession has been taken and compensation has been paid or deposited. It is only in cases where possession has not been taken, nor compensation paid, that there is a lapse. In case possession has been taken, and compensation has not been deposited with respect to the majority of landholdings, the beneficial provision of the statute provides that all beneficiaries shall be paid compensation under the Act of 2013.

D. Lapse of acquisition proceedings and the doctrine of laches

The Court held that the legality of concluded cases cannot be questioned under the guise of Section 24(2) of the Act of 2013, as it does not envisage or confer any such right to question the proceedings where acquisitions have been concluded long back or rights of the parties have been settled after several rounds of litigation.

The Court stated that the challenge to the acquisition proceedings cannot be made within the parameters of Section 24(2) once the panchnama (record) of taking possession has been drawn. Thereafter, re-entry or retaining possession is that of a trespasser. The legality of the proceedings cannot be challenged belatedly, and the right to challenge cannot be revived by virtue of the provisions of Section 24(2).

The Court emphasized that there has to be legal certainty where infrastructure has been created or developed, and investments have been made, especially when land has been acquired long back. The doctrine of laches would preclude an indolent party who chooses not to approach the court or allows an adverse decision to become final from re-agitating the issue of acquisition of their holding, especially in cases where the title has vested with the State and subsequent interests have been created. Doing so would be contrary to public policy.# VI. Conclusion and Implications

A. Summary of the Court's decision

The Supreme Court, in its landmark judgment, has provided a comprehensive interpretation of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act, 2013). The key aspects of the Court's decision are as follows:

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1. **Interpretation of "or" in Section 24(2)**: The Court held that the word "or" used between the phrases "possession has not been taken" and "compensation has not been paid" in Section 24(2) should be read as "nor" or "and." This means that for the land acquisition proceedings to lapse under Section 24(2), both conditions must be satisfied – physical possession of the land has not been taken, and compensation has not been paid.

2. **Proviso to Section 24(2)**: The Court clarified that the proviso to Section 24(2) is part of the same section and not a proviso to Section 24(1)(b). The proviso stipulates that if compensation has not been deposited for the majority of land holdings, all beneficiaries (landowners) as on the date of notification under Section 4 of the Land Acquisition Act, 1894, shall be entitled to compensation under the RFCTLARR Act, 2013.

3. **Meaning of "paid" and "deposited"**: The Court distinguished between the terms "paid" and "deposited" used in Section 24(2) and its proviso, respectively. "Paid" refers to the actual payment of compensation to the landowner, while "deposited" means depositing the compensation amount in court.

4. **Consequences of non-payment or non-deposit**: If compensation has not been paid to the landowner, even after being tendered under Section 31(1) of the Land Acquisition Act, 1894, the acquisition proceedings do not lapse under Section 24(2) of the RFCTLARR Act, 2013. However, if compensation has not been deposited in court with respect to the majority of land holdings, all beneficiaries are entitled to compensation under the RFCTLARR Act, 2013, as per the proviso to Section 24(2).

5. **Mode of taking possession**: The Court recognized that for acquiring large areas of land, the State can take possession by drawing a panchnama (memorandum of possession), which is a valid mode of taking possession.

6. **Exclusion of interim order period**: The Court held that any period covered by an interim order of a court concerning land acquisition proceedings should be excluded for the purpose of calculating the five-year period under Section 24(2).

7. **Revival of stale and barred claims**: The Court clarified that Section 24 of the RFCTLARR Act, 2013, does not revive stale and barred claims or allow landowners to challenge the legality of concluded acquisition proceedings, especially where possession has been taken and development has occurred.

B. Implications for ongoing and future land acquisition cases

The Supreme Court's decision has far-reaching implications for ongoing and future land acquisition cases:

1. **Ongoing cases**: In cases where land acquisition proceedings were initiated under the Land Acquisition Act, 1894, and are still pending, the authorities will have to ensure that both conditions – taking physical possession and paying compensation – are met within five years from the date of the award. If either condition is not satisfied, the acquisition proceedings will lapse under Section 24(2) of the RFCTLARR Act, 2013.

2. **Future cases**: For land acquisition proceedings initiated under the RFCTLARR Act, 2013, the authorities must strictly adhere

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to the timelines and procedures prescribed in the Act, including the preparation of Social Impact Assessment (SIA) reports, obtaining consent from affected families, and providing rehabilitation and resettlement benefits.

3. **Compensation determination**: In cases where compensation has not been deposited for the majority of land holdings, all beneficiaries (landowners) as on the date of notification under Section 4 of the Land Acquisition Act, 1894, will be entitled to compensation under the RFCTLARR Act, 2013, which generally provides for higher compensation.

4. **Challenges to concluded cases**: The Court's decision has made it clear that landowners cannot challenge the legality of concluded acquisition proceedings, especially where possession has been taken and development has occurred, under the guise of Section 24(2) of the RFCTLARR Act, 2013.

C. Potential impact on infrastructure projects and development

The Supreme Court's judgment is likely to have a significant impact on infrastructure projects and development initiatives involving land acquisition:

1. **Timely completion of acquisition proceedings**: The authorities will need to ensure timely completion of land acquisition proceedings, including taking physical possession and paying compensation within the prescribed timelines, to avoid the lapse of proceedings under Section 24(2) of the RFCTLARR Act, 2013.

2. **Higher compensation burden**: In cases where compensation has not been deposited for the majority of land holdings, the authorities may face a higher compensation burden as all beneficiaries (landowners) will be entitled to compensation under the RFCTLARR Act, 2013, which generally provides for higher compensation rates.

3. **Potential delays and cost escalations**: Strict adherence to the procedures and timelines prescribed in the RFCTLARR Act, 2013, such as conducting SIA studies and obtaining consent from affected families, may lead to delays and cost escalations in infrastructure projects and development initiatives.

4. **Legal certainty and protection of investments**: The Court's decision provides legal certainty and protects investments made in infrastructure projects and development initiatives where land acquisition proceedings have been concluded, and possession has been taken, thereby preventing challenges to such acquisitions under Section 24(2) of the RFCTLARR Act, 2013.

Overall, the Supreme Court's judgment aims to strike a balance between protecting the rights of landowners and ensuring the timely completion of infrastructure projects and development initiatives while providing legal certainty and safeguarding investments made in concluded acquisition cases.# VII. Way Forward

A. Suggestions for legislative amendments, if any

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act) is a comprehensive legislation that aims to address the concerns of landowners and those whose

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livelihoods are affected by land acquisition. However, based on the interpretation of Section 24 by the Supreme Court and the practical challenges faced during implementation, certain amendments could be considered to further strengthen the Act and address any ambiguities or gaps.

1. **Clarification on the interpretation of Section 24(2)**: The Supreme Court has interpreted the word "or" in Section 24(2) as conjunctive, meaning that the lapse of acquisition proceedings would occur only if both conditions – non-payment of compensation and non-taking of physical possession – are met. To avoid any future ambiguity, the legislature could consider amending Section 24(2) to explicitly state the intended interpretation, whether disjunctive or conjunctive.

2. **Provision for refund of compensation**: In cases where compensation has been paid but physical possession has not been taken, the Supreme Court's interpretation of Section 24(2) could lead to a situation where the landowner retains the compensation without transferring the land. To address this potential issue, the Act could be amended to include a provision for refund of compensation in such cases, along with appropriate guidelines and procedures.

3. **Exclusion of litigation period**: The Supreme Court has held that the period during which acquisition proceedings were stayed due to court orders should not be excluded from the five-year period mentioned in Section 24(2). To provide relief to landowners and authorities in cases where the delay was due to litigation, the Act could be amended to explicitly exclude such periods from the calculation of the five-year timeline.

4. **Clarification on the applicability of Section 24(1)(a)**: Section 24(1)(a) deals with cases where no award has been made under the Land Acquisition Act, 1894. The Supreme Court has interpreted this provision to apply retrospectively, even to cases where the acquisition process was initiated several years before the commencement of the RFCTLARR Act. To provide clarity and avoid potential disputes, the legislature could consider specifying a reasonable time limit for the applicability of Section 24(1)(a).

B. Recommendations for efficient implementation of the Act

In addition to potential legislative amendments, the following recommendations could be considered to ensure efficient implementation of the RFCTLARR Act:

1. **Streamlining the acquisition process**: The acquisition process under the Act involves multiple stages, including Social Impact Assessment, preparation of Rehabilitation and Resettlement Scheme, and determination of compensation. Efforts should be made to streamline these processes, establish clear timelines, and ensure coordination among various stakeholders to avoid delays.

2. **Capacity building and training**: Comprehensive training programs should be conducted for officials involved in the land acquisition process, including revenue authorities, social impact assessment teams, and rehabilitation and resettlement authorities. This will ensure proper understanding and uniform implementation of the Act across different states and regions.

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3. **Digitization and transparency**: Leveraging technology can significantly improve the efficiency and transparency of the land acquisition process. Digitization of records, online tracking of acquisition proceedings, and public disclosure of relevant information can enhance accountability and build trust among stakeholders.

4. **Grievance redressal mechanism**: A robust and accessible grievance redressal mechanism should be established to address concerns and complaints of affected parties promptly. This could involve setting up dedicated grievance cells, online portals, and periodic public hearings to ensure effective resolution of issues.

5. **Monitoring and evaluation**: Regular monitoring and evaluation of the implementation of the Act should be undertaken to identify challenges, bottlenecks, and areas for improvement. This could involve periodic audits, stakeholder consultations, and data-driven analysis to inform policy decisions and course corrections.

6. **Awareness and outreach**: Efforts should be made to raise awareness about the provisions of the Act, particularly among affected communities and landowners. Outreach programs, information campaigns, and dedicated helplines can empower stakeholders and facilitate their participation in the acquisition process.

By considering these suggestions for legislative amendments and recommendations for efficient implementation, the objectives of the RFCTLARR Act – fair compensation, rehabilitation, and resettlement – can be better achieved, ensuring a balanced approach to land acquisition while safeguarding the interests of all stakeholders.

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64. Madras Bar Association v. Union of India & Anr.

JUSTICE L. NAGESWARA RAO, JUSTICE HEMANT GUPTA AND JUSTICE S. RAVINDRA BHAT

Read the judgment here

Introduction

This judgment by the Supreme Court of India addresses the issue of ensuring the independence and efficient functioning of various tribunals in the country. The court has been called upon to decide the constitutionality of provisions concerning the selection, appointment, tenure, and conditions of service of these tribunals. The judgment aims to uphold the rule of law and equal protection for every citizen. (Paragraph 1)

Background

Tribunalization of Justice

India, like many other countries, introduced the concept of "Tribunalization of Justice" to expedite the resolution of disputes. This was established in the Constitution of India through the Constitution (42nd Amendment) Act, 1976. (Paragraph 3)

Previous Judgments and Directives

The court has previously addressed the issue of tribunals' independence and functioning in several judgments, including:

- **S.P. Sampath Kumar v. Union of India**: The court directed the Central Government to make modifications to the Administrative Tribunals Act, 1985, to ensure the appointment of proper and competent people to the tribunals. (Paragraph 3)
- **L. Chandra Kumar v. Union of India**: The court held that tribunals cannot act as substitutes for High Courts and the Supreme Court, and their functioning is only supplementary. It recommended the creation of a single umbrella organization to oversee the working of the tribunals. (Paragraph 4)
- **Madras Bar Association v. Union of India (2014)**: The court suggested that the Search-cum-Selection Committee for appointments to tribunals should consist of the Chief Justice of India or his nominee as Chairperson, another Supreme Court Judge, and two Secretaries of the Government of India. (Paragraph 24)
- **Union of India v. Madras Bar Association (2010)**: The court extended the tenure of tribunal members to seven or five years, as the short three-year term was ineffective. (Paragraph 34)
- **Rojer Mathew v. South Indian Bank Limited**: The court approved the concept of a National Tribunals Commission and called for the establishment of an autonomous oversight body for the recruitment and functioning of tribunals. (Paragraph 17)

Finance Act, 2017, and the 2017 Rules

The Finance Act, 2017, made amendments for merging tribunals and other authorities and set conditions for the service of their officials. Section 184 of the Act empowered the Central Government to make rules regarding qualifications, appointments, and other terms of service for members of various tribunals. (Paragraph 6)

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The 2017 Rules, formulated under Section 184, were struck down by the court in the case of Rojer Mathew v. South Indian Bank Limited as being contrary to the Constitution. The Central Government was directed to reformulate the Rules in conformity with the court's earlier judgments. (Paragraph 7)

The 2020 Rules

The Central Government issued the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020 (the 2020 Rules) on 12.02.2020, which are being challenged in the present case. (Paragraph 8)

Issues Raised

The main issues raised in the Writ Petition are:

1. The 2020 Rules do not conform to the principles of judicial dominance in the appointment process. (Paragraph 11)
2. The Rules allow for the appointment of persons without judicial experience. (Paragraph 11)
3. The term of office for members is not in accordance with previous judgments. (Paragraph 11)
4. The eligibility criteria for advocates to be appointed as judicial members are not clear. (Paragraph 11)
5. The Rules allow for administrative control of the executive over the tribunals, compromising their independence. (Paragraph 11)

Arguments by the Amicus Curiae and Attorney General

Amicus Curiae (Mr. Datar)

- Emphasized the importance of independent and unbiased tribunals, citing the words of Justice Vivian Bose in Bidi Supply Co. v. Union of India. (Paragraph 12)
- Referred to the Reports of the Franks and Leggatt Committees on the role of Tribunals in the UK. (Paragraph 13)
- Advocated for the establishment of a National Tribunals Commission to improve the functioning of the Tribunals and handle the selection and monitoring of members. (Paragraph 13)
- Argued for a minimum five-year term for Chairperson and members of the Tribunal, citing Section 184 of the Finance Act and Rule 9(2) of the 2020 Rules. (Paragraph 32)
- Complained about the exclusion of Advocates from consideration for appointment as judicial members in most Tribunals by the 2020 Rules. (Paragraph 39)
- Suggested that advocates with 15 years of experience should be eligible for consideration as judicial members of the Tribunals. (Paragraph 40)
- Argued that the Search-cum-Selection Committee's findings on disciplinary actions should be final and implemented by the Central Government. (Paragraph 45)

Attorney General

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- Believed that a National Tribunals Commission would solve current problems and make Tribunals run smoothly. (Paragraph 14)
- Suggested amending the 2020 Rules to give the Chairperson of the Search-cum-Selection Committee a casting vote. (Paragraph 22)
- Argued that a four-year term instead of five wouldn't make much difference due to the provision for re-appointment. (Paragraph 33)
- Stated that retired Judges are not entitled to the same perquisites as sitting Judges and that it's not possible to provide housing for all Tribunals members due to housing shortage in Delhi. (Paragraph 37)
- Suggested that advocates with 25 years of experience should be eligible for appointment as judicial members of the Tribunals. (Paragraph 40)
- Argued that the preliminary scrutiny of complaints against members is to weed out frivolous complaints, and the Search-cum-Selection Committee's recommendations will be implemented by the Central Government. (Paragraph 46)
- Submitted that the 2020 Rules would be effective from the appointed day of 26.05.2017, and would apply to all persons appointed as Members, Presidents, and Chairpersons to the Tribunals after that date, in accordance with Section 183 of the Finance Act. (Paragraph 49)

Directions by the Court

National Tribunals Commission

The Union of India is directed to set up a National Tribunals Commission as soon as possible, as suggested by the Court, to enhance the image of the Tribunals and ensure judicial independence. In the meantime, a separate "tribunals wing" will be established in the Ministry of Finance to handle tribunal requirements. (Paragraph 20)

Search-cum-Selection Committees

The composition of the Search-cum-Selection Committees for appointment to Tribunals has been modified by the Court:

- The Committee will consist of the Chief Justice of India or his nominee as Chairperson, along with the Chairperson of the Tribunal and two Secretaries to the Government of India. (Paragraph 30)
- If the Tribunal is not headed by a judicial member, the Committee will consist of the Chief Justice of India or his nominee, a retired Judge of the Supreme Court or a retired Chief Justice of a High Court, and two Secretaries to the Government of India. (Paragraph 30)
- The Secretary of the parent or sponsoring department will serve as the Member-Secretary or Convener, without a vote. (Paragraph 29)

Appointment Process

- Rule 4(2) of the 2020 Rules shall be amended to recommend only one person for each post, with a waiting list for a suitable replacement if needed. (Paragraph 31)
- The Government of India is directed to make appointments to the Tribunals within three months after the Search-cum-Selection

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Committee completes the selection and makes its recommendations. (Paragraph 47)

Tenure and Reappointment

- The tenure of the Chairman, Vice Chairman, and members of the Tribunals has been extended to five years. (Paragraph 35)
- The 2020 Rules do not mention reappointment, but the Attorney General stated that members can seek reappointment. Preference will be given to those appointed at a young age. (Paragraph 36)

Housing and Allowances

The lack of housing in Delhi is causing retired judges to decline appointments to Tribunals. The government is directed to provide suitable housing or increase the house rent allowance for members of Tribunals, effective from 01.01.2021. (Paragraph 38)

Eligibility of Advocates and Indian Legal Service Members

- The 2020 Rules will be amended to make Advocates eligible for appointment as judicial members in the tribunals where they are currently excluded. (Paragraph 39)
- Advocates with 10 years of experience may be considered for appointment as judicial members of Tribunals. The Search-cum-Selection Committee may consider their experience and specialization in the relevant branch of law. (Paragraph 41)
- Members of the Indian Legal Service can be considered as judicial members of Tribunals if they meet the necessary criteria. Their experience and specialization will be taken into account during the selection process. (Paragraph 43)

Disciplinary Actions

The Search-cum-Selection Committee's recommendations on disciplinary actions against members shall be final and implemented by the Central Government. (Paragraph 45)

Retrospective Effect of the 2020 Rules

The submission that the 2020 Rules should come into force from 26.05.2017, the appointed day under the 2017 Rules, is not accepted. The 2020 Rules cannot have retrospective effect, and the intention of the Government of India to make them prospective is clear from the notification dated 12.02.2020. (Paragraph 51)

Conclusion

The court has issued several directives regarding the functioning and appointments of Tribunals, including the establishment of a National Tribunals Commission, changes to the Search-cum-Selection Committees, and amendments to the 2020 Rules. The directives also address housing, appointments, and disciplinary actions within the Tribunals. The court emphasizes the need for Tribunals to function independently for credibility and public confidence, and urges the Government to adhere to the directions to avoid future litigation. (Paragraph 55)

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65. Nandini Sundar v. State of Chhattisgarh

JUSTICE B. SUDERSHAN REDDY AND JUSTICE SURINDER SINGH NIJJAR

Read the judgment here

I. Introduction and Background

In 2007, Dr. Nandini Sundar, a professor of Sociology at Delhi School of Economics, Dr. Ramachandra Guha, a renowned historian, and E.A.S. Sarma, a former Secretary to the Government of India, filed Writ Petition (Civil) No. 250 challenging the constitutional validity of Chhattisgarh's counter-insurgency strategy against Maoist/Naxalite activities. The petition specifically questioned the appointment of tribal youth as Special Police Officers (SPOs) and alleged widespread human rights violations perpetrated by security forces and vigilante groups like Salwa Judum in Chhattisgarh. The case was decided on July 5, 2011, by a bench comprising Justice B. Sudershan Reddy and Justice Surinder Singh Nijjar.

II. Core Issues Before the Court

1. Constitutional validity of recruiting and deploying Special Police Officers (SPOs) in counter-insurgency operations against Maoists/Naxalites in Chhattisgarh
2. Alleged human rights violations by security forces and Salwa Judum in Maoist-affected areas
3. Allegations regarding the State of Chhattisgarh promoting Salwa Judum as an armed civilian vigilante group
4. Investigation of specific violence in villages of Morpalli, Tadmetla, and Timmapuram, and attacks on Swami Agnivesh during his fact-finding mission

III. Court's Detailed Analysis

Socio-Economic Context of the Conflict

The Supreme Court's judgment began with a powerful examination of the socio-economic context that fostered the Maoist insurgency in Chhattisgarh. The Court recognized that the conflict had deep roots in developmental inequalities, noting that areas rich in natural resources (Chhattisgarh possessed 23% of India's iron ore deposits) were inhabited by impoverished tribal communities. The judgment referenced a Planning Commission Expert Group report that characterized the prevailing development paradigm as having "aggravated the discontent among marginalized sections of society." The Court cited economist Amit Bhaduri's critique of "developmental terrorism," describing how violence was perpetrated against the poor in the name of economic growth. This context, the Court stressed, was crucial to understanding the constitutional dimensions of employing SPOs in counter-insurgency operations.

The SPO Program and Its Implementation

Between 2004 and 2010, Chhattisgarh witnessed 2,298 Naxalite attacks that claimed the lives of 538 police and paramilitary personnel, 169 SPOs, 32 government employees, and 1,064 civilians. To counter this insurgency, the State had appointed approximately 6,500 SPOs (increased from 3,000 the previous year), primarily recruiting tribal youth with minimal education. These SPOs received only two months of training, which included merely 24 hours on law and 12 hours on human rights, were paid an "honorarium" of Rs. 3,000 per month (80% reimbursed by the Union of India), and were appointed for temporary periods. Significantly, 173 SPOs had been killed in counter-insurgency operations, and about 1,200 (20-40% of the total) had been dismissed for indiscipline or dereliction of duties.

Article 14 Violations: Unequal Treatment and

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Arbitrariness
The Court conducted a thorough constitutional analysis of the SPO appointment scheme, finding multiple violations of Article 14 (Right to Equality). First, the Court identified unequal treatment, as SPOs with minimal education performed duties equivalent to regular police but received vastly inferior compensation, inadequate training for equivalent responsibilities, and faced similar or greater dangers without equivalent protections. Second, the Court determined that the policy was arbitrary and irrational, as Section 9(1) and 9(2) of the Chhattisgarh Police Act, 2007 granted uncanalised discretionary power with no clear qualifications specified for appointments. The Court deemed the recruitment of minimally educated youth for sophisticated counter-insurgency tasks fundamentally irrational.

Article 21 Violations: Right to Life and Human Dignity
More gravely, the Court found severe violations of Article 21 (Right to Life). The SPO program endangered the lives of the tribal youth themselves, as their inadequate education made them incapable of understanding the risks they faced, while their two-month training was grossly insufficient for counter-insurgency operations. The disproportionate death rate among SPOs compared to regular forces (173 deaths out of 3,000-6,500 SPOs) and the temporary nature of appointments left them vulnerable to Maoist retribution after their service ended. Additionally, the program endangered broader society by arming inadequately trained youth with no clear plan for weapon retrieval after service termination, creating the risk of "a third front" of armed men. The Court also identified dignity violations, noting the exploitation of tribal youth's poverty and trauma from previous victimization, and the morally problematic use of their "dehumanized sensibilities" and desire for revenge in counter-insurgency activities.

Rejection of State Justifications
The Court systematically rejected the State's justifications for the SPO program. It dismissed the "force multipliers" argument, stating that efficiency alone cannot justify constitutional violations, and found that the claimed effectiveness was "dubious, if not debunked" given the continuing violence. The resource constraints argument was characterized as an "abdication of constitutional responsibilities," with the Court emphasizing that essential state functions like security must be delivered by professional forces. The voluntary participation argument was rejected as the Court found true informed consent impossible given the educational levels of recruits and the context of poverty and displacement.

Statutory Analysis of Police Legislation
In its statutory analysis, the Court found that Section 9(1) and 9(2) of the Chhattisgarh Police Act lacked necessary specificity regarding qualifications for SPO appointment, circumstances under which appointments could be made, limitations on duties, and the permissible number of SPOs. These provisions were contrasted unfavorably with Section 17 of the Indian Police Act, 1861, which specified circumstances for temporary appointments. To preserve constitutionality, the Court determined these provisions needed to be read down substantially.

IV. Court Orders on the SPO Program
The Supreme Court issued several far-reaching orders. It directed the State of Chhattisgarh to immediately cease using SPOs in any activities related to Maoist/Naxalite operations and ordered the Union of India to stop funding SPO recruitment for counter-insurgency purposes. The Court mandated the recall of all firearms issued to current or former SPOs and directed Chhattisgarh to

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provide security to former SPOs now vulnerable to Maoist attacks. The Court read down the relevant provisions of the Chhattisgarh Police Act to limit SPO duties strictly to non-combatant functions specified in Sections 23(1)(h) and 23(1)(i), such as facilitating movement of people/vehicles and basic public order maintenance.

V. Directives on Violence Investigation

Addressing specific allegations of violence, the Court directed the Central Bureau of Investigation to investigate incidents in the villages of Morpalli, Tadmetla, and Timmapuram that occurred in March 2011, as well as attacks on social activist Swami Agnivesh during his fact-finding mission. The Court rejected Chhattisgarh's offer to constitute an inquiry commission headed by a High Court judge, instead requiring a preliminary CBI status report within six weeks. The Court also ordered Chhattisgarh to take appropriate measures against vigilante groups like Salwa Judum and Koya Commandos, investigate previously inadequately examined allegations, and ensure proper prosecution of perpetrators.

VI. Constitutional Principles and Precedent

Throughout its judgment, the Court articulated several significant legal principles. It emphasized that "our constitution is most certainly not a 'pact for national suicide'" and that "the response of law, to unlawful activities... has to be rational within the borders of constitutional permissibility." While acknowledging the serious threat posed by extremist activities, the Court insisted that "our Constitution... warns us that ends do not justify all means." The judgment reinforced the principle that Article 355 imposes a duty on the Union to protect states against external aggression and internal disturbance, establishing that the state has a positive obligation to protect the fundamental rights of all citizens and that essential state functions cannot be delegated through temporary informal arrangements.

VII. Conclusion

In this landmark judgment, the Supreme Court held that the practice of using minimally educated tribal youth as SPOs in counter-insurgency operations was fundamentally unconstitutional, violating both Articles 14 and 21. The Court ordered the immediate cessation of this practice while acknowledging the state's obligation to combat extremism within constitutional boundaries. The judgment emphasized the need for addressing root socio-economic causes of insurgency while developing professional law enforcement capabilities. This case stands as a powerful affirmation that even in the face of serious security challenges, constitutional values cannot be sacrificed in the name of expediency or efficiency.

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66. Arnesh Kumar v. State of Bihar

JUSTICE CHANDRAMAULI KR. PRASAD, JUSTICE PINAKI CHANDRA GHOSE

Read the judgment here

I. Case Background and Facts

The Supreme Court of India delivered a landmark judgment in Criminal Appeal No. 1277 of 2014, addressing the appeal filed by Arnesh Kumar who sought anticipatory bail in a case registered under Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961. The marriage between Kumar and respondent Sweta Kiran was solemnized on July 1, 2007. The wife alleged that Kumar's parents demanded dowry of Rs. 8 lakhs, a Maruti car, an air conditioner, and a television set. She claimed that when she brought these demands to Kumar's notice, he supported his parents and threatened to marry another woman, eventually driving her out of the matrimonial home for not fulfilling the dowry demands. Kumar denied these allegations and applied for anticipatory bail, which was rejected by both the Sessions Court and the High Court, prompting his appeal to the Supreme Court.

II. Key Issues Addressed

The Supreme Court used this case to address the broader issue of misuse of Section 498-A of the IPC, which was originally introduced to combat harassment of women by their husbands and in-laws. The Court expressed concern that this provision, being cognizable and non-bailable, had become a "dubious place of pride" among provisions that were being weaponized in matrimonial disputes rather than serving as protection.

III. Statistical Evidence of Misuse

The judgment cited "Crime in India 2012 Statistics" published by the National Crime Records Bureau, highlighting that:

- 197,762 persons were arrested for offenses under Section 498-A in 2012, a 9.4% increase from 2011
- Nearly 25% of those arrested were women (47,951), mainly mothers and sisters of husbands
- These cases represented 6% of all arrests under the IPC
- While the charge-sheeting rate was high at 93.6%, the conviction rate was only 15%, the lowest across all heads
- Of 372,706 pending cases, approximately 317,000 were likely to result in acquittal

IV. Court's Observations on Arrest Powers

The Court made significant observations about the power of arrest:

- Arrest brings humiliation, curtails freedom, and leaves permanent scars
- Police have not internalized the lessons embodied in the Criminal Procedure Code (CrPC)
- The power to arrest has become a source of police corruption and arrogance
- The attitude of "arrest first, then proceed" is prevalent and problematic
- Law enforcement must justify reasons for arrest beyond the mere power to do so

V. Legal Framework for Arrest

The judgment thoroughly examined Section 41 of the CrPC, which was amended based on the 177th Report of the Law Commission (2001). For offenses punishable with imprisonment up to seven years, police officers must be satisfied that arrest is necessary for:

- Preventing further offenses
- Proper investigation
- Preventing evidence tampering
- Preventing witness tampering
- Ensuring the accused's court appearance

The Court emphasized that police must record their reasons for arrest in writing, and magistrates must

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scrutinize these reasons before authorizing detention.

VI. Guidelines Issued by the Court

To prevent unnecessary arrests, the Supreme Court issued the following directives:

1. State Governments must instruct police officers not to automatically arrest in Section 498-A cases but to satisfy themselves about arrest necessity according to Section 41 parameters.
2. Police officers should be provided with a checklist containing the specific sub-clauses of Section 41(1)(b)(ii).
3. Police must forward the completed checklist with reasons and materials necessitating arrest when producing the accused before the Magistrate.
4. Magistrates must peruse this report and record their satisfaction before authorizing detention.
5. Decisions not to arrest an accused must be forwarded to the Magistrate within two weeks of case registration, with extension possible by the Superintendent of Police with recorded reasons.
6. Notice of appearance under Section 41A must be served within two weeks of case registration, with similar extension provisions.
7. Non-compliance with these directions may result in departmental action against police officers and contempt of court proceedings before the High Court.
8. Magistrates authorizing detention without recording reasons may face departmental action by the appropriate High Court.

The Court clarified that these directions apply not only to Section 498-A cases but to all cases with imprisonment terms up to seven years.

VII. Conclusion

The Court allowed the appeal and made its previous order dated October 31, 2013, granting provisional bail to the appellant, absolute with the directions mentioned above. The judgment was directed to be forwarded to Chief Secretaries, Directors General of Police, and Registrar Generals of all High Courts for implementation. The judgment was delivered on July 2, 2014, by Justices Chandramauli Kr. Prasad and Pinaki Chandra Ghose.

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67. Abhiram Singh v. C.D. Commachen

CHIEF JUSTICE T.S. THAKUR, JUSTICE MADAN B. LOKUR, JUSTICE L. NAGESWARA RAO, JUSTICE S.A. BOBDE, JUSTICE ADARSH KUMAR GOEL, JUSTICE UDAY UMESH LALIT, JUSTICE DR D Y CHANDRACHUD

Read the judgment here

I. Introduction and Constitutional Context

This landmark judgment from the Supreme Court of India addresses the interpretation of Section 123(3) of the Representation of the People Act, 1951, which defines certain electoral practices as "corrupt practices." The case was heard by a seven-judge bench to resolve conflicting interpretations regarding the scope of prohibition on appeals based on religion, race, caste, community, or language during election campaigns. The judgment is significant as it deals with the fundamental question of how religion, caste, and other identity markers interact with democratic processes in India's secular constitutional framework.

The case involves two consolidated appeals: Abhiram Singh v. C.D. Commachen (Civil Appeal No. 37 of 1992) and Narayan Singh v. Sunderlal Patwa (Civil Appeal No. 8339 of 1995). Both cases involved challenges to election results based on alleged corrupt practices under Section 123(3) of the Act.

II. Historical Background and Reference Origin

The reference to the seven-judge bench arose due to conflicting interpretations in previous Supreme Court decisions:

1. In Abhiram Singh v. C.D. Commachen, Abhiram Singh's election to the Maharashtra State Assembly was successfully challenged in the Bombay High Court. During appeal, a three-judge bench recognized the need for authoritative clarification on what constitutes corrupt practices under Section 123(3).
2. In Narayan Singh v. Sunderlal Patwa, a Constitution Bench observed an anomaly created by the 1961 amendment to Section 123(3). The amendment deleted "systematic appeal" (widening the provision's scope) but added "his" before religion (potentially restricting its application).
3. Previous judgments had taken different positions: some interpreted the provision narrowly (limited to appeals based on the candidate's religion), while others suggested a broader interpretation might be appropriate.

The Constitution Bench made the reference to resolve this inconsistency, noting that the original purpose of the 1961 amendment was "for curbing the communal and separatist tendency in the country" and "to widen the scope of corrupt practice."

III. Detailed Legislative Evolution of Section 123(3)

The judgment meticulously traces the legislative history of Section 123(3) through multiple amendments:

1. **Original Provision (1951)**: The Act initially distinguished between major corrupt practices (Section 123) and minor corrupt practices (Section 124). Section 124(5) categorized as a minor corrupt practice: "The systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious and national symbols..."
2. **1956 Amendment**: The distinction between major and minor corrupt practices was eliminated. Section 123(3) was amended to read: "The systematic appeal by a candidate or his agent or by any other

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person, to vote or refrain from voting on grounds of caste, race, community or religion..."

3. **1958 Amendment**: The words "with the consent of a candidate or his election agent" were added after "by any other person" to clarify that a candidate would only be liable for statements of others if they had consented to such statements.
4. **1961 Amendment**: This crucial amendment:
    - Deleted the word "systematic" (making even a single appeal sufficient)
    - Introduced the phrase "for any person on the ground of his religion..."
    - Added "language" to the prohibited grounds
    - Changed "grounds" (plural) to "ground" (singular)
    - Added "for prejudicially affecting the election of any candidate"
    - Simultaneously introduced Section 123(3A) to address promotion of enmity between different classes of citizens

The final text after the 1961 amendment reads: "The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate."

Parliamentary Debates and Intent

The judgment examines parliamentary debates to understand legislative intent:

1. During the 1961 amendment, Law Minister A.K. Sen explained that the amendment aimed to prohibit even "stray cases" of appeals to "sectarian interests or passions" and was aligned with amendments to the Indian Penal Code (Section 153A) addressing communal hatred.
2. The Notes on Clauses accompanying the 1961 amendment bill stated its purpose was "curbing communal and separatist tendencies in the country" and "widening the scope of the corrupt practice."
3. In parliamentary debates, Law Minister A.K. Sen explained the addition of "his" by stating it was "to make quite clear as to what was the mischief which was sought to be prevented." He emphasized the provision was intended to prohibit candidates from seeking votes solely because they speak a particular language or follow a particular religion, or asking voters not to vote for opponents based on such grounds.
4. Two dissenting notes in the Select Committee report are noted: Smt. Renu Chakravartty expressed concern the amendment might prevent legitimate criticism of "unjust practices based on caste or community," while Shri Balraj Madhok opposed removing "systematic" as it could make "any stray remark" actionable.

IV. The Legal Issue in Detail

The central interpretative question was the meaning of "his" in the phrase "his religion, race, caste, community or language." The court had to determine whether this referred exclusively to:

1. The religion, race, caste, community, or language of the candidate seeking votes;
2. The religion, race, caste, community, or language of the rival candidate against whom an appeal is made to refrain from

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voting; or
3. Whether it could be expanded to include the religion, race, caste, community, or language of the voter or any other relevant person.

This question was crucial because it determined the scope of prohibited electoral appeals and the extent to which identity politics could legally operate in Indian elections.

V. Majority Opinion (4:3)

The majority opinion by Justice Madan B. Lokur, concurred with by Justices S.A. Bobde, T.S. Thakur (CJI), and L. Nageswara Rao, adopted a broad, purposive interpretation:

Interpretative Approach

The majority emphasized that while statutes with penal consequences often warrant strict interpretation, the Representation of the People Act is meant to "cherish and strengthen our democratic ideals." Therefore, interpreting it to assist candidates rather than voters would "really be going against public interest." They advocated a "purposive interpretation" that benefits the "little man" (voter).

Constitutional Values and Secularism

The majority extensively discussed secularism as a basic feature of the Constitution, citing previous judgments like S.R. Bommai v. Union of India. Justice Thakur noted: "Under the constitutional scheme, mixing religion with State power is not permissible while freedom to practice, profess and propagate religion is guaranteed."

Broad Interpretation of "His"

The majority held that:

1. "His" in Section 123(3) refers to the religion, race, caste, community, or language of:
    - The candidate
    - The candidate's agent
    - Any other person making the appeal with consent of the candidate
    - The voter
2. This interpretation aligns with the legislative intent to widen the scope of corrupt practices and curb communal and separatist tendencies.
3. The pre-1961 version did not contain the word "his" and prohibited appeals based on religion regardless of whose religion was invoked. The 1961 amendment was intended to widen, not restrict, this prohibition.

Justice S.A. Bobde added that both textual and purposive interpretations support this conclusion, stating: "The word 'his' therefore must necessarily be taken to embrace the entire transaction of the appeal to vote made to voters and must be held referable to all the actors involved i.e. the candidate, his election agent etc. and the voter."

VI. Minority Opinion (3:4)

The minority opinion by Justice D.Y. Chandrachud, concurred with by Justices Adarsh Kumar Goel and Uday Umesh Lalit, advocated a literal interpretation:

Strict Construction for Penal Provisions

The minority emphasized that corrupt practices have "quasi-criminal character" and thus Section 123(3) must be strictly interpreted. The standard of proof is "much higher than a preponderance of probabilities" and "veers close to that which guides a criminal trial."

Textual Analysis

The minority analyzed Section 123(3) by dividing it into three parts:

1. The person making the appeal (candidate, agent, or another person with consent)
2. What the appeal seeks to achieve (to vote for or refrain from voting for any person)
3. The ground of the appeal (religion, race, caste, community, or language)

They argued that grammatically, "his" refers to the person mentioned in the second part—the

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candidate for whom votes are sought or against whom voters are urged to refrain from voting.

Rationale for Narrow Construction

The minority provided a constitutional rationale for limiting "his" to candidates:

1. A representative should represent the entire constituency, not just a particular religion, caste, or community.
2. The Constitution recognizes the diversity of India and acknowledges religion, caste, language in social life.
3. There is no "wall of separation" between state and religion/caste/language in India—these elements are part of the "central theme of the Constitution to produce a just social order."
4. Political mobilization based on addressing historical injustices to communities is legitimate and should not be prohibited.

They argued: "To hold that a person who seeks to contest an election is prohibited from speaking of the legitimate concerns of citizens that the injustices faced by them on the basis of traits having an origin in religion, race, caste, community or language would be remedied is to reduce democracy to an abstraction."

VII. Precedent Analysis

The minority conducted a thorough review of previous judgments interpreting Section 123(3), concluding that courts had consistently limited "his" to refer to the candidate's religion or that of a rival candidate. They cited cases including:

- Jagdev Singh Sidhanti v. Pratap Singh Daulta (1964)
- Kultar Singh v. Mukhtiar Singh (1964)
- Kanti Prasad Jayshanker Yagnik v. Purshottamdas Ranchhoddas Patel (1969)
- Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte (1996)

VIII. Legal Consequences and Penalties

The judgment emphasizes the serious consequences of finding a candidate guilty of corrupt practices under Section 123:

1. Under Section 98(b), the High Court may declare the election of a returned candidate void.
2. Section 100(1)(b) provides that an election can be declared void if "any corrupt practice has been committed by a returned candidate or by his election agent or by any other person with the consent of a returned candidate or his election agent."
3. Section 8A imposes disqualification for up to six years from the date the order under Section 99 takes effect.
4. Section 11A(2) disqualifies the person from voting at any election for the same period.
5. Section 16 provides that persons disqualified from voting are also disqualified from registration in an electoral roll.

These severe consequences, which include effective disenfranchisement and ineligibility to contest elections, were cited by the minority as reasons for adopting a strict construction of the provision.

IX. Conclusion and Resolution

The majority (4:3) concluded that Section 123(3) must be given a broad and purposive interpretation to maintain the purity of the electoral process. They held that any appeal based on religion, race, caste, community, or language—whether of the candidate, agent, person making the appeal, or the voter—constitutes a corrupt practice if made to further the prospects of a candidate's election or prejudicially affect another candidate's election.

The judgment emphasizes that determining whether an appeal violates Section 123(3) is a matter of evidence that must be assessed on a case-by-case basis. The broader interpretation adopted by the majority expands the scope of prohibited

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appeals in Indian elections, potentially limiting identity-based electoral rhetoric and reinforcing the secular character of the democratic process.

The dissenting view, while acknowledging the importance of secularism, emphasizes that democratic discourse must allow discussion of legitimate concerns related to historical injustices based on religion, caste, and other identity markers. They warn that an overly broad interpretation could stifle important political mobilization addressing real social inequities.

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68. Neeraj Dutta v. State (NCT of Delhi)

JUSTICE S. ABDUL NAZEER, JUSTICE B. R. GAVAI, JUSTICE A. S. BOPANNA, JUSTICE V. RAMASUBRAMANIA, JUSTICE B. V. NAGARATHNA

Read the judgment here

I. Introduction and Background

This judgment by a five-judge Constitution Bench of the Supreme Court of India addresses a significant legal question regarding the Prevention of Corruption Act, 1988 (the "Act"). The primary issue concerns whether, in the absence of direct evidence from a complainant, inferential deductions of guilt can be made about a public servant under Sections 7 and 13(1)(d)(i)(ii) read with Section 13(2) of the Act.

The reference to the Constitution Bench arose from a perceived conflict between three three-judge Bench decisions: B. Jayaraj vs. State of Andhra Pradesh (2014), P. Satyanarayana Murthy vs. District Inspector of Police, State of A.P. (2015), and M. Narsinga Rao vs. State of A.P. (2001). The central question was whether, when a complainant is unavailable (due to death or other reasons), turns hostile, or does not support the prosecution's case, the court can still find sufficient evidence to convict a public servant of corruption offenses.

II. Key Provisions of the Prevention of Corruption Act, 1988

The judgment extensively discusses Sections 7, 13(1)(d)(i)(ii), and 20 of the Prevention of Corruption Act as they stood prior to amendments:

1. Section 7 concerns a public servant taking gratification other than legal remuneration in respect of an official act. Its key ingredients include:
    - The accused must be a public servant or expecting to be one
    - Acceptance, obtainment, agreement to accept, or attempt to obtain gratification
    - From any person, for himself or others
    - Gratification other than legal remuneration
    - As a motive or reward for doing or forbearing to do any official act
2. Section 13(1)(d) deals with criminal misconduct by a public servant who:
    - By corrupt or illegal means, obtains valuable things or pecuniary advantage
    - By abusing position, obtains valuable things or pecuniary advantage
    - While holding office, obtains for any person valuable things without public interest
3. Section 20 creates a legal presumption that when a public servant accepts gratification, it shall be presumed it was accepted as a motive or reward unless proven otherwise.

III. The Trilogy of Cases and Perceived Conflict

The judgment analyzed the three key cases that led to the reference:

1. **B. Jayaraj (2014)**: The complainant did not support the prosecution case and was declared hostile. The Court held that mere possession and recovery of tainted currency notes without proof of demand would not establish offenses under Sections 7 and 13(1)(d). The Court observed that the complainant disowned what he had stated in the initial complaint, and in the absence of any other evidence to prove demand, the evidence of the complainant and the complaint could not be relied upon. The only material available was the recovery of tainted currency notes from the possession

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of the accused, which by itself was insufficient without proof of demand.

2. **P. Satyanarayana Murthy (2015)**: The complainant had died before examination. The Court, relying on B. Jayaraj, held that proof of demand is a sine qua non for offenses under Sections 7 and 13(1)(d)(i)(ii). The Court emphasized that mere possession and recovery of currency notes from the accused without proof of demand would not establish offenses under these sections. It was observed that proof of acceptance of illegal gratification could follow only if there was proof of demand. The Court concluded that in the absence of proof of demand, the legal presumption under Section 20 of the Act would not arise.
3. **M. Narsinga Rao (2001)**: Despite prosecution witnesses turning hostile, the Court used circumstantial evidence to infer that the accused had willingly received tainted currency notes, thus sustaining the conviction. The Court examined whether a legal presumption can be based on a factual presumption, distinguishing between discretionary factual presumptions and mandatory legal presumptions. It observed that circumstances preceding and succeeding the discovery of tainted currency notes helped draw a factual presumption that the appellant had willingly received them. Once this factual presumption was established and not rebutted, the legal presumption under Section 20 of the Act was applied.

The perceived conflict was whether, in the absence of direct evidence from the complainant, inferential deductions of guilt could be made based on other evidence.

IV. Court's Detailed Analysis of Evidence Law Principles

The Supreme Court provided an extensive and nuanced analysis of evidence law principles as applied to corruption cases:

A. Types of Evidence and Their Legal Significance

1. **Direct vs. Indirect Evidence**: The Court elaborated that direct evidence directly establishes a fact in issue without inference or presumption, while indirect evidence gives rise to logical inferences that a fact exists. For circumstantial evidence to be sufficient, it must lead to only one conclusion and exclude all other explanations.
2. **Original vs. Hearsay Evidence**: The judgment explains that original evidence is what a witness personally observed through their senses, while hearsay evidence comes through third parties. While hearsay is generally inadmissible, it may be considered when corroborated by substantive evidence from other witnesses.
3. **Primary vs. Secondary Evidence**: Primary evidence is the original document or direct oral testimony, while secondary evidence includes copies or oral accounts of documents. The Court emphasized that primary evidence must be used unless satisfactorily explained why it's unavailable.
4. **Documentary Evidence Requirements**: The judgment details the strict requirements for admitting documentary evidence, noting that mere production and marking of a document as an exhibit doesn't prove its contents without establishing authenticity through proper channels.

B. Detailed Analysis of Presumptions in Law

The Court provided a sophisticated analysis of presumptions, distinguishing:

1. **Factual Presumptions ("May Presume")**:

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These are discretionary inferences drawn by the court based on common experience and proven facts. The Court emphasized that such presumptions are rebuttable and remain valid only until disproved.

2. **Legal Presumptions ("Shall Presume")**: These are mandatory presumptions that courts must make when certain conditions are met. For Section 20 of the Act, once it's proved that the accused accepted gratification, the court must presume it was accepted as a motive or reward.
3. **Conclusive Proof**: This gives an artificial probative effect to certain facts, and no evidence is allowed to disprove them.

The Court emphasized a critical distinction: factual presumptions depend on judicial discretion and require foundational facts, while legal presumptions like those in Section 20 are compulsory once triggering conditions are met. The Court noted that under Section 20, the onus shifts to the accused to rebut the presumption with proof, not mere plausible explanation.

C. Burden of Proof in Corruption Cases

The Court carefully analyzed the concept of burden of proof in corruption cases:

1. The judgment references the case of Kundan Lal Rallaram vs. The Custodian, highlighting that "burden of proof" has two meanings: the burden as a matter of law (which remains constant) and the burden of establishing a case (which can shift).
2. The evidence required to shift the burden need not be direct evidence—it can include circumstantial evidence or presumptions of law or fact.
3. In corruption cases, while the initial burden is on the prosecution to prove acceptance or obtainment of gratification, once this is established, Section 20 shifts the burden to the accused to prove it wasn't accepted as a motive or reward.
4. The Court emphasized that this shifted burden requires "proof" of innocence, not merely a plausible explanation.

D. Comprehensive Analysis of Circumstantial Evidence

The Court provided an extensive analysis of how circumstantial evidence operates in corruption cases:

1. Circumstantial evidence can establish facts through inference, but must form a complete chain without breaks.
2. For conviction based on circumstantial evidence, all incriminating facts must be incompatible with the innocence of the accused or any other reasonable hypothesis.
3. When incriminating circumstances are put to the accused who offers no explanation or an untrue one, this becomes an additional link in the chain.
4. The combined effect of all proven facts taken together must conclusively establish guilt, even if individual facts aren't decisive.

E. Clarification on "Hostile Witnesses"

The Court provided significant clarification on the legal concept of "hostile witnesses":

1. Drawing from Sat Paul vs. Delhi Administration (1976), the Court explained that terms like "hostile witness" originated in English common law but are not used in the Indian Evidence Act.
2. Section 154 of the Evidence Act allows the court to permit a party to cross-examine their own witness but doesn't require declaring them "hostile."
3. Most importantly, the Court emphasized that the testimony of a hostile witness is not automatically discarded—it must be considered with caution, and parts found credible can still be relied upon.
4. The Court noted that a witness turning hostile doesn't result in automatic rejection

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of evidence; if corroborated by other reliable evidence, it may still support conviction.

V. The Court's Specific Findings on Key Legal Issues

The Court made several critical determinations on specific legal issues:

A. On Proof of Demand and Its Essentiality

1. The Court clearly established that proof of demand and acceptance of illegal gratification is a sine qua non for offenses under Sections 7 and 13(1)(d) of the Act.
2. It distinguished between "acceptance" (Section 7) and "obtainment" (Section 13(1)(d)):
    - In "acceptance," the offer originates from the bribe giver without prior demand from the public servant
    - In "obtainment," the demand originates from the public servant, making prior demand an essential element
3. The Court emphasized that mere acceptance or receipt without proof of offer or demand would not constitute an offense under either section.

B. On Methods of Proving Demand

The Court provided comprehensive guidance on how demand can be proven:

1. Direct evidence through oral testimony of the complainant or documentary evidence is the primary method.
2. In absence of the complainant's testimony, demand can be proved through:
    - Testimony of other witnesses present during the transaction
    - Documentary evidence like emails or written communications
    - Circumstantial evidence that forms a complete chain pointing to guilt
3. The Court clarified that the death or unavailability of the complainant does not vitiate the prosecution case if other evidence adequately proves demand.

C. On the Application of Presumptions

The Court made important distinctions regarding presumptions:

1. Factual presumptions regarding demand and acceptance can only be drawn after foundational facts are proved beyond reasonable doubt.
2. The legal presumption under Section 20 applies only to Section 7 (not to Section 13(1)(d)), and only after proof of acceptance of illegal gratification.
3. The Court emphasized that Section 20 creates a mandatory legal presumption about motive or reward, but the underlying facts of acceptance must first be established.
4. Unlike factual presumptions under Section 114 of the Evidence Act, the presumption under Section 20 is mandatory ("shall presume") and places a heavier burden on the accused to rebut.

VI. Conclusion

After extensive analysis, the Court concluded there was no actual conflict between the three judgments in question. Each case was decided on its specific facts:

1. In B. Jayaraj and P. Satyanarayana Murthy, the prosecution failed to prove demand through any evidence when the complainant was unavailable.
2. In M. Narsinga Rao, despite hostile witnesses, other circumstantial evidence adequately proved demand and acceptance.

The Court answered the reference question affirmatively:

"In the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of

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culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution."

The Court concluded with strong observations on corruption as a societal ill, describing it as "corroding, like cancerous lymph nodes, the vital veins of the body politic" and emphasizing that corruption has "spread everywhere" with a "deep and pervasive impact on the functioning of the entire country." The judgment closed with an appeal for complainants and prosecutors to make sincere efforts to ensure corrupt public servants are brought to justice to maintain integrity in public administration.

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69. Sukhpal Singh Khaira v. State of Punjab

JUSTICE S. ABDUL NAZEER, JUSTICE B.R. GAVAI, JUSTICE A.S. BOPANNA, JUSTICE V. RAMASUBRAMANIAN, JUSTICE B. V. NAGARATHNA

Read the judgment here

I. Background of the Case

The case revolves around the appellant, Sukhpal Singh Khaira, who challenged an order dated 17.11.2017 passed by the High Court of Punjab and Haryana. This High Court order had dismissed Criminal Revision Petitions (No. 4070 and 4113 of 2017) and upheld the Trial Court's order dated 31.10.2017, which had summoned the appellant as an additional accused under Section 319 of the Criminal Procedure Code (CrPC).

The circumstances leading to this case began on 05.03.2015 when a First Information Report was lodged against 11 accused for offenses under various sections of the Narcotic Drugs and Psychotropic Substance Act, the Arms Act, and the Information Technology Act. In the charge sheet dated 06.09.2015, 10 accused were summoned and put to trial in Sessions Case No. 289 of 2015. The appellant was not named as an accused in the second charge sheet filed by the police.

II. Procedural History

During the trial, witnesses initially did not mention the appellant's name. However, after the prosecution filed an application under Section 311 of CrPC to recall witnesses PW-4 and PW-5, these witnesses named the appellant in their further examination. Subsequently, on 21.09.2017, the prosecution filed an application under Section 319 of CrPC to summon five additional accused, including the appellant.

On 31.10.2017, the Sessions Judge pronounced judgment in the original case, convicting nine accused (while acquitting one) and imposing sentences. On the same day, the Sessions Judge also allowed the application under Section 319 of CrPC and summoned the appellant to face trial. The appellant challenged this summoning order, arguing that it was not sustainable as it was passed after the judgment had already been delivered in the proceedings.

III. Questions Referred to the Larger Bench

The Supreme Court identified three substantial questions of law for consideration:

1. Whether the trial court has power under Section 319 of CrPC to summon additional accused when the trial with respect to other co-accused has ended and judgment of conviction rendered on the same date before pronouncing the summoning order?
2. Whether the trial court has power under Section 319 of CrPC to summon additional accused when the trial in respect of certain other absconding accused is ongoing/pending, having been bifurcated from the main trial?
3. What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC?

IV. Legal Provisions and Precedents Considered

The Court extensively examined Section 319 of CrPC, which empowers courts to proceed against persons not initially accused but who appear from evidence to have committed an offense. This provision was incorporated based on the Law Commission's 41st Report recommendation to ensure no culprit escapes prosecution.

The Court also analyzed previous judgments, particularly:

- Hardeep Singh vs. State of Punjab (2014), which established that power under Section 319 can be exercised at any time after the

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charge sheet is filed and before the pronouncement of judgment.

- Shashikant Singh vs. Tarkeshwar Singh (2002), which held that the phrase "could be tried together with the accused" in Section 319(1) is directory rather than mandatory.

Additionally, the Court examined provisions related to judgment in criminal cases, including Sections 232, 235, 353, and 354 of CrPC to determine when a trial concludes.

V. Analysis and Findings of the Court

A. Interpretation of Section 319 CrPC: Scope and Purpose

The Supreme Court began its analysis by closely examining the text of Section 319 CrPC, noting that this provision empowers courts to summon additional accused based on evidence emerging during trial. The Court emphasized that this power stems from the legal maxim "judex damnatur cum nocens absolvitur" (Judge is condemned when guilty is acquitted).

The Court found that the object of incorporating Section 319 CrPC was based on the Law Commission's Forty-First Report recommendation, which sought to ensure that persons involved in crimes but not initially charged would not escape justice. This provision was specifically designed to ensure "the whole case against all known suspects should be proceeded with expeditiously."

The Court observed that Section 319 CrPC serves a critical function in the criminal justice system by granting courts the power to bring to justice individuals whose involvement becomes apparent during trial but who were not originally charge-sheeted. This power exists independent of the investigating agency's decisions and represents the court's autonomous authority to ensure complete justice.

B. Timing of Exercise of Power Under Section 319 CrPC

One of the central questions before the Court was determining the exact point until which the power under Section 319 CrPC could be exercised. The Court made several significant findings:

The Court reaffirmed the principle established in Hardeep Singh vs. State of Punjab that the power under Section 319 CrPC "can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre-trial stage."

However, the Court needed to determine precisely what constitutes "pronouncement of judgment" in this context. To resolve this, the Court conducted a thorough analysis of the judgment-related provisions in CrPC:

The Court examined Sections 232 and 235 of CrPC, which deal with acquittal and conviction respectively. It noted that in case of acquittal under Section 232, "there is nothing further to be done by the learned Judge and therefore the trial concludes at that stage." However, in case of conviction under Section 235, the judge must hear the accused on the question of sentence before imposing punishment.

Further examining Sections 353 and 354 of CrPC, which detail the procedure for pronouncing judgment, the Court observed that these provisions "indicate that even after the conviction is ordered, the specified procedure is required to be followed by the learned Judge to impose the sentence." This requires the judge to apply their mind to the evidence to assess "the nature of involvement in committing the offence, gravity of the same and impose the sentence."

Based on this comprehensive examination, the Court reached an important conclusion:

A trial is not complete upon pronouncement of conviction alone. While an acquittal order under Section 232 concludes the trial, a conviction necessitates further judicial application of mind to determine the appropriate sentence based on the

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evidence and gravity of the offense.

To support this view, the Court cited Rama Narang vs. Ramesh Narang (1995), where a three-judge bench held that "after the conviction is recorded, Section 235(2) inter alia provides that the Judge shall hear the accused on the question of sentence and then pass sentence on him according to law. The trial, therefore, comes to an end only after the sentence is awarded to the convicted person."

Similarly, in Yakub Abdul Razak Memon vs. State of Maharashtra (2013), the Court had held that "a conviction order is not a 'judgment' as contemplated under Section 353" and that a judgment is "complete only after the sentence is determined."

C. The Crucial Determination of "Conclusion of Trial"

The Court's detailed analysis led to a definitive finding on when a trial concludes in a criminal proceeding:

For cases resulting in acquittal, the trial concludes with the acquittal order itself. For cases resulting in conviction, "a judgment is considered to be complete in all respects only when the sentence is imposed on the convict, if the convict is not given the benefit of Section 360 of CrPC."

In cases with multiple accused where some are acquitted and others convicted, the trial concludes at different times for different accused—upon acquittal for those acquitted, and upon sentencing for those convicted.

D. Procedural Requirements for Summoning Additional Accused

The Court also clarified the procedural aspects of summoning additional accused under Section 319 CrPC:

If the court decides to summon an additional accused based on trial evidence, this decision "can be exercised by passing an order to that effect before the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion."

Importantly, the Court noted that Section 319(4) CrPC requires that "if the learned Sessions Judge exercises the power to summon the additional accused, the proceedings in respect of such person shall be commenced afresh and the witnesses will have to be re-examined in the presence of the additional accused."

The Court emphasized that evidence recorded earlier cannot automatically be used against the newly added accused due to the requirements of Section 273 CrPC. A fresh trial must be conducted for the summoned accused.

E. Joint vs. Separate Trial Considerations

The Court provided significant clarity on whether joint or separate trials are mandatory when additional accused are summoned:

While Section 319 CrPC states that a summoned person "could be tried together with the other accused," the Court found that, read with Section 223 CrPC (which governs joint trials), it would be "open to the learned Sessions Judge... to also take a decision as to whether a joint trial is to be held after summoning such accused by deferring the judgment being passed against the tried accused."

If the court determines that "the fresh trial to be conducted against the newly added accused could be separately tried," it may proceed to pass judgment against the original accused and subsequently conduct a separate trial against the newly added accused.

Crucially, the Court affirmed that the phrase "could be tried together with the accused" in Section 319(1) CrPC is "directory" rather than mandatory, upholding the view expressed in Shashikant Singh vs. Tarkeshwar Singh (2002).

F. Bifurcated Trials and Additional Accused

The Court addressed a specific scenario involving bifurcated trials: "If the trial against the absconding accused is split up (bifurcated) and is pending, that by itself will not provide validity to an application filed under Section 319 of CrPC or the order of Court to summon an additional accused in the

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earlier main trial if such summoning order is made in the earlier concluded trial against the other accused."

However, the Court clarified that in a split-up case, once the presence of absconding accused is secured and trial commences, "if in the evidence recorded therein it points to the involvement of any other person as contemplated in Section 319 of CrPC, such power to summon the accused can certainly be invoked or exercised in the split up (bifurcated) case before conclusion of the trial therein."

G. Foundational Purpose of Section 319 CrPC

In its comprehensive analysis, the Court reaffirmed the underlying purpose of Section 319 CrPC by citing Rajendra Singh vs. State of U.P. (2007):

"The power under Section 319 of the Code is conferred on the court to ensure that justice is done to the society by bringing to book all those guilty of an offence... There is also a duty to render justice to the victim of the offence... It is a salutary power enabling the discharge of a court's obligation to the society to bring to book all those guilty of a crime."

The Court cautioned against "fettering that power and the discretion, either by calling it extraordinary or by stating that it will be exercised only in exceptional circumstances," emphasizing that it is meant to be used whenever the conditions envisaged by the section arise.

H. Balancing Procedural Requirements with Justice

Throughout its analysis, the Court maintained a balance between strict procedural compliance and the broader interests of justice. It emphasized that the power under Section 319 CrPC, while procedurally bound, serves the essential function of ensuring that no guilty person escapes trial due to mere procedural technicalities or investigative oversights.

VI. Guidelines Established by the Court

The Court formulated comprehensive guidelines for exercising power under Section 319 of CrPC:

1. If evidence emerges or an application is filed regarding involvement of another person at any trial stage before acquittal/sentencing, the court should pause the trial.
2. The court must first decide whether to summon the additional accused.
3. If decided to summon, the order must be passed before proceeding further with the main case.
4. The court must determine whether the summoned accused should be tried jointly with other accused or separately.
5. For joint trials, fresh proceedings should commence only after securing the summoned accused's presence.
6. For separate trials, the court may continue and conclude proceedings against the original accused.
7. In cases leading to acquittal, if the summoned accused will be tried separately, the court may proceed with the acquittal judgment in the main case.
8. In bifurcated trials, Section 319 power can only be invoked based on evidence from that bifurcated proceeding.
9. If the need to invoke Section 319 arises after arguments but before judgment, the case should be set for rehearing.
10. If joint trial is decided after rehearing, fresh trials should be conducted.
11. If separate trials are decided: a. In conviction cases, the main case may be decided by pronouncing conviction and sentence before proceeding against the summoned accused. b. In acquittal cases, acquittal orders may be passed before proceeding against the summoned accused.

VII. Conclusion

The Supreme Court answered the referred

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questions, providing clarity on the timing and procedure for summoning additional accused under Section 319 of CrPC. The Court emphasized that the power must be exercised before the conclusion of trial by pronouncement of judgment, which in conviction cases means before imposing the sentence.

For the specific case at hand, having answered the legal questions, the Court directed the Registry to obtain orders from the Chief Justice and place the matter before an appropriate Bench to decide on the factual aspects in light of the established legal position.

The Court also placed on record its appreciation for the assistance rendered by all learned Senior Counsel/Counsel, including the Amicus Curiae, in resolving these important questions of law that significantly impact criminal trial procedures in India.

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70. Satender Kumar Antil v. Central Bureau of Investigation

JUSTICE M. M. SUNDRESH, JUSTICE S.V.N. BHATTI

Read the judgment here

I. Introduction and Background

This Supreme Court order (2024 INSC 134) pertains to ongoing monitoring of compliance with directions issued in the landmark judgment of Satender Kumar Antil v. Central Bureau of Investigation (2022) 10 SCC 51. The Court, having reviewed compliance affidavits filed by various States, Union Territories, Central Bureau of Investigation (CBI), and the National Legal Services Authority (NALSA), is now providing specific directions to ensure comprehensive implementation of previously issued guidelines. The Court heard learned Amicus Mr. Siddharth Luthra, Senior Advocate Mr. Gaurav Agarwal for NALSA, and Additional Solicitor General Ms. Aishwarya Bhati representing the Union of India.

II. Structure of Compliance Monitoring

The Court has accepted the Amicus' report dated 10.02.2024, which organizes the compliance requirements into categories based on which authorities are responsible for implementation. Some directions fall within the domain of States/Union Territories/CBI, others within the domain of High Courts, and some require coordination between both. For effective monitoring, the Court has decided to hear stakeholders in a phased manner, with the first ten States and their respective High Courts scheduled for hearing on 07.05.2024.

III. Key Directions Requiring Compliance

The Court has identified several critical areas requiring immediate attention:

1. **Para 100.2, 100.4, 100.7 directions and prosecutor training**: States, UTs, and CBI must provide details of First Information Reports in cognizable and non-bailable cases where Sections 41 and 41-A of CrPC and the Arnesh Kumar judgment guidelines were not followed, actions taken against erring officers, and information about Standing Orders being followed by Investigating Officers. They must also provide details of Special Courts constituted and steps taken for creating additional Special Courts.
2. **Para 100.2, 100.3, 100.5, 100.6, 100.7, 100.8, 100.9, 100.10, 100.11 directions**: High Courts must address issues related to bail being granted despite compliance with procedural requirements, insistence on bail applications under Section 88 CrPC, constitution of Special Courts, identification of prisoners unable to comply with bail conditions, and timely disposal of bail applications.
3. **Curriculum updates and application to Section 438 CrPC**: High Courts must include the judgments in Siddharth v. State of UP (2022) and Satender Kumar Antil (2022) in judicial academy curricula and apply the Satender Kumar Antil guidelines to anticipatory bail petitions under Section 438 CrPC.

IV. State-Specific Compliance Requirements

The Court has issued detailed, jurisdiction-specific directions to all 28 States, 8 Union Territories, and their respective High Courts. Each entity has been given specific areas to address in their compliance reports, with many showing partial compliance requiring completion or inconsistencies needing clarification. For example:

1. The State of Maharashtra stands out as the only state that has not filed compliance affidavits and has been directed to do so within 8 weeks.

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2. Several High Courts (including Gujarat, Punjab and Haryana, Jharkhand, Allahabad) show discrepancies in their reporting, claiming compliance with Sections 41 and 41-A CrPC while simultaneously granting bail due to non-compliance of these provisions.
3. Many states have not adequately addressed the issue of prisoners unable to furnish sureties despite bail being granted, or have not provided details of Special Courts constituted.

V. Standard Operating Procedure (SOP) for Support to Poor Prisoners

The Court has incorporated a comprehensive Standard Operating Procedure submitted by the Central Government titled "Guidelines and Standard Operating Procedure for implementation of the Scheme for support to poor prisoners." Key features include:

1. **Funding mechanism**: Funds will be provided to States/UTs through the Central Nodal Agency (National Crime Records Bureau).
2. **Committee structure**: Each district will have an Empowered Committee comprising the District Collector/Magistrate, Secretary of District Legal Services Authority, Superintendent of Police, Prison Superintendent, and a judge nominee. A State-level Oversight Committee will also be constituted.
3. **Process for undertrial prisoners**: If an undertrial prisoner remains in jail for over 7 days after bail is granted, jail authorities must inform the DLSA. The DLSA Secretary will examine whether the prisoner cannot furnish financial surety and place such cases before the Empowered Committee. Financial support up to Rs. 40,000 per case can be provided.
4. **Process for convicted prisoners**: For those unable to pay court-imposed fines, jail superintendents must inform the DLSA within 7 days. After inquiry, the Empowered Committee can sanction fine amounts up to Rs. 25,000.

VI. Timeline and Procedural Matters

The Court has directed all States, Union Territories, High Courts, Union of India, CBI, and NALSA to file updated compliance affidavits within 8 weeks. The learned Amicus will then file a report on these compliances within 2 weeks thereafter. The Court will begin reviewing compliance from States and High Courts listed in serial numbers 1 to 10 on 07.05.2024, with remaining stakeholders to be addressed subsequently in a staggered manner.

Additionally, the Court has approved the creation of a dedicated email address for these proceedings to facilitate efficient exchange of reports and affidavits between all parties involved.

VII. Conclusion

This order demonstrates the Supreme Court's commitment to ensuring nationwide compliance with bail reform directives from the Satender Kumar Antil judgment. By issuing detailed, jurisdiction-specific instructions and introducing a structured funding mechanism to help poor prisoners meet bail conditions, the Court addresses both procedural non-compliance and financial barriers in the bail system. The methodical monitoring process established through phased hearings and regular compliance reports creates accountability while providing practical guidance. This comprehensive approach reflects the Court's determination to translate progressive bail jurisprudence into meaningful change, particularly regarding adherence to Sections 41 and 41-A CrPC and the principles laid down in Arnesh Kumar, ultimately working toward a more fair and efficient

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criminal justice system.

71. Janhit Abhiyan v. Union of India

CHIEF JUSTICE UDAY UMESH LALIT, JUSTICE DINESH MAHESHWARI, JUSTICE S. RAVINDRA BHAT, JUSTICE BELA M. TRIVEDI, JUSTICE J.B. PARDIWALA, JUSTICE DINESH MAHESHWARI

Read the judgment here

I. Preliminary and Brief Outline

The 103rd Constitution Amendment Act, 2019, empowers the State to provide up to ten percent reservation for the economically weaker sections (EWS) among citizens, excluding Scheduled Castes (SCs), Scheduled Tribes (STs), and non-creamy layer of Other Backward Classes (OBCs). This amendment introduced clause (6) to Articles 15 and 16 of the Constitution.

II. Referral and Constitutional Questions

This matter reached the Supreme Court to decide substantial constitutional questions: whether reservations based solely on economic criteria violate the basic structure of the Constitution; if exclusion of SC, ST, and OBC communities from EWS reservation violates equality; and if exceeding the established fifty percent reservation ceiling violates the Constitution's basic structure.

III. Arguments in Challenge to the Amendment

1. Basis of Reservation:
- Reservations historically aimed at addressing social discrimination and inequality based on caste, not solely economic status.
- Economic status alone was never the constitutional criterion for reservation; this reservation violates the basic structure.
2. Violation of Equality and Discrimination:
- The exclusion of SC, ST, and OBC groups from EWS reservations, despite their economic hardship, is discriminatory.
- This amendment essentially provides benefits to privileged groups, perpetuating discrimination and violating the Equality Code enshrined in Articles 14-17.
3. Exceeding Reservation Ceiling:
- The amendment breaches the fifty percent ceiling on reservations established by judicial precedents.
- Such a breach disturbs the balance and the Equality Code, integral to the basic structure of the Constitution.

IV. Arguments in Partial Challenge

- Economic criteria for reservation is acceptable, but additional reservations ("in addition to existing reservation") must be severed.
- Reservations must not become perpetual; maintaining existing reservations indefinitely is problematic.
- Fifty percent ceiling is a critical limit that must be respected.

V. Arguments Supporting the Amendment

1. Constitutionality and Basic Structure:
- The amendment does not violate but rather strengthens the Constitution's basic structure by addressing economic justice.
- Historical evolution and social realities justify introducing economic criteria for reservation.
2. Exclusion Justification:
- SC, ST, and OBC communities already benefit from affirmative action; the amendment serves economically weaker sections among unreserved groups.
- Exclusion prevents double benefits, ensuring a fair distribution of opportunities.
3. Reservation Ceiling:
- The fifty percent ceiling is flexible and can be exceeded under extraordinary

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circumstances.

- The amendment explicitly caps additional reservations at ten percent, providing inherent safeguards.

VI. Judicial Precedents and Interpretations

- Various landmark judgments, including Indra Sawhney, Kesavananda Bharati, and M. Nagaraj, were discussed extensively.
- Precedents emphasize that reservations should address social inequality rooted in historical discrimination, with economic factors alone not considered sufficient.
- Recent developments necessitate a dynamic, purposive interpretation of constitutional provisions, allowing economic reservations.

VII. Conclusion

The Supreme Court, by majority decision, upheld the validity of the 103rd Constitution Amendment. The Court concluded that reservations based solely on economic criteria do not violate the basic structure, and excluding groups already benefiting from existing reservations does not amount to unconstitutional discrimination. Additionally, the Court held that the fifty percent ceiling, while important, is not absolute and can be exceeded under justifiable circumstances, as done by this amendment.

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72. Shilpa Sailesh v. Varun Sreenivasan

JUSTICE SANJAY KISHAN KAUL, JUSTICE SANJIV KHANNA, JUSTICE ABHAY S. OKA, JUSTICE VIKRAM NATH, JUSTICE J.K. MAHESHWARI

Read the judgment here

I. Background of the Case

This judgment arises from several transfer petitions that led the Supreme Court to examine the scope of its powers under Article 142 of the Constitution of India, particularly in matrimonial matters. The key questions emerged from an order dated 12.05.2010 in T.P. (C) No. 899 of 2007 (Neeti Malviya v. Rakesh Malviya), which raised doubts about whether the Court could reduce or waive the six-month waiting period required under Section 13-B(2) of the Hindu Marriage Act for divorce by mutual consent. The matter evolved through various orders and referrals, with the Attorney General suggesting additional questions for consideration. Eventually, a Constitution Bench was formed to address three substantial questions of law regarding the scope of Article 142 powers.

II. Key Questions Addressed by the Constitution Bench

The Constitution Bench addressed three primary questions:

1. The scope and ambit of power and jurisdiction of the Supreme Court under Article 142(1) of the Constitution of India.
2. Whether the Supreme Court, while hearing a transfer petition or other proceedings, can exercise power under Article 142(1) to grant a divorce by mutual consent dispensing with procedures prescribed under Section 13-B of the Hindu Marriage Act, and also quash related proceedings under various laws.
3. Whether the Supreme Court can grant divorce using Article 142(1) powers when there is complete and irretrievable breakdown of marriage despite one spouse opposing the prayer.

III. Nature and Scope of Article 142(1) Powers

The judgment defines Article 142(1) as a provision that grants the Supreme Court wide and capacious power to do "complete justice" in any "cause or matter." The Court traced the origins of this provision to age-old concepts of justice, equity, and good conscience. The judgment explains that:

1. Article 142(1) is unique to the Indian Constitution, without counterparts in most major written constitutions worldwide.
2. The power is plenary and conscientious but must be exercised with restraint based on fundamental considerations of public policy.
3. The Court may relax or exempt parties from the application of law in view of particular facts and circumstances of a case to do "complete justice."
4. This power is different from the inherent powers of civil courts under Section 151 CPC or High Courts under Section 482 CrPC.
5. The only limitation on this power is that it should not contravene any express prohibition in substantive law based on fundamental principles of public policy.

IV. Hindu Marriage and Divorce Under the Hindu Marriage Act

The judgment provides context about Hindu marriage law, explaining:

1. Section 13-B of the Hindu Marriage Act provides for divorce by mutual consent, requiring conditions such as:
    - Parties living separately for one year or more
    - Parties unable to live together

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- Mutual agreement that the marriage should be dissolved

2. Section 13-B(2) requires a waiting period of six months between the first and second motion for divorce, intended as a cooling-off period.
3. The Court examined cases of exceptional hardship where prolonged litigation and suffering make continuation of marriage impossible, noting that the procedural requirement of waiting six months can become an impediment to settlement.
4. Reference to Amardeep Singh v. Harveen Kaur (2017), which held that the cooling-off period can be waived in exceptional situations.

V. Power to Grant Divorce by Mutual Consent Under Article 142

The judgment clarifies that:

1. The Supreme Court can take on record a settlement agreement and grant divorce by mutual consent under Article 142(1), dispensing with procedural requirements of Section 13-B of the Hindu Marriage Act.
2. There is a distinction between existence of power (a matter of law) and exercise of that power (a mixed question of law and facts).
3. This power should be exercised with discretion based on the factual matrix of each case, evaluated on objective criteria.
4. The Court should consider factors like whether parties had sufficient time to reflect on their decision, whether the statutory waiting period serves any purpose in the specific case, and whether all issues of maintenance, custody, etc. have been properly settled.
5. Section 13-B does not impose fetters on the Supreme Court's powers to grant divorce by mutual consent when substantive conditions are fulfilled.

VI. Power to Quash Criminal and Other Proceedings

The judgment clarifies that matrimonial disputes often lead to multiple legal proceedings, including criminal cases. The Court held that:

1. Public policy underlying matrimonial legislation encourages mutual settlement.
2. In B.S. Joshi v. State of Haryana, the Supreme Court held that High Courts can quash non-compoundable offenses like those under Section 498A IPC when exercising power under Section 482 CrPC.
3. The Supreme Court, when passing a decree of divorce by mutual consent under Article 142, can also set aside and quash other proceedings including criminal cases, provided conditions specified in relevant judgments are satisfied.

VII. Divorce on Ground of Irretrievable Breakdown of Marriage

On the question of whether divorce can be granted despite one spouse's opposition, the judgment notes:

1. The concept of "cruelty" under Section 13(1)(i-a) has evolved to include situations where the marriage has broken down irretrievably.
2. Several judgments including V. Bhagat v. D. Bhagat and Naveen Kohli v. Neelu Kohli have recognized that maintaining a dead marriage serves no purpose.
3. The Court examined the "fault theory" of divorce and its limitations, noting that fault is often difficult to determine and excessive reliance on it increases bitterness.
4. The Court can dissolve a completely failed marriage using Article 142 powers without necessarily assigning fault.
5. Multiple judgments (Ashok Hurra, Munish Kakkar, Sivasankaran) were cited where the

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Court exercised this power despite opposition from one spouse.

VIII. Limitations and Guidelines for Exercising Article 142 Powers

The judgment emphasizes that:

1. Grant of divorce on the ground of irretrievable breakdown is not a matter of right but a discretion to be exercised with great care and caution.
2. The Court must be fully convinced that the marriage is totally unworkable, emotionally dead, and beyond salvation.
3. Factors to consider include:
    - Period of cohabitation after marriage
    - When parties last cohabited
    - Nature of allegations between parties
    - Orders passed in legal proceedings
    - Attempts at reconciliation
    - Period of separation (preferably six years or more)
    - Economic and social status of parties
    - Children's welfare and custody
    - Provision for alimony
4. A party cannot directly approach the Supreme Court through a writ petition under Article 32 seeking divorce on grounds of irretrievable breakdown of marriage.

IX. Conclusions of the Constitution Bench

The Constitution Bench answered the three questions as follows:

1. On the scope of Article 142(1): The Court can depart from procedural and substantive laws to do complete justice, guided by considerations of fundamental public policy.
2. On granting divorce by mutual consent: The Court can dissolve marriage by passing a decree of divorce by mutual consent without requiring the second motion, and can also quash related proceedings.
3. On granting divorce despite opposition: The Court has discretion to dissolve marriage on grounds of irretrievable breakdown even when one spouse opposes, provided the Court is satisfied the marriage has completely failed and continuation of the formal relationship is unjustified.

The judgment clarifies that previous decisions that seemed to limit these powers must be read down in light of the Constitutional power to do "complete justice" under Article 142(1).

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73. Kaushal Kishor v. State of U.P.

JUSTICE ABDUL NAZEER, JUSTICE B.R. GAVAI, JUSTICE A.S. BOPANNA, JUSTICE V. RAMASUBRAMANIAN, JUSTICE B.V. NAGARATHNA

Read the judgment here

I. Introduction:

The judgment in the case of Kaushal Kishor vs. State of Uttar Pradesh addresses significant constitutional questions regarding freedom of speech and expression, specifically concerning harmful remarks made by public officials. These remarks posed potential violations of individual liberties and dignity, triggering an analysis of constitutional provisions and state responsibilities.

II. Background and Facts:

The petition arose from derogatory statements made by public officials. In Uttar Pradesh, a former Cabinet Minister publicly dismissed a serious criminal incident involving robbery and gang rape as a political conspiracy, undermining the gravity of the crime and affecting public sentiment. Additionally, statements by the Kerala Minister of Electricity that were derogatory towards women led to public interest litigations seeking redress and accountability.

III. Constitutional Questions Raised:

The Court deliberated on several critical constitutional questions:

1. Whether statements by ministers inconsistent with constitutional rights constitute actionable constitutional tort.
2. The extent of the State's affirmative duty to protect citizens against threats to their liberty and dignity from private actors.
3. Whether fundamental rights under Articles 19 and 21 of the Constitution are horizontally enforceable against private individuals or entities.
4. Determining the liability of the State for misconduct by public officials unrelated to their official duties.

IV. Horizontal Application of Fundamental Rights:

The judgment extensively explored the horizontal application of fundamental rights, acknowledging a limited horizontal applicability, particularly under Article 21. This application is recognized in exceptional circumstances such as unlawful detention by private individuals. Generally, fundamental rights are vertically enforceable against the State unless legislative provisions explicitly provide for horizontal applicability.

V. State's Duty to Protect Citizens:

The Court reinforced the affirmative obligation of the State to actively protect its citizens' rights, particularly life, liberty, and dignity, from encroachment by non-state actors. This responsibility stems from constitutional mandates and past judicial precedents underscoring the proactive role expected of the State.

VI. Concept of Constitutional Tort:

The judgment clarified the scope and applicability of constitutional tort, indicating that statements by ministers become actionable only if tangible consequential harm or injury results from subsequent state action or inaction. Mere offensive statements without demonstrable consequential harm do not automatically amount to constitutional tort.

VII. Liability for Misconduct by Public Officials:

The Court emphasized that misconduct by ministers or public officials, unconnected to their official duties or statutory responsibilities, cannot result in vicarious liability for the State. Such actions are deemed personal wrongdoing. State liability is strictly limited to actions directly related

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to official functions and duties.

VIII. Remedies and Judicial Recommendations:
The Court recommended reliance on existing constitutional and statutory remedies to address violations effectively. It emphasized the adequacy of constitutional provisions (Articles 32 and 226) and statutory laws like the Indian Penal Code to redress grievances, cautioning against unnecessarily expanding judicial intervention.

IX. Conclusion:
The Supreme Court judgment in Kaushal Kishor vs. State of Uttar Pradesh offers critical clarifications on freedom of speech, the horizontal application of fundamental rights, and state liability. It underscores the constitutional imperative to safeguard individual dignity and liberty, drawing clear boundaries regarding accountability and remedial measures.

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74. Subhash Desai v. State of Maharashtra

CHIEF JUSTICE DR DHANANJAYA Y CHANDRACHUD, JUSTICE MR SHAH, JUSTICE KRISHNA MURARI, JUSTICE HIMA KOHLI, JUSTICE PAMIDIGHANTAM SRI NARASIMHA

Read the judgment here

I. Introduction

The Supreme Court's judgment in Subhash Desai vs. Principal Secretary, Governor of Maharashtra & Ors. addresses the constitutional issues arising from the political crisis in Maharashtra in mid-2022. The case involved the fracturing of the Shiv Sena into two factions - one led by then-Chief Minister Uddhav Thackeray and the other by Eknath Shinde, who subsequently became Chief Minister. The judgment, delivered by a five-judge Constitution Bench headed by Chief Justice Dr. Dhananjaya Y Chandrachud, provides significant clarifications on the anti-defection law, the role of the Governor, the powers of the Speaker, and the relationship between proceedings under the Tenth Schedule and the Election Symbols Order.

II. Factual Background

The political crisis in Maharashtra unfolded in June 2022 when the Shiv Sena, which was in power as part of the Maha Vikas Aghadi (MVA) coalition with the Nationalist Congress Party (NCP) and the Indian National Congress (INC), experienced internal discord. The following key events occurred:

1. On June 21, 2022, Mr. Sunil Prabhu, the Chief Whip of the Shiv Sena, issued a whip directing all MLAs to attend a meeting at Mr. Thackeray's residence. Several MLAs, including Mr. Eknath Shinde (the Group Leader of the Shiv Sena Legislature Party), did not attend this meeting.
2. The MLAs who attended the meeting passed a resolution removing Mr. Shinde from his position as Group Leader and appointing Mr. Ajay Choudhari in his place. This decision was communicated to and accepted by the Deputy Speaker.
3. Concurrently, thirty-four MLAs of the Shiv Sena organized a separate meeting and passed a resolution reaffirming Mr. Shinde as the Group Leader of the SSLP, canceling the appointment of Mr. Sunil Prabhu as Chief Whip, and appointing Mr. Bharat Gogawale instead.
4. Disqualification petitions were filed against MLAs from both factions under the Tenth Schedule of the Constitution.
5. On June 28, 2022, the Governor directed Mr. Thackeray to prove his majority on the floor of the House on June 30, 2022.
6. Mr. Thackeray resigned on June 29, 2022, without facing the floor test.
7. Mr. Shinde, with support from the BJP and independent MLAs, was sworn in as Chief Minister on June 30, 2022.
8. On July 3, 2022, a new Speaker, Mr. Rahul Narwekar, was elected, who subsequently recognized Mr. Shinde as the Leader of the SSLP and Mr. Gogawale as the Chief Whip.
9. The ECI, on October 17, 2022, granted the 'bow and arrow' symbol to the group led by Mr. Shinde.

III. Reference to a Larger Bench Regarding the Nabam Rebia Case

The Court referred the correctness of the decision in Nabam Rebia & Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly to a seven-judge bench. In Nabam Rebia, the Court had ruled that a Speaker cannot decide disqualification petitions under the Tenth Schedule after a notice of intention to move a resolution for their removal is issued.

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The Court's reasons for the reference included:

1. Nabam Rebia appears to conflict with Kihoto Hollohan v. Zachillhu, which held that there is no reason to doubt the independence and impartiality of the Speaker when adjudicating Tenth Schedule proceedings.
2. The interpretation of the phrase "all the then members" in Article 179(c) may not have considered the entirety of the Constituent Assembly Debates.
3. The majority in Nabam Rebia did not fully consider the effect and import of Article 181 and the second proviso to Article 179.
4. The temporary disablement of the Speaker's functions under the Tenth Schedule could be prone to misuse by MLAs facing disqualification proceedings.

IV. The Power of the Court to Decide Disqualification Petitions

The Court held that it cannot ordinarily adjudicate disqualification petitions under the Tenth Schedule in the first instance for the following reasons:

1. Paragraph 6 of the Tenth Schedule vests the exclusive power to decide disqualification with the Speaker.
2. Kihoto Hollohan held that judicial review is not available at a stage prior to the decision of the Speaker except in exceptional circumstances.
3. Disqualification has drastic consequences for the member and their constituency, so it should be decided following the established procedure.
4. The Speaker occupies a high constitutional office and is expected to act impartially, as emphasized in Kihoto Hollohan.
5. There were no exceptional circumstances in this case warranting the Court to decide the disqualification petitions directly.

V. Validity of House Proceedings During Pending Disqualification Petitions

On the question of whether proceedings in the House are valid when disqualification petitions are pending, the Court concluded:

1. An MLA has the right to participate in House proceedings until they are disqualified.
2. Article 189(2) stipulates that proceedings in the legislature shall be valid notwithstanding subsequent discovery that some persons who were not entitled to do so participated.
3. The decision of the Speaker does not relate back to when the prohibited conduct occurred; the consequences of disqualification are prospective.
4. Making House proceedings subject to future disqualification decisions would create uncertainty and render parliamentary governance unworkable.

VI. The Power to Appoint the Whip and Leader of the Legislature Party

The Court made significant rulings on who has the authority to appoint the Whip and Leader:

1. Article 212, which bars courts from inquiring into the validity of legislative proceedings on grounds of procedural irregularity, does not prevent judicial review of substantive illegality or constitutional violations.
2. 'Political party' and 'legislature party' are distinguishable concepts. The Tenth Schedule, the 1986 Rules, and the Act of 1956 recognize this distinction.
3. Based on a literal and purposive interpretation: a. The direction to vote must come from the political party, not the legislature party. b. The Chief Whip is appointed by the political party forming the government. c. The Leader is the link

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between the political party and the legislative assembly.
4. The decision of the Speaker recognizing Mr. Gogawale as Chief Whip was illegal because it was based on a resolution of a faction of the SSLP without determining if it represented the political party's decision.
5. The Speaker must recognize the Whip and Leader authorized by the political party with reference to the party constitution after conducting an appropriate inquiry.

VII. Deciding Who the "Real" Political Party Is
The Court addressed the complex issue of determining which faction represents the original political party:

1. The Tenth Schedule penalizes defection but does not automatically result in expulsion from the political party.
2. The ECI under Paragraph 15 of the Symbols Order determines which group is entitled to the party symbol by deciding which group is the political party itself.
3. The ECI is free to apply the test best suited to the facts of each case, not necessarily limited to the test of legislative majority.
4. The Speaker and ECI are empowered to concurrently adjudicate petitions under the Tenth Schedule and Paragraph 15 of the Symbols Order respectively.
5. The ECI's decision has prospective effect, while the Speaker must determine who the political party was at the time of the alleged Tenth Schedule violation.

VIII. The Impact of Deleting Paragraph 3 of the Tenth Schedule
The Court clarified the consequences of removing the 'split' defense from the Tenth Schedule:

1. The defense of a split is no longer available to members facing disqualification proceedings.
2. In cases where a split has occurred, members must rely on other defenses within the Tenth Schedule, such as merger under Paragraph 4.
3. The percentage of members in each faction is now irrelevant to determining whether a defense to disqualification is made out.
4. The Speaker must still make a prima facie determination of which faction constitutes the political party for the purpose of adjudicating disqualification petitions.
5. This determination should be based on the party constitution and leadership structure, not solely on which group has a majority in the legislature.

IX. The Governor's Exercise of Discretion in Calling for a Floor Test
The Court held that the Governor's direction to Mr. Thackeray to prove his majority was not justified:

1. The Governor's power to call for a floor test is not unfettered but must be based on objective material showing that the government has lost the confidence of the House.
2. The resolution of June 21, 2022, did not express any intention of the MLAs to exit the MVA government.
3. The floor test cannot be used to resolve internal party disputes. Dissent within a party must be resolved through the party's own mechanisms.
4. The Governor erred in relying on extraneous considerations, such as security concerns of MLAs, to conclude that Mr. Thackeray had lost the support of the majority.
5. However, since Mr. Thackeray resigned without facing the floor test, the status quo ante cannot be restored.

X. The Governor's Exercise of Discretion in

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Inviting Mr. Shinde to Form the Government

The Court found that the Governor was justified in inviting Mr. Shinde to form the government:

1. Article 164(1B) does not bar the appointment of a member as Minister if a disqualification petition is merely pending; it applies only after actual disqualification.
2. The pending disqualification petitions did not prevent Mr. Shinde from being appointed as Chief Minister.
3. Since Mr. Thackeray had resigned, creating a vacancy in the office of Chief Minister, the Governor had to invite someone to form the government.
4. The BJP, which had the highest number of MLAs, extended support to Mr. Shinde, as did several independent MLAs.
5. The Governor did not exceed his authority or improperly recognize one faction as the "real" Shiv Sena.

XI. Conclusion

The judgment provides important clarifications on constitutional governance, particularly regarding the anti-defection law, the role of constitutional authorities, and the interplay between different constitutional provisions during political crises. The Court balanced the need to prevent defection with the importance of democratic processes and constitutional propriety.

The Court disposed of the writ petitions in accordance with its conclusions, referred the Nabam Rebia question to a larger bench, and directed the Speaker to recognize the Whip and Leader duly authorized by the Shiv Sena political party after conducting an appropriate inquiry.

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75. Cox & Kings Ltd. v. SAP India (P) Ltd

CHIEF JUSTICE DR DHANANJAYA Y CHANDRACHUD, JUSTICE HRISHIKESH ROY, JUSTICE J B PARDIWALA, JUSTICE MANOJ MISRA, JUSTICE PAMIDIGHANTAM SRI NARASIMHA

Read the judgment here

I. Introduction and Reference

The Supreme Court of India, through a Constitution Bench, delivered a unanimous judgment on the applicability of the 'Group of Companies' doctrine in Indian arbitration law. The main opinion was authored by Chief Justice Dr. Dhananjaya Y Chandrachud (joined by Justices Hrishikesh Roy, J B Pardiwala, and Manoj Misra), with a concurring opinion by Justice Pamidighantam Sri Narasimha.

The case came as a reference from a three-judge bench seeking clarity on whether the doctrine has a statutory foundation and its validity in Indian law.

II. Main Opinion's Framework and Analysis

A. Historical and Statutory Context

The judgment traces the evolution of arbitration law in India and examines the structure of the Arbitration and Conciliation Act, 1996. Under Section 7, an arbitration agreement is defined as "an agreement by the parties to submit to arbitration... disputes... in respect of a defined legal relationship."

Section 7(3) requires the agreement to be in writing, which under Section 7(4) can be evidenced through:

- A document signed by parties
- Exchange of correspondence providing a record of agreement
- Statement of claim and defense where existence of agreement is alleged and not denied

B. The Group of Companies Doctrine: Evolution and Application

The Court traced how the approach to non-signatories evolved from restrictive (pre-Chloro Controls) to more inclusive (post-Chloro Controls). In Chloro Controls (2013), the Court allowed joinder of non-signatories based on four factors: direct relationship to a signatory, commonality of subject matter, composite transaction, and ends of justice.

Subsequent decisions refined the doctrine, with Discovery Enterprises (2022) providing a comprehensive test based on: mutual intent, relationship between signatory and non-signatory, commonality of subject matter, composite nature of transactions, and performance of contract.

C. International Perspectives

The judgment examines approaches in France (origin of the doctrine), Switzerland, England (rejection of the doctrine), Singapore (rejection), and the United States (using various principles of contract law).

D. Key Findings on the Doctrine

The Constitution Bench concluded that:

1. The doctrine has independent existence stemming from Sections 2(1)(h) and 7
2. It is not anchored in the phrase "claiming through or under" in Sections 8 and 45
3. It should be based on mutual intention of parties, not merely on companies being part of same group
4. The principle of alter ego or piercing the corporate veil cannot be its basis
5. At referral stage, courts should make only prima facie determination

III. Justice Narasimha's Concurring Opinion

Justice Narasimha, while agreeing with the main opinion, provided additional reasoning focusing on:

A. Arbitration as a Contract-Based Remedy

He emphasizes that arbitration is an exception to the standard remedy of civil courts, saved under

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Section 28 of the Indian Contract Act as "a contract to refer to arbitration." Being a contract, an arbitration agreement must satisfy the requirements of the Contract Act, though it need not be signed by the parties.

B. Interpreting Section 7(4)(b) and Non-Signatory Consent

Justice Narasimha elaborates on how Section 7(4)(b) allows determination of a non-signatory's consent through:

- Exchange of correspondence
- Conduct of parties
- Express language in the record of agreement
- Surrounding circumstances including nature and object of contract

He references cases like Rickmers Verwaltung, Smita Conductors, and Govind Rubber to show how courts have determined non-signatory consent through their conduct evidenced in written correspondence.

C. Statutory Anchor for the Group of Companies Doctrine

Justice Narasimha's unique contribution is his articulation that the Group of Companies doctrine can be "subsumed within Section 7(4)(b)" of the Arbitration Act. He explains:

"Since the fundamental issue before the court or tribunal under Section 7(4)(b) and the Group of Companies doctrine is the same, the doctrine can be subsumed within Section 7(4)(b). Consequently, the record of agreement that evidences conduct of the non-signatory... must be comprehensively used to ascertain the existence of the arbitration agreement with the non-signatory."

He argues that the doctrine is essentially an interpretive tool that courts can use while determining mutual intention under Section 7(4)(b), providing it with a clear statutory anchor.

D. Rejection of "Claiming Through or Under" as Basis

Justice Narasimha concurs with the main opinion that the expression "claiming through or under" in Sections 8 and 45 cannot be the basis for the doctrine, as it applies to derivative rights, not to making non-signatories parties to the agreement.

IV. Conclusion and Principles

The unanimous judgment retains the Group of Companies doctrine in Indian arbitration jurisprudence but reformulates it to be firmly grounded in the mutual consent of parties as determined through objective evidence of conduct. The court rejects approaches based solely on "single economic unit" or corporate structure without evidence of mutual intention.

The judgment balances traditional principles of separate corporate personality and privity of contract with the practical realities of complex modern business transactions, providing a framework for determining when non-signatories can be bound by or benefit from arbitration agreements.

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76. In Re: Interplay B/w Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899

CHIEF JUSTICE DR DHANANJAYA Y CHANDRACHUD, JUSTICE SANJAY KISHAN KAUL, JUSTICE B R GAVAI, JUSTICE SURYA KANT, JUSTICE J B PARDIWALA, JUSTICE MANOJ MISRA, JUSTICE SANJIV KHANNA

Read the judgment here

I. Introduction and Background

The Supreme Court of India, through a seven-judge bench, has delivered a landmark judgment in the case titled "In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899" along with related matters. The judgment addresses a fundamental legal question: whether an arbitration agreement contained in an unstamped or insufficiently stamped instrument is valid and enforceable.

This judgment overrules the majority decision in N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd. (2023), which had held that an arbitration agreement in an unstamped instrument would be unenforceable until the underlying contract was duly stamped. The Court has now clarified the legal position regarding the interplay between the Arbitration and Conciliation Act, 1996, the Indian Stamp Act, 1899, and the Indian Contract Act, 1872.

II. Procedural History of the Case

The reference to the seven-judge bench arose from a complex procedural history. The issue first emerged in N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd. (2021) where a three-judge bench held that an arbitration agreement, being separate from the underlying commercial contract, would remain valid despite the underlying contract being unstamped. This view differed from earlier decisions in SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd. (2011) and Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd. (2019), which had held that an arbitration agreement in an unstamped contract could not be acted upon.

A five-judge Constitution Bench in N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd. (2023) then overruled the 2021 decision by a 3:2 majority, holding that an unstamped instrument is void and unenforceable, and consequently, the arbitration agreement contained therein cannot exist in law until properly stamped. Subsequently, considering the wider ramifications of this decision, a five-judge bench referred the matter to a seven-judge bench.

III. Key Legal Issues Addressed

The Court addressed several key issues:

1. Whether an unstamped or insufficiently stamped instrument is void or merely inadmissible in evidence
2. The effect of non-stamping on the arbitration agreement contained in such instrument
3. The scope of judicial intervention at the pre-arbitral stage under Sections 8 and 11 of the Arbitration Act
4. Harmonious construction of the Arbitration Act, Stamp Act, and Contract Act
5. The application of the doctrines of separability and competence-competence in the context of unstamped agreements

IV. Analysis of the Indian Stamp Act, 1899

The Court conducted a detailed analysis of the Stamp Act, particularly Sections 33 and 35. Section 33 empowers persons authorized to receive evidence and public officers to impound unstamped or insufficiently stamped instruments. Section 35 renders such instruments inadmissible in evidence and prevents them from being acted

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upon, registered, or authenticated until properly stamped.

The judgment distinguishes between an instrument's inadmissibility in evidence and its validity. It clarifies that non-stamping or insufficient stamping does not render an instrument void or void ab initio, but merely inadmissible in evidence until the defect is cured. The Stamp Act itself provides a procedure for curing this defect through payment of the requisite stamp duty and penalty.

The Court observed that the Stamp Act is a fiscal legislation intended to raise revenue for the government, not to invalidate commercial transactions or provide litigants with technical objections to delay proceedings.

V. Principles of the Arbitration and Conciliation Act, 1996

The judgment elaborates on the core principles of the Arbitration Act:

1. **Arbitral Autonomy**: The Act recognizes the autonomy of arbitral tribunals to decide matters submitted to them without undue interference from courts.
2. **Principle of Minimum Judicial Interference**: Section 5 of the Arbitration Act contains a non-obstante clause that limits judicial intervention in arbitral proceedings to situations explicitly provided for in the Act.
3. **Self-Contained Code**: The Arbitration Act is a comprehensive code that provides a complete framework for arbitration proceedings, making it a special law in relation to arbitration agreements.
4. **Modern Arbitration Principles**: The Act reflects modern arbitration principles of party autonomy, efficiency, and expediency in resolving disputes.

VI. Doctrine of Separability of Arbitration Agreements

A significant part of the judgment discusses the doctrine of separability, which treats an arbitration agreement as legally distinct from the underlying contract in which it is contained. This doctrine ensures that challenges to the validity of the main contract do not automatically invalidate the arbitration agreement.

The Court traced the evolution of this doctrine in various jurisdictions including the United Kingdom, United States, Singapore, and international conventions, noting that it has been explicitly recognized in Section 16(1) of the Arbitration Act. The separability presumption allows an arbitration agreement to survive even if the main contract is terminated, repudiated, or found to be invalid.

VII. The Doctrine of Competence-Competence

The judgment also explores the doctrine of competence-competence, which empowers arbitral tribunals to rule on their own jurisdiction, including objections regarding the existence or validity of the arbitration agreement. Section 16 of the Arbitration Act incorporates this principle.

The Court elucidated both the positive aspect (arbitral tribunals can decide challenges to their jurisdiction) and the negative aspect (courts should defer jurisdictional questions to arbitral tribunals at the pre-arbitral stage). This doctrine complements the separability presumption and reinforces the autonomy of arbitral proceedings.

VIII. Scope of Judicial Intervention Under the Arbitration Act

The judgment clarifies the limited role of courts at the pre-arbitral stage under Sections 8 and 11 of the Arbitration Act. Section 8 requires judicial authorities to refer parties to arbitration if a valid arbitration agreement exists, while Section 11 deals with the appointment of arbitrators.

Section 11(6A), introduced by the 2015

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amendment, confines the court's examination to the existence of an arbitration agreement. The Court interpreted "examination" to mean a prima facie determination rather than a detailed inquiry, emphasizing that substantive objections, including those related to stamping, should be left to the arbitral tribunal.

IX. Harmonious Construction of the Three Statutes

The Court adopted a harmonious construction of the Arbitration Act, Stamp Act, and Contract Act:

1. The Arbitration Act is a special law concerning arbitration agreements, while the Stamp Act and Contract Act are general laws.
2. The non-obstante clause in Section 5 of the Arbitration Act gives it primacy over other laws in matters of arbitration.
3. The purpose of both statutes can be fulfilled by allowing arbitral tribunals to address stamping issues, ensuring that stamp duty is eventually paid while not delaying the arbitration process.
4. The word "shall" in Sections 33 and 35 of the Stamp Act must be interpreted contextually, considering the interplay with the Arbitration Act.

X. Overruling Previous Decisions

The Court explicitly overruled SMS Tea Estates (2011) and partially overruled Garware Wall Ropes (2019) to the extent they held that arbitration agreements in unstamped instruments cannot be acted upon. The Court also clarified that Vidya Drolia v. Durga Trading Corporation (2021) did not specifically address the issue of stamping.

The judgment noted that the legislative intent behind Section 11(6A) was to minimize judicial intervention at the referral stage. The non-obstante clause in this provision was intended to override previous judicial decisions that permitted extensive examination of preliminary issues.

XI. Majority Opinion by Chief Justice Chandrachud

The majority opinion authored by Chief Justice Dr. D.Y. Chandrachud provides an extensive analysis of the interplay between the Arbitration Act, Stamp Act, and Contract Act. It systematically dismantles the reasoning in N.N. Global 2 (2023) by examining the purpose of the Stamp Act as a fiscal statute, the principles underlying modern arbitration law, and the legislative intent behind the amendments to the Arbitration Act.

The majority emphasized that the Stamp Act renders unstamped documents inadmissible in evidence but does not make them void. It highlighted the doctrines of separability and competence-competence as fundamental to arbitration law, allowing arbitration agreements to be considered independently from the underlying contracts and empowering arbitral tribunals to rule on their own jurisdiction.

The majority opinion concluded that objections regarding insufficient stamping should be decided by arbitral tribunals rather than courts at the pre-arbitral stage, thus upholding the principle of minimal judicial interference enshrined in Section 5 of the Arbitration Act.

XII. Justice Sanjiv Khanna's Concurring Opinion

Justice Sanjiv Khanna wrote a separate concurring opinion, agreeing with the conclusions reached by Chief Justice Chandrachud while providing additional justifications and analysis. His opinion particularly focused on:

1. **Detailed Analysis of Sections 33 and 35 of the Stamp Act**: Justice Khanna elaborated on the cautious wording of Section 33, noting that it applies only when an instrument is produced before a person authorized to receive evidence or a public officer in the performance of their

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functions. He emphasized that these sections do not apply when instruments are produced or acted upon by parties themselves or by persons not authorized to receive evidence.

2. **Precedents on Stamp Act Interpretation**: He cited numerous Supreme Court decisions including Javer Chand v. Pukhraj Surana (1961), Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao (1971), and Hameed Joharan v. Abdul Salam (2001) to reinforce that the Stamp Act does not render instruments void but merely inadmissible until properly stamped.
3. **Commercial Certainty and Stability**: Justice Khanna emphasized the importance of predictability and certainty in commercial law, noting that treating unstamped agreements as void would cause "disarray and disruption" in daily commercial and routine transactions.
4. **Analysis of Arbitration Agreement Requirements**: He examined Section 7 of the Arbitration Act in detail, noting that an arbitration agreement can be established through various means beyond signed documents, including through exchange of communications or statements of claim and defense.
5. **Jurisprudential Analysis of Void and Voidable Agreements**: Justice Khanna provided a comprehensive analysis of the distinctions between agreements that are void ab initio, void, and voidable under the Contract Act, clarifying that insufficient stamping does not fall within any category that would render an agreement legally non-existent.
6. **Clarification on Vidya Drolia**: He specifically addressed his previous judgment in Vidya Drolia, acknowledging an error regarding the status of Section 11(6A) and clarifying that the decision did not specifically address the effect of insufficient stamping on arbitration agreements.

Justice Khanna's concurring opinion thus complemented the majority judgment by providing additional legal analysis, particularly on the nature of unstamped instruments under the Stamp Act and the various forms of arbitration agreements recognized under Section 7 of the Arbitration Act.

XIII. Conclusion and Holdings

Both the majority opinion and Justice Khanna's concurring opinion reached the same conclusions:

1. Agreements that are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act but are not rendered void, void ab initio, or unenforceable.
2. Non-stamping or inadequate stamping is a curable defect.
3. Objections as to stamping do not fall for determination under Sections 8 or 11 of the Arbitration Act. The concerned court must examine only whether the arbitration agreement prima facie exists.
4. Any objections relating to the stamping of the agreement fall within the ambit of the arbitral tribunal.
5. The decisions in N.N. Global 2 (2023) and SMS Tea Estates (2011) are overruled, and paragraphs 22 and 29 of Garware Wall Ropes (2019) are overruled to that extent.

This unanimous decision by the seven-judge bench brings clarity to a previously contentious area of law and upholds the fundamental principles of modern arbitration law in India.

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77. In Re: Article 370 of the Constitution

CHIEF JUSTICE DR DHANANJAYA Y CHANDRACHUD, JUSTICE B R GAVAI, JUSTICE SURYA KANT, JUSTICE SANJIV KHANNA

Read the judgment here

I. Background

The judgment addresses the constitutional challenges to actions taken regarding Article 370 of the Constitution of India, which pertained to the governance of the State of Jammu and Kashmir. The timeline of events leading to the legal challenge began with the resignation of the Chief Minister of Jammu and Kashmir on June 19, 2018, after the Bharatiya Janata Party withdrew support from the coalition government. This was followed by the imposition of Governor's rule on June 20, 2018, under Section 92 of the Constitution of Jammu and Kashmir. The Legislative Assembly of the State was subsequently dissolved on November 21, 2018.

As the six-month period for Governor's rule was ending, the President of India issued a Proclamation under Article 356 of the Indian Constitution on December 19, 2018, imposing President's rule in the State. This Proclamation, among other things, declared that the powers of the Legislature of the State would be exercisable by or under the authority of Parliament. President's rule was later extended.

On August 5, 2019, the President issued Constitutional Order (CO) 272. This order, made with the concurrence of the Government of the State of Jammu and Kashmir (exercised by the Governor during President's rule), stated that all provisions of the Constitution of India, as amended from time to time, would apply to the State of Jammu and Kashmir. It also added a clause to Article 367 of the Indian Constitution, which, for its application to Jammu and Kashmir, reinterpreted the term "Constituent Assembly of the State referred to in clause (2)" of Article 370 to mean the "Legislative Assembly of the State."

Contemporaneously, on August 5, 2019, the Rajya Sabha recommended to the President, under the now-modified Article 370(3), that all clauses of Article 370 (except for a rephrased clause (1) stating that all provisions of the Indian Constitution would apply to J&K) should cease to be operative. The Rajya Sabha also expressed its views accepting the Jammu and Kashmir Reorganisation Bill, 2019.

On August 6, 2019, the Lok Sabha also made a similar recommendation regarding Article 370(3) and passed the Reorganisation Act. Following these parliamentary recommendations, the President issued CO 273 on August 6, 2019, declaring that from that date, all clauses of Article 370 would cease to be operative, except for the newly rephrased clause (1) which applied the entire Indian Constitution to Jammu and Kashmir without any modifications or exceptions.

The Jammu and Kashmir Reorganisation Act, 2019, which received Presidential assent on August 9, 2019, bifurcated the State of Jammu and Kashmir into two Union Territories: the Union Territory of Jammu and Kashmir (with a Legislative Assembly) and the Union Territory of Ladakh (without a Legislative Assembly). The Act came into force on October 31, 2019.

The petitioners challenged the constitutionality of CO 272, CO 273, and the Reorganisation Act, 2019. The judgment also notes that an earlier request by the petitioners for the matter to be referred to a larger bench, based on alleged contradictions in previous Supreme Court rulings on Article 370, was declined by a Constitution Bench in *Dr Shah Faesal v. Union of India*.

II. Submissions of the Petitioners

The petitioners presented a wide array of arguments challenging the actions of the Union

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government. Their main contentions were:

- **A. Invalidity of Governor's Rule and President's Rule:**
  - The imposition of Governor's rule under Section 92 of the J&K Constitution on June 20, 2018, was challenged as a political act, lacking the mandatory satisfaction of the Governor that the State government could not be carried on. It was argued that no opportunity was given to other political parties to demonstrate their strength to form a government.
  - The subsequent Proclamation of President's rule under Article 356 on December 19, 2018, was contended to be void ab initio. Petitioners argued that the Governor's report showing the failure of constitutional machinery was not placed before Parliament, and the motion approving the Proclamation was passed without adequate debate.
  - They apprehended that such unilateral exercise of emergency powers set a dangerous precedent for other states and undermined the federal structure.
- **B. Limitations on Presidential/Parliamentary Powers during President's Rule:**
  - Actions taken when the Proclamation under Article 356 was in force were challenged as void. It was argued that once the Legislative Assembly was dissolved, there was no occasion for the President to exercise power under Article 356.
  - The purpose of Article 356, being housed in 'Emergency provisions', is restorative. It was contended that Parliament cannot make irreversible changes during the temporary period of President's rule. Article 357(2), which allows the subsequent State Legislature to alter or repeal laws made by Parliament during President's rule, was cited to support this.
  - It was argued that Article 356 does not envisage a transfer of constituent power to the President or Parliament. The President does not acquire the State Government's power under Article 370(1)(d) to give concurrence, nor does Parliament acquire the constituent powers of the Legislative Assembly to recommend a notification under Article 370(3).
- **C. Interpretation of Article 370:**
  - Article 370 was presented as envisaging different modes of cooperation, requiring consultation, consent, or recommendation depending on the nature of the action.
  - It was argued that Article 370 reflected asymmetric federalism, autonomy, and consent, which are part of the basic structure of the Indian Constitution.
  - The petitioners contended that Article 370 recognized the constituent power of the people of J&K, and once the relationship was crystallized by the State's Constitution, there was no scope for change after the J&K Constituent Assembly ceased to exist.
  - The "temporary" nature of Article 370, as indicated by its marginal note and placement in Part XXI, was argued to be conditional upon the J&K Constituent Assembly recommending its abrogation. Since the Assembly did not do so, Article 370 acquired permanence.
  - A divergent view was also presented by one senior counsel arguing that Article 370 was indeed temporary and ceased to be a source of power after the J&K Constitution was enacted in 1957, making subsequent actions under it invalid.
  - It was also argued that J&K retained a part of its sovereignty upon accession, evidenced by the absence of a merger agreement and the recognition of a separate

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Constituent Assembly.

- **D. Unconstitutionality of CO 272:**
  - CO 272, issued under Article 370(1)(d), was challenged for amending Article 370(3) by substituting "Constituent Assembly" with "Legislative Assembly" through a modification of Article 367 (an interpretation clause). This was termed a colorable exercise of power, as Article 370 could only be amended via the procedure in Article 370(3).
  - It was argued that the J&K Legislative Assembly, under Section 147 of the J&K Constitution, had no power to amend any provision of the Indian Constitution, and thus could not give consent to CO 272.
  - The petitioners distinguished previous Constitutional Orders modifying Article 367, stating they were purely clarificatory and did not make substantive changes to Article 370, unlike CO 272.
  - The wholesale application of the Indian Constitution to J&K via CO 272 was alleged to suffer from a lack of application of mind.
  - A crucial argument was that the "concurrence" of the State Government for CO 272 was invalid as there was no Council of Ministers in place; the Governor acting on behalf of the State Government could not provide such concurrence, especially when the President (acting for the Union) was the one seeking it.
- **E. Unconstitutionality of CO 273:**
  - CO 273, which declared Article 370 inoperative, was challenged as void ab initio due to the invalidity of CO 272.
  - It was argued that CO 273 lacked the mandatory "recommendation" from a competent representative body under the proviso to Article 370(3). Even if "Constituent Assembly" was validly substituted by "Legislative Assembly" (which was denied), the Legislative Assembly was not in existence when CO 273 was issued.
  - The petitioners contended that the J&K Constituent Assembly had expressed its desire not to abrogate Article 370, and the President had no power to act contrary to this.
- **F. Unconstitutionality of the Jammu and Kashmir Reorganisation Act, 2019:**
  - The suspension of the provisos to Article 3 of the Indian Constitution (regarding reference to the State Legislature for its views and, for J&K, requiring its consent for altering area/boundaries) through the President's Rule Proclamation was challenged as beyond the President's power under Article 356(1)(c).
  - It was argued that Article 3 does not grant Parliament the power to degrade a State into Union Territories, thereby extinguishing its character and diminishing representative democracy and federalism. This, they contended, violated the basic structure of the Constitution.
  - The petitioners asserted that such a reorganisation bypassed the mandatory procedures under Article 368 for constitutional amendments, as the changes effected were substantial.
  - It was highlighted that historically, Union Territories had progressed towards statehood, and there was no precedent for retrograding an existing State into Union Territories in India.
  - The Act was also challenged for not representing the will of the people of Jammu and Kashmir, as the Rajya Sabha, which expressed views on behalf of the dissolved State Assembly, was not truly representative of the State's populace in this

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specific context.

III. Submissions of the Union of India

The Union of India, defending the challenged actions, put forth the following main arguments:

- **A. Nature of Article 370:**
  - Article 370 was unequivocally presented as a "temporary" provision, as evidenced by its text, its placement in Part XXI of the Constitution (originally titled "Temporary and Transitional provisions"), its drafting history, and statements made in the Constituent Assembly.
  - The Union argued that the continued existence of Article 370 deprived the residents of Jammu and Kashmir of several fundamental and statutory rights available to other Indian citizens and hindered the complete integration of the State.
  - The power under Article 370(1) was described as expansive, allowing the application of the Indian Constitution to J&K with modifications, indicating it was not intended to be a permanent feature freezing the constitutional relationship.
- **B. President's Power under Article 370(3):**
  - The Union contended that the proviso to Article 370(3), requiring the recommendation of the J&K Constituent Assembly, was operative only as long as the Assembly existed.
  - Upon the dissolution of the J&K Constituent Assembly without recommending the abrogation of Article 370, the President became the sole authority to exercise power under Article 370(3). The recommendation, even if the Assembly existed, was not binding on the President.
  - The argument was that if the President could not exercise this power, Article 370 would effectively become permanent, contrary to its original intent.
- **C. Validity of CO 272 and CO 273:**
  - The modification of Article 367 by CO 272 to substitute "Constituent Assembly" with "Legislative Assembly" was defended as a necessary step to democratize the decision-making process. It was argued that Parliament, representing the democratic will of the nation, was the appropriate body to make such recommendations during President's rule.
  - The Union cited past instances where Article 367 had been amended via Presidential Orders under Article 370(1)(d) in relation to J&K.
  - The application of the entire Constitution of India to J&K via CO 272 was presented as a measure to bring residents of J&K at par with other citizens and was not an arbitrary act.
  - The subsequent issuance of CO 273, declaring Article 370 inoperative based on Parliament's recommendation (acting as the State Legislature), was thus defended as a valid exercise of power.
- **D. Sovereignty and Integration of Jammu and Kashmir:**
  - The Union vehemently argued that the State of Jammu and Kashmir did not possess any element of sovereignty after its accession to India. The IoA signed by the Maharaja was an act of complete surrender of sovereignty.
  - The Constitution of Jammu and Kashmir was described as a subordinate document, framed for internal governance and subject to the Constitution of India.
  - The process of constitutional integration of J&K was presented as being similar to that of other princely states.
- **E. Validity of the Jammu and Kashmir**

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Reorganisation Act, 2019:

- The Union asserted that Parliament possesses plenary power under Article 3 of the Constitution to reorganise States, which includes the power to convert a State into Union Territories.
- It was argued that the sufficiency of material or the circumstances necessitating such reorganisation are beyond the scope of judicial review.
- Regarding the procedural requirement of obtaining the views of the State Legislature under the first proviso to Article 3, it was submitted that since Parliament was exercising the powers of the State Legislature during President's rule, it could express its own views. The second proviso (requiring consent of J&K Legislature) was argued to be inapplicable after CO 272 applied the standard Article 3 to J&K.
- The Solicitor General also submitted to the Court that the status of Jammu and Kashmir as a Union Territory was temporary and that statehood would be restored.
-

IV. Issues for Determination by the Court

The judgment framed the following principal questions for its consideration:

- Whether Article 370 of the Constitution was temporary or had acquired permanence.
- The constitutional validity of amending Article 367 through Article 370(1)(d) to substitute "Constituent Assembly" with "Legislative Assembly" in the proviso to Article 370(3).
- Whether the entire Constitution of India could be applied to Jammu and Kashmir under Article 370(1)(d).
- The validity of abrogating Article 370 under Article 370(3) in the absence of a recommendation from the J&K Constituent Assembly.
- The constitutional validity of the Proclamations imposing Governor's rule and President's rule, and the dissolution of the J&K Legislative Assembly.
- The constitutional validity of the Jammu and Kashmir Reorganisation Act, 2019, particularly in relation to Article 3 and its provisos.
- Whether, during President's rule, a State can be converted into a Union Territory.

V. Analysis and Findings of the Court

The Supreme Court, in its detailed analysis, arrived at the following key findings:

- **A. Sovereignty of Jammu and Kashmir:** The Court held that the State of Jammu and Kashmir did not retain any element of sovereignty after the execution of the Instrument of Accession (IoA) and the subsequent Proclamation by Yuvraj Karan Singh in November 1949 adopting the Constitution of India. Article 370 was interpreted as a feature of asymmetric federalism, not an expression of sovereignty. The Constitution of India was affirmed as the supreme governing document.
- **B. Challenge to Proclamations (Section 92 and Article 356):** The Court found it unnecessary to adjudicate the challenge to the Proclamations imposing Governor's rule and President's rule because the petitioners had not challenged them contemporaneously and the principal challenge was to actions taken *after* these proclamations were issued. Since the proclamations had been revoked, no material relief could be granted on this specific challenge.
- **C. Limitations on Power under Article 356:** The Court reiterated that the exercise

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of power by the President under Article 356 is subject to judicial review and must have a reasonable nexus with the object of the Proclamation. It rejected the petitioners' argument that actions taken during President's rule cannot be "irreversible." The Court also held that Parliament's power under Article 356(1)(b) to exercise the powers of the State Legislature is not confined to law-making powers but extends to all powers of the Legislature.

- **D. Temporary Nature of Article 370:** Based on its historical context, its placement in Part XXI of the Constitution (originally titled "Temporary and Transitional Provisions"), and its textual interpretation, the Court concluded that Article 370 was a temporary provision.
- **E. Effect of Dissolution of J&K Constituent Assembly on Article 370(3):** The Court held that the power of the President under Article 370(3) to declare that Article 370 shall cease to operate or shall be operative only with specified exceptions and modifications did *not* cease to exist upon the dissolution of the Constituent Assembly of Jammu and Kashmir. The recommendation of the J&K Constituent Assembly, as mentioned in the proviso to Article 370(3), was deemed a transitional power related to the period when the Assembly was framing the State's Constitution. Once the Assembly was dissolved, this specific recommendatory power ceased, but the President's primary power under Article 370(3) to act remained.
- **F. Validity of CO 272:**
  - The Court held that amending Article 370 through a modification of Article 367 (an interpretation clause), as attempted by Paragraph 2 of CO 272, was *ultra vires* Article 370(1)(d). Article 370 could only be amended or cease to operate through the procedure laid down in Article 370(3). An interpretation clause cannot be used to bypass the specific amendment procedure for a constitutional provision.
  - However, the Court upheld the application of all provisions of the Constitution of India to the State of Jammu and Kashmir by CO 272 (excluding the part amending Article 367 to alter Article 370). It reasoned that the President had the power under Article 370(3) to unilaterally declare Article 370 inoperative (which would result in the full application of the Indian Constitution). Since applying all provisions via Article 370(1)(d) had a similar effect, the concurrence of the State Government (or the Union Government acting on its behalf during President's rule) was not strictly necessary for this specific action, and the exercise of power was not deemed mala fide.
- **G. Validity of CO 273:** The Court upheld CO 273, by which Article 370 ceased to operate (except for the rephrased clause (1) applying the entire Indian Constitution). This was held to be a valid exercise of the President's power under Article 370(3) and a culmination of the process of constitutional integration.
- **H. Status of the Constitution of Jammu and Kashmir:** Following the application of the entire Constitution of India to Jammu and Kashmir by CO 273, the Court declared the Constitution of the State of Jammu and Kashmir to be inoperative and redundant.
- **I. Validity of the Jammu and Kashmir Reorganisation Act, 2019:**
  - **Procedural Grounds (Article 3):** The Court found that since the views of the State Legislature under the first proviso to

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Article 3 are only recommendatory, Parliament's exercise of power (acting as the State Legislature during President's rule) to express its own views on the Reorganisation Bill was valid and not mala fide. The challenge regarding the second proviso to Article 3 (requiring consent of the J&K Legislature for altering its area/boundaries) was deemed not to survive because CO 272 had already made the standard Article 3 (without this special J&K proviso) applicable.

- **Substantive Grounds (Conversion to Union Territory):** In light of the Solicitor General's statement that statehood for Jammu and Kashmir would be restored (except for the carved-out Union Territory of Ladakh), the Court did not find it necessary to definitively rule on whether Parliament has the power under Article 3 to convert an existing State into one or more Union Territories, thereby extinguishing its character as a State. However, the Court upheld the validity of carving out the Union Territory of Ladakh, citing Article 3(a) read with Explanation I, which permits forming a Union Territory by separation of territory from any State.

VI. Conclusion and Directions of the Court

The Supreme Court, in its final conclusions, largely upheld the actions of the Union of India. The key operative parts of the judgment are:

- The State of Jammu and Kashmir did not possess any internal sovereignty distinguishable from other States after its accession to India. Article 370 was a temporary provision.
- The President's power under Article 370(3) to abrogate the article did not cease with the dissolution of the J&K Constituent Assembly.
- CO 272 was valid to the extent it applied all provisions of the Indian Constitution to J&K, although the method of amending Article 370 via Article 367 was held invalid.
- CO 273, declaring Article 370 inoperative, was held to be a valid exercise of Presidential power.
- The Constitution of Jammu and Kashmir was declared inoperative and redundant.
- The Jammu and Kashmir Reorganisation Act, 2019, was upheld, including the creation of the Union Territory of Ladakh.
- The Court directed the Election Commission of India to take steps to conduct elections to the Legislative Assembly of Jammu and Kashmir by September 30, 2024.
- The Court noted the Union's submission and stated that the restoration of statehood for Jammu and Kashmir should take place at the earliest and as soon as possible.

The writ petitions and special leave petitions were disposed of in accordance with these conclusions.

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78. Association for Democratic Reforms (Electoral Bond Scheme) v. Union of India

CHIEF JUSTICE S. A. BOBDE, JUSTICE A. S. BOPANNA, JUSTICE V. RAMASUBRAMANIAN

Read the judgment here

I. Background of the Case

The case involves a Public Interest Litigation filed by the Association for Democratic Reforms and Common Cause challenging the constitutionality of various sections of the Finance Act 2017 and other acts that introduced the Electoral Bond Scheme. The petitioners sought to declare these amendments as unconstitutional, illegal, and void. Additionally, they requested a writ of mandamus directing that no political parties should accept donations in cash.

On October 3, 2017, the Supreme Court issued notice in the writ petition and directed it to be tagged along with other related petitions. One of the related petitions sought declarations that all national and regional political parties are public authorities under the Right to Information Act, 2005, and directions for the Election Commission of India to collect information about political party finances and for political parties to disclose details about their income, expenditure, and donations.

II. Previous Interim Order of April 12, 2019

On April 12, 2019, the Supreme Court passed an interim order after examining amendments brought by the Finance Acts of 2016 and 2017. The Court acknowledged that the issues raised had "tremendous bearing on the sanctity of the electoral process" but recognized that these weighty matters required in-depth hearings that could not be concluded within the limited time before the Electoral Bonds funding process closed.

The interim order required all political parties who received donations through Electoral Bonds to submit to the Election Commission of India, in sealed covers, detailed particulars of the donors against each bond, the amount of each bond, and full particulars of the credit received, including bank account details and dates of credits. These details were to be furnished immediately for bonds received until that date, and by May 30, 2019, for bonds received up until May 15, 2019. The sealed covers would remain in the custody of the Election Commission and be subject to further court orders.

III. Current Applications Before the Court

After the interim order, the Association for Democratic Reforms filed an application (I.A. No.183625 of 2019) seeking a stay of the Electoral Bond Scheme, 2018, claiming that vital documents with strong bearing on the case had surfaced. This application, filed on November 29, 2019, could not be taken up for hearing.

Subsequently, the petitioners filed a fresh application (I.A. No.36653 of 2021) seeking an interim direction to prevent the opening of any further window for the sale of Electoral Bonds. This application was filed on the premise that a window for fresh bond sales was likely to open on April 1, 2021.

IV. Court's Observations on Repeated Applications

The Court pointed out that there cannot be repeated applications seeking the same relief merely because the interim reliefs relate to something happening at periodical intervals. Under Clause 8(1) of the Electoral Bonds Scheme, 2018, bonds are made available for purchase for 10 days each in January, April, July, and October. Once the Court had passed an interim order on April 12, 2019, applications for the same interim relief cannot be made every time the purchase window opens.

Despite this procedural rule, the Court heard arguments from both sides due to the seriousness of the issues raised.

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V. Arguments Against the Electoral Bonds Scheme

The main objection raised by the petitioners was that the Scheme allows donors of political parties to maintain anonymity, which they argued is unhealthy for a democracy. Although the government might technically be able to identify donors since the Scheme operates through the State Bank of India via banking channels, members of the public and political parties not in power would be unable to access this information.

The petitioners also contended that the party in power would normally receive more funds, as donations would be reciprocated with favors. They drew attention to letters from the Reserve Bank of India (RBI) and the Election Commission expressing serious reservations about the Scheme.

VI. Arguments Supporting the Electoral Bonds Scheme

The Attorney General opposed the stay request, arguing that the Scheme was intended to prevent unaccounted money from influencing elections by obliging donors to operate only through banking channels, thereby curbing the use of black money in elections. The Election Commission of India supported the Scheme.

VII. RBI's Position on the Electoral Bonds Scheme

The Court clarified that while RBI had some reservations, it was incorrect to say that both RBI and the Election Commission opposed the Electoral Bond Scheme itself. Before the Scheme was issued on January 2, 2018, under Section 31(3) of the Reserve Bank of India Act, 1934, discussions were held with RBI's participation.

In a letter dated August 4, 2017, RBI recommended certain safeguards to minimize potential misuse, including limiting bond tenors to 15 days, allowing purchases in specific denominations, requiring KYC compliance for purchasers, ensuring bonds could only be redeemed by deposit into designated political party accounts, limiting sale periods, and centralizing issuance at RBI Mumbai.

In a subsequent letter dated September 14, 2017, the then RBI Governor stated that the Scheme's major objective was to provide anonymity, which could be achieved if bonds were issued in electronic form with RBI as the depository rather than as physical scrip. On September 27, 2017, the matter was placed before the Central Board of RBI, which raised serious reservations.

However, the Court noted that the RBI's final position, as stated in paragraph 5 of the September 27, 2017 letter, was that if the government reconsidered issuing bonds in scrip form, they could discuss issuing them in demat form with RBI as the sole custodian of information about subscribers and transfers. RBI acknowledged this would provide both anonymity to contributors and ensure transfers were through banking channels, calling it "an enduring reform, consistent with the government's digitisation push."

The Court concluded that RBI's objection was to the form (scrip vs. demat) rather than the substance of the Scheme, and that these concerns could not advance the petitioners' case.

VIII. Incorporation of RBI Recommendations in the Scheme

The Court observed that most of RBI's recommendations had been incorporated into the Scheme, including: (i) limiting eligibility to registered political parties that secured at least 1% of votes in the last general election; (ii) requiring bonds to be encashed only through authorized bank accounts; (iii) applying KYC norms; (iv) limiting bond validity to 15 days; (v) accepting payments only through legitimate banking channels; (vi) requiring bonds to be encashed only by deposit into designated party accounts; and (vii) counting

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bond face values as income for tax exemption purposes.

IX. Safeguards Within the Electoral Bonds Scheme

The Court emphasized that despite providing anonymity, the Scheme ensures all transactions occur through banking channels. While the buyer's identity is withheld, the Scheme prevents unidentified persons from purchasing bonds and giving them to political parties.

Under Clause 7, buyers must apply in prescribed forms, disclosing required particulars. Though this information is confidential, it can be disclosed when demanded by a competent court or upon registration of a criminal case. Non-KYC compliant applications are rejected.

Regarding information to the Election Commission, the Court noted that its interim order of April 12, 2019, addressed this issue. The Election Commission had received sealed covers from various political parties containing the required details, as indicated in Annexures to their reply filed on February 3, 2020.

X. Transparency Through Corporate Disclosures

The Court questioned the sustainability of allegations about complete anonymity in political financing. Since bonds can only be purchased and encashed through banking channels with KYC compliance, information about purchasers would be available with the SBI. Additionally, any expenditure on bonds would have to be accounted for in the purchaser's books, reflected in their trial balance, cash flow statement, profit and loss account, and balance sheet.

Under Section 128(1) of the Companies Act, 2013, companies must prepare and keep books of accounts and financial statements for every financial year. These statements must give a true and fair view of the company's affairs and comply with accounting standards. They must be placed at Annual General Meetings and filed with the Registrar of Companies.

These financial statements are accessible online on the Ministry of Corporate Affairs website or in physical form from the Registrar of Companies. Since both political parties and companies must file audited statements, and all transactions occur through banking channels, this information eventually becomes public. All that's required is effort to collate information from both sides to match transactions.

XI. Addressing Other Concerns

The Court dismissed concerns about black money being used to repurchase bonds from initial buyers, pointing out that under Clause 14 of the Scheme, the bonds are not tradable. Moreover, first buyers would have no incentive to sell white money for black.

The Court also rejected apprehensions about foreign corporate influence, noting that under Clause 3 of the Scheme, bonds may only be purchased by Indian citizens or entities incorporated or established in India.

XII. Conclusion and Order

Given that the Scheme was introduced on January 2, 2018, that bonds had been released periodically in January, April, July, and October of 2018, 2019, and 2020 without impediment, and that safeguards were already provided in the interim order of April 12, 2019, the Court found no justification for granting a stay. Both applications for stay were dismissed.

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79. Kavita Kamboj v. High Court of Punjab & Haryana

CHIEF JUSTICE DR DHANANJAYA Y CHANDRACHUD, JUSTICE J B PARDIWALA, JUSTICE MANOJ MISRA

Read the judgment here

I. Background of the Case

This case originated from a judgment delivered by the High Court of Punjab and Haryana on December 20, 2023. The controversy pertains to recommendations made by the High Court for the appointment of thirteen in-service candidates as Additional District and Sessions Judges. These candidates were seeking recruitment to the post through promotions from the post of Senior Civil Judges against the 65% promotional quota under the Haryana Superior Judicial Service Rules 2007 (the "Rules").

The Rules, which came into force on January 10, 2007, regulate recruitment and service conditions for appointments to the Haryana Superior Judicial Service. According to Rule 6, recruitment to the service is made from three sources: (i) 65% by promotion from amongst Civil Judges (Senior Division) based on merit-cum-seniority and passing a suitability test; (ii) 10% by promotion strictly based on merit through a limited competitive examination; and (iii) 25% by direct recruitment from amongst eligible advocates.

II. Chronology of Events Leading to the Dispute

On January 29, 2013, the High Court resolved that candidates would need to obtain an aggregate of 50% marks in the written test and viva voce combined to be eligible for promotion. On November 11, 2021, the Recruitment and Promotion Committee overseeing the Superior Judicial Service modified this requirement, stipulating that candidates must secure 50% marks in the written test and 50% marks in the viva voce individually. This resolution was approved by the Full Court on November 30, 2021.

In August 2022, the process of filling vacancies for Additional District and Sessions Judges was initiated. After conducting written tests and viva voce, the High Court recommended thirteen judicial officers for appointment on February 23, 2023. The State Government sought clarification regarding certain senior judicial officers who were not recommended despite their seniority. The High Court responded that appointments were made strictly following Rule 6(1)(a), which prescribes merit-cum-seniority.

III. Legal Proceedings and Arguments

The State Government decided not to accept the High Court's recommendations, claiming that the "settled procedure" under Article 233 read with Article 309 and the Rules had not been followed. Writ petitions were filed both by the recommended candidates seeking implementation of the recommendations and by unsuccessful candidates challenging the new criteria requiring 50% marks in both the written test and viva voce separately.

The High Court, in its judgment dated December 20, 2023, directed the State of Haryana to accept its recommendations. The matter was then appealed to the Supreme Court.

IV. Submissions Before the Supreme Court

A. Arguments by Unsuccessful Candidates

The unsuccessful candidates argued that:

1. The new criteria discriminated against candidates seeking promotions in the 65% quota compared to those in the 10% quota, for which no such individual cut-offs were prescribed.
2. No such cut-off requirement existed for direct recruitment candidates either.
3. The new requirement was disclosed only after the process was complete, leaving candidates unaware of the changed criteria.
4. The modification of a longstanding practice

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required either an amendment to the Rules or regulations by the State Government.
5. The change violated principles of fairness, good governance, and legitimate expectations.

B. Arguments by the State of Haryana

The State of Haryana contended that:

1. Criteria for selection should be fixed in consultation with the State Government.
2. There is inherent subjectivity in laying down minimum marks for interviews.
3. The High Court ought to have consulted the State Government when modifying its own Resolution.
4. The Government was not informed of the change in criteria.

C. Arguments by the High Court

The High Court maintained that:

1. Rule 8 provides modalities for testing merit and suitability, and administrative instructions can supplement the Rules where they are silent.
2. The High Court was exercising its administrative power under Articles 233 and 235.
3. The three categories of recruitment (direct, limited competitive, and promotional) are distinct and constitute valid classifications.
4. No prejudice was caused to candidates by not disclosing the minimum eligibility cut-off.
5. The High Court remains the sole repository of power in matters of appointments to the District Judiciary.

V. Analysis by the Supreme Court

A. Distinction Between Recruitment Methods

The Supreme Court affirmed that each of the three avenues for appointment to the Higher Judicial Service is distinct, with different purposes and methods of evaluation. While all three modes aim to fill vacancies in the same post, the candidates taking these routes are differently placed and must be tested differently. In-service candidates seeking regular promotion cannot be equated with those seeking direct recruitment or accelerated promotion through limited competitive examination.

B. Supplementing Rules Through Administrative Instructions

The Court observed that Rules 6(1)(a) and 8 are silent regarding how merit and suitability would be determined. Where rules are silent on details of implementation, they can be supplemented by administrative instructions. Since the Rules did not specify minimum qualifying marks, the High Court's administrative instructions did not amount to an amendment of the rules but rather filled a gap in them.

C. Distinction from the Sivanandan C T Case

The Supreme Court distinguished this case from Sivanandan C T v. High Court of Kerala (2023), where the statutory rules had specifically indicated that the merit list would be prepared based on aggregate marks, and the scheme had explicitly stated there would be no separate cut-off for the viva voce. In the present case, the Rules were silent, and the High Court had the authority to modify its earlier Resolution.

D. Application of Articles 233, 234, and 235

The Court reaffirmed that in matters of appointment to the District Judiciary, the High Court remains the sole repository of power. While the Rules under Article 309 must be implemented where they exist, when the Rules are silent, the High Court can issue administrative directions through Full Court Resolutions. The Court held that the State Government exceeded its authority by referring the matter to the Union Government instead of consulting with the High Court as required by the Constitution.

VI. Conclusion

The Supreme Court concluded that the State

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Government was in error in finding fault with the process followed by the High Court. The Court affirmed the High Court's judgment and dismissed the appeals. The Court upheld the High Court's authority to prescribe minimum eligibility requirements of 50% in both the written test and viva voce independently for candidates seeking promotion to the Higher Judicial Service.

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80. Sita Soren v. Union of India

CHIEF JUSTICE DR DHANANJAYA Y CHANDRACHUD, JUSTICE A.S. BOPANNA, JUSTICE M.M. SUNDRESH, JUSTICE J B PARDIWALA, JUSTICE MANOJ MISRA, JUSTICE PAMIDIGHANTAM SRI NARASIMHA, JUSTICE SANJAY KUMAR

Read the judgment here

I. Case Background

The case arose from a judgment of the Jharkhand High Court where Sita Soren, a member of the Jharkhand Legislative Assembly belonging to Jharkhand Mukti Morcha (JMM), was accused of accepting a bribe to vote for an independent candidate in a Rajya Sabha election. However, she ultimately voted for her party's candidate instead. She moved the High Court to quash criminal proceedings against her, claiming protection under Article 194(2) of the Constitution, but the High Court declined based on a previous Supreme Court judgment in PV Narasimha Rao v. State (1998).

The matter was referred to a seven-judge bench of the Supreme Court to reconsider the correctness of the PV Narasimha Rao judgment, which had held (by a 3:2 majority) that MPs who accept bribes and vote in accordance with the bribe agreement are immune from prosecution under Article 105(2) of the Constitution.

II. The PV Narasimha Rao Case Overview

The PV Narasimha Rao case involved allegations that members of Parliament received bribes to vote against a no-confidence motion. The majority opinion (authored by Justice SP Bharucha and supported by Justices S Rajendra Babu and GN Ray) had held that MPs who accepted bribes and voted accordingly were protected from prosecution under Article 105(2), as bribery was "in respect of" their votes in Parliament.

The minority opinion (by Justice SC Agarwal, supported by Justice AS Anand) had held that the immunity under Article 105(2) did not extend to bribery cases, as the offence of bribery is complete upon accepting the bribe, independent of the vote cast in Parliament.

III. Arguments Before the Court

The appellant (Sita Soren) argued that the majority judgment in PV Narasimha Rao was correct and should not be reconsidered as it had been settled law since 1998. She argued that parliamentary immunity was an essential feature of constitutional democracy.

The Attorney General argued that PV Narasimha Rao was inapplicable to the present case as Rajya Sabha elections are not part of legislative functions under Article 194(2).

The amicus curiae and other intervenors argued that the majority judgment should be reconsidered as it was subversive to the rule of law and created an artificial distinction between those who accept bribes and vote accordingly and those who don't follow through with their illegal agreement.

IV. History of Parliamentary Privilege in India

The judgment traces the evolution of parliamentary privilege in India from colonial times through various Government of India Acts to the Constitution of India. It notes that the demand for parliamentary privileges in pre-independence India was always connected to the functions that legislators sought to discharge, and never meant as a blanket immunity from criminal law.

The Court observed that the Constitution was intended to be a "modernizing force" with parliamentary democracy as its first modernizing influence, aimed at creating a society that eschews discrimination and social hierarchies.

V. Purport of Parliamentary Privilege in India

The Court analyzed parliamentary privilege through three lenses:

A. Functional Analysis

Articles 105 and 194 provide freedom of speech in

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Parliament and state legislatures, unlike the freedom of speech under Article 19(1)(a). This freedom is subject only to the Constitution and procedural rules of the House. Article 105(2) provides that members shall not be liable to court proceedings for anything said or votes given in Parliament.

B. Parliamentary Privilege as a Collective Right

The Court emphasized that privileges are primarily enjoyed by the House collectively, while members enjoy certain privileges individually only to the extent necessary for the functioning of the House. These individual privileges are not an end in themselves but facilitate the effective discharge of collective functions.

C. Necessity Test for Claiming Privilege

The Court articulated a test for parliamentary privilege: the privilege claimed must be tethered to the collective functioning of the House and its necessity must bear a functional relationship to the discharge of essential legislative duties.

VI. Bribery is Not Protected by Parliamentary Privilege

The Court provided several reasons why bribery cannot be protected:

A. Bribery is Not "In Respect Of" Speech or Vote

The phrase "in respect of" in Articles 105(2) and 194(2) means "arising out of" or having a clear relation to the speech or vote. Bribery is not directly related to the speech or vote but precedes it and is independent of it.

B. The Constitution Envisions Probity in Public Life

The purpose of Articles 105 and 194 is to create a fearless atmosphere for debate and deliberation, which is undermined when members are induced to vote based on bribes rather than their conscience or belief.

C. Courts and the House Exercise Parallel Jurisdiction

Criminal prosecution for bribery and the House's disciplinary action against a member serve different purposes. The criminal court's jurisdiction over the offence of bribery is not excluded merely because the House may also take action against the member.

D. Delivery of Results is Irrelevant to Bribery

The offence of bribery under the Prevention of Corruption Act is complete upon accepting or agreeing to accept an undue advantage, regardless of whether the promised act is performed. Therefore, the distinction made in PV Narasimha Rao between members who follow through on their bribe agreement and those who don't is artificial.

VII. International Position on Bribery vis-à-vis Privileges

The Court examined the law in several jurisdictions:

A. United Kingdom

The UK has evolved from treating bribery of members as solely a breach of parliamentary privilege to making it a criminal offence under the Bribery Act 2010. The courts have narrowly interpreted parliamentary immunity to cover only the core functions of Parliament.

B. United States of America

The US Supreme Court has consistently held that the Speech and Debate Clause does not provide immunity from prosecution for bribery, though it prevents prosecutors from using the speech or vote itself as evidence.

C. Canada

Canadian courts have held that bribery of legislators falls within the jurisdiction of criminal courts and is not shielded by parliamentary privilege.

D. Australia

Australian jurisprudence since 1875 has consistently held that bribing a member of the legislature constitutes a criminal offence under common law.

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VIII. Elections to the Rajya Sabha are Within the Remit of Article 194(2)

The Court rejected the Attorney General's argument that PV Narasimha Rao was inapplicable because Rajya Sabha elections are not part of legislative functions. The Court held that Article 194(2) consciously uses the term "Legislature" rather than "House" to include parliamentary processes that may not take place on the floor of the House when it is in session.

The Court emphasized that the protection under Articles 105 and 194 is not limited to law-making on the floor of the House but extends to other powers and responsibilities of elected members, including voting in Rajya Sabha elections.

IX. Conclusion

The Supreme Court unanimously overruled the majority judgment in PV Narasimha Rao, holding that a member of Parliament or a state legislature cannot claim immunity from prosecution on a charge of bribery under Articles 105(2) and 194(2). The key conclusions were:

1. The claim of privilege in bribery cases fails the twofold test that it must be tethered to the collective functioning of the House and necessary for the discharge of essential legislative duties.
2. Bribery undermines the purpose of Articles 105 and 194, which is to sustain an environment for free debate and deliberation.
3. The offence of bribery is complete upon accepting the bribe, independent of whether the vote is cast as agreed.
4. The paradoxical outcome in PV Narasimha Rao, where members who follow through on their corrupt bargain are immune while those who don't are liable, is contrary to the text and purpose of Articles 105 and 194.
5. The jurisdictions of criminal courts to prosecute bribery and the House to discipline its members exist in distinct spheres with different purposes and consequences.

Having answered the question of law, the Court disposed of the criminal appeal, allowing the prosecution against Sita Soren to proceed.

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81. State (NCT of Delhi) v. BSK Realtors LLP

JUSTICE SURYA KANT, JUSTICE DIPANKAR DATTA, JUSTICE UJJAL BHUYAN

Read the judgment here

I. Introduction

The judgment addresses a complex legal situation stemming from a change in land acquisition law interpretation by the Supreme Court of India. The case involves multiple civil appeals related to land acquisition proceedings under the Land Acquisition Act, 1894 ("1894 Act") and their status under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("2013 Act"). The Supreme Court confronted the challenge of reconciling contradictory judgments and determining the application of legal principles like res judicata, merger doctrine, and the court's power to do complete justice under Article 142 of the Constitution.

II. Background and Factual Matrix

The case originated from acquisition proceedings initiated under the 1894 Act for several parcels of land. Initially, the Delhi High Court relied on the Supreme Court's decision in Pune Municipal Corporation v. Harakchand Misirimal Solanki (2014) to declare that land acquisition proceedings had lapsed under Section 24(2) of the 2013 Act when either physical possession was not taken or compensation was not paid. The Delhi Development Authority (DDA), dissatisfied with this ruling, appealed to the Supreme Court, but its appeal was dismissed. This marked the end of the first round of litigation.

However, the legal landscape shifted dramatically when a Constitution Bench of the Supreme Court in Indore Development Authority v. Manoharlal (2020) overruled the Pune Municipal Corporation decision, holding that acquisition proceedings lapse only when the twin conditions of non-payment of compensation and failure to take physical possession are met. This prompted Government of NCT of Delhi (GNCTD) to file a fresh Special Leave Petition (SLP) challenging the original High Court judgment, initiating a second round of litigation.

III. Categorization of Cases

To manage the numerous appeals efficiently, the Court categorized them into six groups based on their litigation status:

1. Group A: Miscellaneous Applications filed by authorities seeking recall of Supreme Court judgments dismissing earlier appeals.
2. Group B.1: Cases where Civil Appeals were dismissed in the first round, and new SLPs are pending.
3. Group B.2: Cases where Civil Appeals were allowed in the first round, and new SLPs are pending.
4. Group C.1: Cases where SLPs were dismissed in the first round, new SLPs are pending, and the twin conditions for lapse are met.
5. Group C.2 & C.3: Cases where SLPs were dismissed in the first round or are pending, but the twin conditions for lapse are not met.
6. Group D: Miscellaneous matters incorrectly tagged with the present batch.
7. Group E: Cases involving allegations of fraud by landowners regarding subsequent sale transactions or title disputes.

IV. Key Legal Issues Examined

The Court framed and examined four central issues:

1. Whether the dismissal of a civil appeal by one appellant operates as res judicata against another appellant in subsequent litigation.

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2. Whether suppression of first-round litigation constitutes a material fact warranting dismissal.
3. Whether the doctrine of merger bars the entertainment of these civil appeals.
4. Whether previous determinations regarding subsequent purchasers' rights preclude reconsideration.

V. Analysis of Res Judicata and Material Fact Suppression

The Court held that res judicata would not apply between co-respondents (GNCTD and DDA) in the present case as they did not have conflicting interests, nor was there any disputed issue between them that the court had adjudicated. The Court relied on M.P. Shah Charitable Trust (1994) and Mathura Prasad (1970) to conclude that res judicata does not apply when there has been a change in law, particularly in matters involving public interest.

Regarding suppression of material facts, the Court found no reason to dismiss the appeals solely based on the prior dismissal of appeals filed by other authorities, noting that such suppression must be material enough to affect the merits of the case.

VI. Doctrine of Merger and Public Interest Considerations

While acknowledging the settled principles of the merger doctrine as established in Kunhayammed v. State of Kerala (2000), the Court recognized exceptions to this doctrine in the rarest of rare cases, particularly when exercising its extraordinary constitutional powers under Article 142 to do complete justice.

The Court emphasized the unique circumstances created by contradictory judicial pronouncements on Section 24(2) of the 2013 Act, which had led to discriminatory treatment of identically situated landowners. Some land parcels were deemed acquired while others were released, despite being part of the same acquisition proceedings. This inconsistency threatened public interest and infrastructure projects like metros, flyovers, schools, and hospitals.

VII. Analysis of Fraud Allegations Against Landowners

The Court addressed allegations that some landowners had committed fraud by suppressing subsequent sale transactions or title disputes. Relying on Shiv Kumar v. Union of India (2019), which was approved by the Constitution Bench in Manoharlal, the Court affirmed that subsequent purchasers of land (after Section 4(1) notification) lack standing to challenge acquisition proceedings. For Group E cases involving such allegations, the Court ordered remand to the High Court for thorough fact-finding.

VIII. Conclusions and Directions

For each category of cases, the Court issued specific directions:

1. For Groups A and B.1: Exercising its power under Article 142, the Court extended the time limit for fresh acquisition proceedings by one year, dispensed with certain procedural requirements of the 2013 Act to expedite acquisition, and directed maintenance of status quo regarding possession and land use until completion of acquisition.
2. For Group B.2: The Court dismissed these SLPs as infructuous since the appeals had already been allowed.
3. For Group C.1: The Court applied the same directions as for Groups A and B.1, since both conditions for lapse under Section 24(2) were met.
4. For Groups C.2 and C.3: The Court allowed these appeals, set aside the High Court judgments, and upheld the land acquisitions under the 1894 Act, as the twin conditions

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for lapse were not met.

5. For Group E: The Court remanded these cases to the High Court for factual inquiry regarding fraud allegations, with directions to determine the rightful claimants for compensation.
6. For Group D: The Court ordered separate listing for these miscellaneous matters.

The judgment represents a significant effort by the Supreme Court to balance conflicting interests while ensuring consistency in land acquisition proceedings, particularly in light of the evolving jurisprudence on Section 24(2) of the 2013 Act. The Court's exercise of its Article 142 powers demonstrates its commitment to achieving complete justice while safeguarding public infrastructure projects.

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82. Mineral Area Development Authority v. SAIL

CHIEF JUSTICE DR DHANANJAYA Y CHANDRACHUD, JUSTICE HRISHIKESH ROY, JUSTICE ABHAY S OKA, JUSTICE J B PARDIWALA, JUSTICE MANOJ MISRA, JUSTICE UJJAL BHUYAN, JUSTICE SATISH CHANDRA SHARMA, JUSTICE AUGUSTINE GEORGE MASIH, JUSTICE B.V. NAGARATHNA

Read the judgment here

I. Introduction and Constitutional Context

The nine-judge bench of the Supreme Court of India was convened to resolve the fundamental question of whether royalty under Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) constitutes a tax. This question arose from conflicting judgments: a seven-judge bench in India Cement Ltd. v. State of Tamil Nadu (1990) had held that royalty is a tax, while a five-judge bench in State of West Bengal v. Kesoram Industries Ltd. (2004) disagreed, claiming that the earlier judgment contained a typographical error.

The reference to this larger bench stemmed from Mineral Area Development Authority v. Steel Authority of India, where eleven questions were framed concerning the interpretation of various constitutional provisions related to taxation of mineral rights. These questions were later condensed into five key issues focusing on the nature of royalty, the scope of legislative entries, and the interrelationship between Union and State powers in taxing mineral-bearing lands.

The constitutional framework relevant to this case is rooted in Article 265, which mandates that no tax shall be levied or collected except by authority of law, and Article 366(28), which defines "taxation" inclusively to cover "any tax or impost, whether general or local or special." Article 246 establishes the distribution of legislative powers between Parliament and State Legislatures through the three Lists in the Seventh Schedule. The controversy centered around the interpretation and interplay of the following entries:

- Entry 54, List I (Union List): "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest"
- Entry 23, List II (State List): "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union"
- Entry 49, List II: "Taxes on lands and buildings"
- Entry 50, List II: "Taxes on mineral rights subject to any limitation imposed by Parliament by law relating to mineral development"

II. Historical Evolution of Mineral Regulation in India

The legislative history regarding mines and minerals regulation can be traced back to the Government of India Act 1915-19, which first distributed the subject between central and provincial governments through the Devolution Rules. The Government of India Act 1935 retained this distribution, specifying Entry 36 in the Federal Legislative List for regulation of mines and mineral development declared to be under federal control, Entry 23 in the Provincial Legislative List for regulation subject to the Federal List, and Entry 44 in the Provincial List for taxes on mineral rights subject to limitations by federal law.

Post-independence, the Constitution incorporated a similar distribution, with Entry 54 in List I and Entries 23 and 50 in List II. The Dominion Legislature had enacted the Mines and Minerals (Regulation and Development) Act 1948, which

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was replaced by the current MMDR Act in 1957. This legislative evolution demonstrates the consistent intent to maintain central oversight over mineral development while allowing states certain regulatory and taxation powers.

III. Comprehensive Analysis of the MMDR Act, 1957

The MMDR Act was enacted pursuant to Entry 54 of List I, as evidenced by Section 2, which contains the declaration that "it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided." The Act serves as a comprehensive code for regulating mines and mineral development throughout India.

Key provisions of the Act include:

1. **Definitions and Scope**: Section 3 defines crucial terms like "minerals," "minor minerals," "mining lease," and "mining operations." The Act excludes mineral oils from its purview.
2. **General Restrictions**: Section 4 prohibits undertaking any mining or prospecting operations except under a proper license or lease.
3. **Royalty Provisions**: Section 9 mandates that holders of mining leases, both pre-existing and new, must pay royalty on minerals removed or consumed from the leased area at rates specified in the Second Schedule. Section 9(3) empowers the Central Government to modify these rates, though not more than once in three years.
4. **Dead Rent**: Section 9A requires lessees to pay dead rent at rates specified in the Third Schedule, with the provision that the lessee pays either royalty or dead rent, whichever is higher.
5. **Additional Contributions**: The Act also requires contributions to:
    - District Mineral Foundation (Section 9B) for the benefit of persons affected by mining
    - National Mineral Exploration Trust (Section 9C) for regional and detailed exploration
6. **Rule-making Powers**: Sections 13 and 15 authorize the Central Government to make rules for major minerals and State Governments to make rules for minor minerals, respectively.
7. **Recovery Mechanism**: Section 25 provides for recovery of rent, royalty, tax, fee or other sums due as arrears of land revenue.

Under the Mineral Concession Rules, 1960, mining leases must be executed according to Form K, which stipulates the terms between the lessor (usually the State Government) and lessee. The form details the obligations of the lessee to pay royalty, dead rent, and surface rent.

IV. Detailed Analysis of Key Judicial Precedents

The bench conducted an exhaustive examination of previous judgments that shaped the understanding of legislative powers related to mines and minerals:

1. **Hingir-Rampur Coal Co. Ltd. v. State of Orissa (1961)**: A Constitution Bench held that the Orissa Mining Areas Development Fund Act, 1952, imposed a fee, not a duty of excise. It established the principle that the legislative competence of State Legislatures under Entry 23 of List II is subject to limitations imposed by Entry 54 of List I. The Court clarified that if Parliament declared through law that regulation of mines should be under Union control in public interest, to that extent, State legislatures would lose competence. However, it found that the MMRD Act 1948, being pre-constitutional, did not constitute the requisite declaration under Entry 54 of List I.

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2. **State of Orissa v. M.A. Tulloch (1964)**: This Constitution Bench case concerned the same Orissa Act but challenged after the MMDR Act 1957 came into force. The Court held that the declaration in Section 2 of the MMDR Act 1957 satisfied the requirements of Entry 54 of List I. It established that "to the extent" the Union Government takes control of regulation and mineral development, State legislative power is withdrawn. The Court found that Section 18(1) of the MMDR Act evinced Parliament's intention to cover the entire field of conservation and development of minerals.
3. **Baijnath Kedia v. State of Bihar (1969)**: The Court examined amendments to the Bihar Land Reforms Act regarding terms of mining leases for minor minerals. It held that by enacting the MMDR Act 1957, the Union had taken all powers to itself and authorized State Governments only to make rules for regulating leases. The Court concluded that through the declaration in Section 2 and enactment of Section 15, the entire field of minor minerals came within Parliament's jurisdiction, leaving no scope for State legislation.
4. **H.R.S. Murthy v. Collector of Chittoor (1965)**: This case dealt with land cess under the Madras District Boards Act on mining leases. The Court rejected arguments that this was a tax on mineral rights, finding it to be a tax on land within Entry 49 of List II. The Court distinguished between taxes directly imposed on land and taxes on minerals won from land.
5. **India Cement Ltd. v. State of Tamil Nadu (1990)**: This seven-judge bench decision examined whether cess on royalty could be levied by Tamil Nadu. The Court held that royalty is a tax, and consequently, cess on royalty (being a tax on royalty) was beyond the competence of the State legislature because Section 9 of the MMDR Act covered that field. The Court also held that royalty on mineral rights is not a tax on land but a payment for the user of land.
6. **State of West Bengal v. Kesoram Industries Ltd. (2004)**: A five-judge bench claimed there was a typographical error in paragraph 34 of India Cement, arguing that the sentence "royalty is a tax" should have read "cess on royalty is a tax." Justice Lahoti, writing for the majority, held that royalty is not a tax, disagreeing with India Cement. However, Justice Sinha in his dissent maintained that royalty could be considered a tax.
7. **P. Kannadasan v. State of Tamil Nadu (1996)**: This case upheld the validity of the Cess and Other Taxes on Minerals (Validation) Act, 1992, passed by Parliament to validate state levies invalidated by India Cement. The Court affirmed that Parliament has supremacy over regulation of mines and mineral development, and that Sections 9 and 9A of the MMDR Act serve as limitations on States' power to impose taxes on exercise of mineral rights.

V. Comprehensive Analysis of the Nature of Royalty

The majority judgment, authored by Chief Justice Dr. Dhananjaya Y Chandrachud, conducted a thorough analysis of the nature of royalty, examining its historical origins, statutory framework, and essential characteristics.

Historically, royalty derives from "jura regalia" or royal prerogatives. In mining contexts, it traditionally represented the payment made to landowners (originally the Crown) for the privilege of extracting minerals from their land. The

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judgment traced how this concept evolved from feudal rights to modern contractual and statutory arrangements.

Under the MMDR Act framework, royalty is characterized by several key features:

1. It is determined under Section 9 of the Act at rates specified in the Second Schedule
2. It becomes payable upon removal or consumption of minerals from the leased area
3. For major minerals, rates are fixed by the Central Government
4. For minor minerals, States are authorized to prescribe rates
5. It is collected along with dead rent (Section 9A), with the lessee liable to pay whichever is higher

The majority concluded that royalty does not satisfy the essential characteristics of a tax, which include:

1. Being a compulsory exaction by public authority
2. Being imposed under statutory power without taxpayer consent
3. Being enforceable by law
4. Being for public purposes without reference to special benefits to the payer
5. Being part of the common burden

By contrast, royalty was found to be:

1. A consideration paid for parting with the right to work mines and win minerals
2. A payment flowing from the contractual conditions of the mining lease
3. A return for the grant of privilege to remove minerals
4. A compensation for the value of minerals extracted

The majority distinguished royalty from taxes, noting conceptual differences:

1. Royalty is a consideration for parting with mineral rights, while tax is a sovereign imposition
2. Royalty is paid for specific action (extracting minerals), while tax is levied on events determined by law
3. Royalty primarily flows from lease deed arrangements, while tax is imposed by authority of law

VI. Detailed Analysis of the Relationship Between Entry 54 List I and Entry 23 List II

The judgment provided an extensive examination of the interrelationship between Entry 54 of List I and Entry 23 of List II, establishing several key principles:

1. **Meaning and Scope of "Regulation of Mines" and "Mineral Development"**:
    - "Regulation" implies management, control, and governance of mines
    - "Mines" includes both the process of extracting minerals and the places where extraction occurs
    - "Mineral development" encompasses exploitation of minerals, reduction of wastage, environmental protection, and equitable distribution of resources
    - The MMDR Act gives shape to these concepts through provisions for prospecting, mining operations, conservation, and systematic development
2. **Extent of Parliamentary Control**:
    - Entry 54 of List I requires three prerequisites: (a) Parliament must make a law, (b) the law must contain a declaration that control by Union is expedient in public interest, and (c) the law must specify the extent of control
    - The extent to which regulation and development is brought under Union control determines the corresponding reduction in State

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legislative competence
    - The field must be expressly covered by Parliament; implied occupation is insufficient
3. **Impact on State Legislative Powers**:
    - State legislatures possess plenary power under Entry 23 of List II, subject to Entry 54 of List I
    - The State's field is subordinated only to the extent Parliament has brought regulation and development under Union control
    - Parliamentary intention must be ascertained from the language of the statute
    - The expression of legislative intention to cover a particular field excludes State powers in that field

The judgment cited the Constituent Assembly debates to show that the framers intended States to have certain powers regarding mines and minerals, which would be curtailed only when Parliament made specific declarations bringing aspects under Union control.

VII. Exhaustive Analysis of the Relationship Between Entry 50 List II and Entry 54 List I

The majority examined the unique relationship between Entry 50 of List II and Entry 54 of List I, focusing on:

1. **Nature and Scope of "Taxes on Mineral Rights"**:
    - "Mineral rights" encompasses the bundle of rights associated with ownership of minerals
    - These include rights to extract minerals, work mines, and monetize extracted minerals
    - "Taxes on mineral rights" covers levies on the exercise of these rights
    - The taxable event is the exercise of mineral rights, and the incidence falls on whoever exercises these rights
    - The measure of tax is a matter of legislative policy, provided it has a reasonable nexus with the nature of tax
2. **Meaning and Scope of "Any Limitations"**:
    - The expression "any limitations" is uniquely used in Entry 50 of List II
    - It enables Parliament to impose restrictions on State taxation powers through a law relating to mineral development
    - These limitations can include restrictions, conditions, principles, and even prohibitions
    - Parliament's power to limit State taxation is rooted in the need to ensure uniform mineral development nationwide
    - Limitations must be express, not merely implied from the scheme of legislation
3. **Relationship to Non-Taxing Entry**:
    - Entry 50 of List II is unique in making a taxing entry subject to limitations imposed under a regulatory entry
    - This does not constitute an exception to the principle that taxation is a distinct matter from general legislation
    - Parliament cannot directly tax mineral rights under Entry 54 of List I or its residuary powers
    - Parliament can only impose limitations on State taxation to ensure it doesn't impede mineral development
4. **Assessment of MMDR Act Provisions as Limitations**:

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- Section 9 (royalty) and Section 9A (dead rent) are not limitations on State taxation powers
- The MMDR Act does not expressly limit the State's power to tax mineral rights
- The scheme of the Act cannot by itself be construed as a limitation under Entry 50 of List II
- For a limitation to be effective, it must be expressly stated in the statute

VIII. Comprehensive Analysis of Entry 49 of List II and Its Applicability to Mineral-Bearing Lands

The majority provided an extensive examination of Entry 49 of List II (taxes on lands and buildings) and its applicability to mineral-bearing lands:

1. **Scope and Interpretation of "Lands"**:
   - The term "lands" in Entry 49 is of the widest amplitude
   - It includes agricultural and non-agricultural lands, and everything under or over the land
   - Mineral-bearing land falls within the description of "lands" under Entry 49
   - States have constitutional competence to tax mineral-bearing lands as units
2. **Principles Governing Taxes on Lands and Buildings**:
   - Tax must be directly imposed on land as a unit
   - Tax is not concerned with division of interest in the land
   - The use to which land is put can be taken into account for taxation
   - Income, yield, or produce of land can be used as a measure of tax
   - Measure of tax does not determine the nature of tax
3. **Decoupling of Minerals from Land**:
   - Minerals are naturally part of land until extracted
   - Mining lease involves both mineral rights and surface rights
   - No severance occurs between mineral rights and surface rights during mining operations
   - Minerals are "decoupled" from land only upon extraction during exercise of mineral rights
4. **Measure of Tax on Mineral-Bearing Land**:
   - Yield of mineral-bearing land (quantity of mineral produced or royalty) can be used as a measure for tax
   - This does not make the tax a levy on mineral rights
   - The reasonable nexus requirement between measure and nature of tax is satisfied
   - Different measures can be used for different categories of land
   - Entries 49 and 50 of List II operate in different fields without overlap
5. **Limitations on Entry 49 of List II**:
   - Limitations imposed under Entry 50 of List II do not affect Entry 49 of List II
   - There is no constitutional stipulation subjecting Entry 49 to limitations under Entry 54 of List I
   - States retain full competence to tax mineral-bearing lands as units under Entry 49
   - The doctrine of generalia specialibus non derogant does not apply as Entries 49 and 50 operate in different fields

IX. Detailed Analysis of Justice Nagarathna's

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Dissenting Opinion

Justice Nagarathna's dissent provided a comprehensive alternative interpretation:

1. **On the Nature of Royalty**:
    - Royalty under Section 9 of the MMDR Act is a tax or exaction
    - It satisfies all four components of tax as outlined in Govind Saran Ganga Saran case: character, taxable person, rate, and measure
    - It is a compulsory statutory payment for exercise of mineral rights
    - The fact that it's recoverable as arrears of land revenue under Section 25 reinforces its tax-like character
    - The majority in Kesoram erroneously claimed a typographical error in India Cement
2. **On the Relationship Between Entries**:
    - Entry 50 of List II is sui generis and an exception to the Sundararamier principle
    - Entry 54 of List I can limit taxation powers under Entry 50 of List II through the MMDR Act
    - Sections 9 and 9A of the MMDR Act are limitations on State power to tax mineral rights
    - The Validation Act of 1992 confirmed that States lacked competence to levy taxes on mineral rights
3. **On Mineral-Bearing Lands and Entry 49**:
    - Entry 49 of List II does not apply to mineral-bearing lands
    - Word "lands" under Entry 49 cannot include mineral-bearing lands
    - Mineral value or produce cannot be used as a measure to tax mineral-bearing lands
    - This would amount to double taxation: once by State under Entry 49 and again through royalty under the MMDR Act
    - States cannot bypass Entry 50 limitations by resorting to Entry 49
4. **On the Impact of Overruling India Cement**:
    - Overruling India Cement would disrupt the established legal position
    - It would permit States to levy various taxes on mineral rights, leading to:
        - Uneven and haphazard mineral development
        - Unhealthy competition between States
        - Steep increases in mineral prices affecting the economy
        - Possible importation of minerals affecting foreign exchange
        - Breakdown of the federal system in mineral development
5. **On Indian Federalism**:
    - Indian federalism was designed to prevent "race to the bottom" dynamics in economic competition
    - The Sarkaria Commission emphasized Union supremacy in matters requiring national uniformity
    - The Commission noted that minerals are national resources to be exploited for the benefit of the country as a whole
    - Only Union legislation can ensure proper regulation and development of minerals

X. Conclusions and Implications of the Majority

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Judgment

The nine-judge bench, by a majority of 8:1, concluded:

1. **On the Nature of Royalty**:
    - Royalty is not a tax but a contractual consideration paid for enjoyment of mineral rights
    - It does not meet the criteria of a tax or impost under Article 366(28)
    - It is a payment for the right to work mines and win minerals
2. **On Entry 50 of List II**:
    - Parliament can impose "any limitations" on States' power to tax mineral rights
    - These limitations must be through a law relating to mineral development
    - The MMDR Act as it stands does not impose any such limitations
    - The scope of "any limitations" is wide enough to include restrictions, conditions, principles, and prohibition
3. **On the Relationship Between Entries**:
    - Entry 50 of List II is not an exception to the Sundararamier principle
    - Parliament cannot tax mineral rights under Entry 54 of List I or residuary powers
    - Entries 49 and 50 of List II deal with distinct subject matters
    - Limitations on Entry 50 do not affect Entry 49
4. **On Mineral-Bearing Lands**:
    - States can tax mineral-bearing lands under Entry 49 of List II
    - Mineral value or royalty can be used as a measure to tax such lands
    - This does not conflict with Entry 50 of List II

The majority overruled India Cement, Orissa Cement, Mahalaxmi Fabric Mills, Saurashtra Cement, and Mahanadi Coalfields to the extent they held royalty to be a tax. These conclusions affirm the federal structure by recognizing States' fiscal autonomy while acknowledging Parliament's power to impose limitations when necessary for mineral development. The judgment provides a definitive framework for understanding the constitutional distribution of powers related to mineral taxation, resolving decades of legal uncertainty.

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83. State of Punjab v. Davinder Singh

JUSTICE SURYA KANT, JUSTICE M. M. SUNDRESH

Read the judgment here

I. Case Background

The present appeal was filed before the Supreme Court of India challenging the conviction of the appellant, Davinder Singh, who was charged and convicted for offenses under Sections 376 (rape), 452 (house trespass after preparation for assault), and 506 (criminal intimidation) of the Indian Penal Code, 1860. The conviction was originally rendered by the Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar, and subsequently confirmed by the High Court of Punjab & Haryana in Criminal Appeal No. S.1106 SB of 2003.

II. Prosecution's Version

According to the prosecution, the appellant came to the residence of the prosecutrix (victim) and committed rape while brandishing a knife. The brother of the victim, named Pargat Singh, came home during the incident, upon seeing whom the appellant fled the scene. Upon returning home, PW4 (the victim's father) filed a complaint only for quarrel as he was concerned about his daughter's dignity.

After the initial occurrence on March 15, 2000, the appellant allegedly went with a few co-accused persons to the residence of the prosecutrix's uncle where she was temporarily staying, and threatened her. Consequently, a complaint was lodged on April 13, 2000, registered as FIR No. 60/2000 under Sections 376, 452, and 506 IPC.

The Additional Sessions Judge examined ten prosecution witnesses. Notably, Pargat Singh, the brother of the prosecutrix and the only reported eyewitness to the incident, was not examined by the prosecution. The Trial Court and High Court convicted the appellant on all charges, with the primary punishment being seven years of rigorous imprisonment for the offense under Section 376 IPC.

III. Appellant's Submissions

The appellant's counsel presented several arguments, including: (1) No recovery of the alleged weapon used; (2) Non-examination of Pargat Singh, making the prosecution's case doubtful; (3) Absence of external injuries on the prosecutrix; (4) Inordinate delay in filing the complaint; (5) Suggestion that the case may have involved a relationship disapproved by the family rather than rape; (6) Erroneous recording by the High Court that the appellant took co-accused to commit rape at the uncle's residence; (7) The parties' compromise of the matter in 2013 should be considered; (8) The High Court dealt with the matter cursorily without proper analysis of evidence; and (9) Non-examination of the maternal uncle of the prosecutrix, Satnam Singh.

IV. Respondent's Submissions

The State's counsel argued that: (1) The findings were concurrent and absent any perversity, no interference was necessary; (2) Subsequent arrangements between parties would have no bearing and were not permissible under law; (3) Both courts correctly relied on the evidence of PW4 and PW6; and (4) In the absence of enmity or motive, the evidence of PW6 (the prosecutrix) was correctly found favorable.

V. Supreme Court's Analysis and Findings

The Court noted several significant issues with the prosecution's case:

(1) There was a 28-day delay in filing the complaint with reasons that defied logic;

(2) If PW4 intended to suppress the occurrence, there was no need to file a complaint later;

(3) The complaint was given by PW4 who was not

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present on either occasion;
(4) It seemed implausible that someone would take accomplices to commit rape after allegedly committing a similar offense earlier;
(5) The best witness would have been the uncle of the prosecutrix, yet he wasn't examined;
(6) No attempt was made to recover the knife allegedly used; and
(7) The brother of the prosecutrix, the sole eye-witness, was not examined.
The Court also highlighted that the High Court recorded an incorrect factual finding that the offense under Section 376 IPC was committed at the uncle's residence, which was not even claimed by the prosecutrix. The Court observed that while the evidence of a prosecutrix should be held at a higher pedestal, such testimony must satisfy the conscience of the Court and be evaluated contextually with other available evidence.
The Court found it appeared that the appellant wanted to marry the prosecutrix, which was opposed by her family. The Court was unwilling to consider the subsequent compromise between the parties, which occurred after the death of PW4.

VI. Legal Principles Cited
On the issue of non-examination of material witnesses, the Court cited Takhaji Hiraji v. Thakore Kubersing Chamansing (2001), which established that failing to examine a material witness who could reveal the genesis of an incident or essential part of the prosecution case can create a deficiency in the prosecution's case and oblige the court to draw an adverse inference.
The Court also referenced Rajesh Yadav v. State of Uttar Pradesh (2022), which clarified that mere non-examination of a witness will not automatically vitiate the prosecution's case, as it depends on the quality rather than quantity of witnesses. However, if the court finds that a material witness has been deliberately withheld, an adverse inference may be drawn.
The Court extensively quoted Rajesh Yadav regarding the approach to appreciating evidence, emphasizing the importance of considering the "matters before it" and the degree of probability in proving facts through logical inference. The judgment explains how courts should evaluate evidence and consider the existence of facts based on probability and the credibility of witnesses.

VII. Conclusion
After thorough consideration, the Supreme Court held that the conviction and sentence rendered by the Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar in Sessions Case No. 41 of 2002, as confirmed by the High Court of Punjab & Haryana in Criminal Appeal No. S.1106 SB of 2003, required to be set aside. Accordingly, the Court allowed the appeal and acquitted the appellant of all charges. The bail bond executed was discharged.

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84. Aligarh Muslim University v. Naresh Agarwal

CHIEF JUSTICE DR. DHANANJAYA Y. CHANDRACHUD, JUSTICE SANJIV KHANNA, JUSTICE J. B. PARDIWALA, JUSTICE MANOJ MISRA, JUSTICE SURYA KANT, JUSTICE DIPANKAR DATTA, JUSTICE SATISH CHANDRA SHARMA

Read the judgment here

I. Introduction

The Supreme Court of India's judgment in Civil Appeal No. 2286 of 2006 and related matters concerns the minority status of the Aligarh Muslim University (AMU) under Article 30 of the Indian Constitution. The appellant, Aligarh Muslim University, challenged the Allahabad High Court's decision, which, relying on the 1968 Supreme Court judgment in *S. Azeez Basha v. Union of India*, declared AMU not a minority institution. The respondents defended the High Court's ruling and the *Azeez Basha* judgment. This seven-judge bench was constituted to address the correctness of the *Azeez Basha* judgment and to clarify the criteria for determining the minority status of educational institutions, particularly universities established before the Constitution's commencement.

II. Facts and Background of the Case

The AMU's origins trace back to the Muhammadan Anglo-Oriental (MAO) College, established in 1875 by Sir Syed Ahmad Khan. The college, initially affiliated with Calcutta and later Allahabad University, aimed to provide modern education to Indian Muslims. The Aligarh Muslim University Act, 1920 ("1920 Act"), incorporated the MAO College as AMU, dissolving the previous governing bodies and vesting its properties in the newly established university. The 1920 Act established a governing structure with significant government oversight, including a Lord Rector (later the President of India as Visitor) with considerable authority.

The 1951 and 1965 amendments to the 1920 Act further altered the university's administrative structure, reducing the powers of the Court (initially an all-Muslim body) and increasing the influence of the Executive Council and Visitor. These amendments were challenged in *S. Azeez Basha v. Union of India* (1968), where a five-judge Constitution Bench held that AMU was not a minority institution because it was established by Parliament, not the Muslim minority, and its administration did not vest primarily with the Muslim community. The *Azeez Basha* judgment emphasized the conjunctive reading of "establish and administer" in Article 30(1), requiring both for minority status.

Subsequent events included a 1981 amendment to the 1920 Act, attempting to reassert AMU's minority status by explicitly stating it was "established by the Muslims of India." This amendment, however, was challenged and struck down by the Allahabad High Court in 2006, which relied on *Azeez Basha*. The High Court's decision, in turn, led to the present appeals before the Supreme Court, prompting a three-judge bench to refer the matter to a seven-judge bench in 2019 to definitively address the *Azeez Basha* judgment's correctness and the criteria for determining minority educational institution status under Article 30. The reference also considered the impact of the 2005 National Commission for Minority Educational Institutions Act and its 2010 amendment, as well as the Supreme Court's 2005 decision in *Prof. Yashpal v. State of Chhattisgarh*, which dealt with the establishment of private universities.

III. Arguments

A. Petitioner's (Aligarh Muslim University and Others) Arguments

1. Challenge to Azeez Basha Judgment's

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Correctness: Dr. Rajeev Dhawan, representing AMU, argued that Azeez Basha's judgment suffers from internal contradictions and incorrect reasoning on facts and law. He emphasized that the judgment needs reconsideration in light of both earlier and subsequent Supreme Court decisions on Article 30(1). The petitioner contended that the judgment incorrectly interpreted the establishment of universities under the UGC Act and failed to properly consider the historical context of AMU's Muslim character.

2. Historical and Constitutional Context: Mr. Kapil Sibal, representing the Old Boys' Association, argued that Azeez Basha failed to consider AMU's history and genesis in the right perspective. He emphasized that the 1920 Act was not the establishing factor of the University but merely a recognition of the establishment already done by the Muslim community. The petitioners highlighted the importance of considering historical initiative, impetus, promotion, and purpose behind the institution's creation.

3. Minority Rights and Constitutional Interpretation: Mr. Salman Khurshid argued for a moral reading of the Constitution, asserting that rights under Part III are natural and inherent to human beings. He contended that minority rights under Article 30 existed prior to 1950 and cannot be restricted by an artificially narrow interpretation of the word 'establish'. The argument emphasized the inalienable nature of these rights as they are inseparable from human personality.

4. Distinction Between Establishment and Legal Recognition: Mr. Shadan Farasat argued that there is a crucial difference between establishing an educational institution and the legal device to bring it into existence. He contended that the 1920 Act was merely a device to bring AMU into legal existence, while the actual establishment was done by the Muslim community. The interpretation of Article 30, according to him, cannot depend on the existence of a particular legal regime at any given point.

5. De Facto Control and Administration: The petitioners presented data showing that de facto administration of AMU has been predominantly with persons from the Muslim community. They argued that the majority of students have been from the Muslim community, regardless of formal reservation policies. This practical reality, they contended, supports their claim of the institution's minority character.

6. Legislative Intent and Statutory Framework: The petitioners argued that the 1920 Act clearly demonstrates AMU's Muslim character through various provisions intended for the benefit of the Muslim community. They emphasized that the administration of AMU has been vested with the Muslim minority, with both de jure and de facto control over its management.

7. Impact of Modern Legislative Framework: The petitioners argued that under the current UGC Act and NCMEI Act (as amended in 2010), universities can only be established by statute. They contended that excluding statutorily established universities from Article 30's protection would effectively deny minorities access to higher education protection under the Constitution.

8. Preliminary Objection to Government's Change of Stand: The petitioners raised objections regarding the Union of India's change of stance concerning the validity of the 1981 Amending Act. They argued that having filed an appeal against the Allahabad High Court's judgment, the decision to withdraw it and adopt a contrary position was arbitrary, unreasonable, and lacking in good faith.

B. Respondent's Arguments

1. AMU's Establishment by Parliament: The respondents contended that AMU's establishment stemmed from the Aligarh Muslim University Act, 1920, enacted by the then-Central Legislature of

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British India. They argued that this legislative act, not any action by the Muslim community, brought the university into existence. The respondents emphasized that the 1920 Act was a comprehensive piece of legislation that meticulously regulated various aspects of AMU, including its governance structure, and that the university's legal existence flowed directly from this statute. They asserted that the Muslim community's efforts, while significant, did not constitute the "establishment" of the university in the legal sense. The respondents further argued that the subsequent amendments to the AMU Act, including those of 1951 and 1965, merely aligned the university's structure with evolving constitutional provisions and did not violate Article 30 because the Muslim community never possessed the right to administer AMU in the first place.

2. The Conjunctive Reading of "Establish and Administer": The respondents strongly advocated for a conjunctive reading of the phrases "establish" and "administer" in Article 30(1). They argued that a minority community must prove both the establishment *and* the administration of an institution to claim protection under Article 30. They asserted that the right to administer is a consequence of establishment, not an independent right. The respondents contended that merely proving establishment by a minority is insufficient; the minority must also demonstrate ongoing administrative control. They highlighted that a disjunctive interpretation would open the door to misuse, allowing institutions to claim minority status even if they are not genuinely administered by the minority community.

3. AMU's Lack of Minority Administration: The respondents presented a detailed analysis of the AMU Act, 1920, and its subsequent amendments to demonstrate that AMU was never administered by the Muslim community. They pointed to the significant powers vested in the Lord Rector (later the Visitor), the Visiting Board, the Executive Council, and the Academic Council, none of which were exclusively composed of Muslims. They argued that the composition of the AMU Court, even with its initial all-Muslim membership, did not grant the Muslim community overall administrative control. The respondents emphasized that the electorate for the Court was not exclusively Muslim, and other governing bodies held substantial authority over the university's affairs.

4. The Irrelevance of the 1981 Amendment: The respondents argued that the 1981 amendment to the AMU Act, which attempted to retroactively assert AMU's minority status, was invalid. They contended that this amendment could not alter the historical fact, established in *Azeez Basha*, that AMU was established by Parliament and not the Muslim community. They further argued that Parliament lacked the power to create a minority institution; only a minority community could do so. The respondents also questioned the Union of India's attempt to withdraw its appeal against the Allahabad High Court's decision, arguing that the government's primary duty is to assist the Court in interpreting the law, not to defend potentially unconstitutional legislation.

5. The Meaning of "Establish" in Article 30: The respondents argued that "establish," in Article 30, means "to bring into existence" and not "to found." They contended that if an institution's legal existence depends on a statute, then the legislature, not the minority community, is deemed to have established it. They emphasized that AMU's existence was entirely dependent on the 1920 Act; without it, the university would not have existed. They further argued that the fact that the Muslim community sought government recognition for AMU's degrees demonstrated a willingness to surrender control to the imperial government, thereby forfeiting any claim to minority status.

6. AMU's National Character: The respondents

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highlighted AMU's designation as an institution of national importance under Entry 63 of List I of the Seventh Schedule to the Constitution. They argued that this constitutional classification underscores AMU's national character and precludes its classification as a minority institution. They emphasized that the Constituent Assembly Debates and subsequent legislative actions consistently affirmed AMU's national and secular character. They further argued that granting AMU minority status would conflict with the principles of secularism and equality enshrined in the Constitution and would potentially lead to reverse discrimination against other communities.

7. The Incompetence of the Reference: The respondents challenged the validity of the reference itself, arguing that a two-judge bench lacked the authority to directly refer the *Azeez Basha* judgment to a seven-judge bench. They cited precedents establishing that only a bench of equal or greater strength can question the correctness of a prior judgment. They argued that the original reference in *Anjuman-e-Rahmaniya* was flawed and that the subsequent re-reference was based on an invalid premise. They further argued that the reference was limited to clarifying the definition of a minority institution and did not authorize a re-examination of AMU's specific status.

IV. Court's Reasonings

1. Preliminary Objection Regarding the Validity of the Reference: The Union of India raised a preliminary objection, arguing that the two-judge bench in *Anjuman-e-Rahmaniya* lacked the authority to directly refer the *Azeez Basha* judgment to a larger bench. They contended that only a bench of equal strength (five judges) could initiate such a referral. However, the Court rejected this objection, citing two exceptions to the general rule: the Chief Justice's inherent discretion in managing the roster and the possibility of a larger bench directly reconsidering a lower bench's decision if deemed necessary. The Court also noted that the 2019 reference order acknowledged the unusual nature of the direct referral to a seven-judge bench, given the prior unanswered reference in *Anjuman-e-Rahmaniya*. The Solicitor General's decision not to press the objection further solidified the Court's decision to proceed.

2. Scope and Purpose of Article 30: The Court extensively analyzed Article 30, emphasizing its dual nature as both an anti-discrimination provision and a special rights provision. It clarified that Article 30 prevents the state from discriminating against religious and linguistic minorities seeking to establish educational institutions (the non-discrimination purpose). Simultaneously, it guarantees special protection to minority educational institutions by limiting state regulation in their administration, ensuring sufficient autonomy to preserve their minority character (the special rights purpose). The Court reviewed past judgments, highlighting the consistent interpretation of Article 30 as a guarantee of substantive equality for minorities, enabling them to maintain their distinct identities. It rejected the notion that Article 30 solely concerns religious instruction, emphasizing its application to secular education as well. The Court also clarified that while reasonable restrictions are permissible to maintain educational standards and public interest, these restrictions cannot infringe upon the minority character of the institution.

3. Indicia for a Minority Educational Institution: The Court addressed the criteria for identifying a minority educational institution, emphasizing that the "establishment" of the institution by a minority is the primary indicium. It rejected the argument that both "establishment" and "administration" must be proven conjunctively, clarifying that administration is a consequence of establishment, not a precondition. The Court examined past cases (*SK Patro*, *Mother Provincial*, *St. Stephen's*), highlighting the need to

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demonstrate the minority character of the institution through its genesis, purpose, and implementation. It outlined indicia for determining establishment: (i) the origin of the idea for establishing the institution must stem from a minority member or group; (ii) the institution must be predominantly established for the benefit of the minority community; and (iii) the implementation steps must be undertaken by the minority community. The Court clarified that participation from non-minority members does not negate minority status, provided the minority community retains core responsibility. The Court also emphasized that the administrative structure must affirm the minority character and purpose of the institution. The onus of proving establishment by a minority rests on the claimant.

4. Applicability of Article 30 to Universities Established Before the Constitution: The Court rejected the argument that universities established before the Constitution are excluded from Article 30's purview. It cited precedents (*In re Kerala Education Bill*, *SK Patro*, *St. Stephen's*) affirming Article 30's retrospective application. The Court reasoned that a prospective application would significantly weaken Article 30's protective effect. It distinguished between "establishment" and "incorporation," clarifying that the latter (conferring legal status through legislation) does not automatically negate minority character. The Court emphasized that the need for legislative incorporation to gain government recognition of degrees does not equate to establishment by the legislature. It held that the Court must examine the circumstances surrounding the incorporation to determine if the minority character was relinquished.

5. Impact of Entry 63 of List I: The Court addressed the impact of Entry 63 (Union List), which designates certain universities as institutions of national importance. It held that this designation does not negate minority character, as the two concepts are not mutually exclusive. The Court reasoned that a minority institution can also be of national importance, and interpreting Entry 63 to preclude minority status would render Article 30 subservient to Parliament's legislative power.

6. Analysis of *Prof. Yashpal* and the NCMEI Act: The Court found *Prof. Yashpal* irrelevant to the present case, as it concerned institutions lacking essential features of universities. Regarding the 2010 amendment to the NCMEI Act, which added "and administered" to the definition of a minority educational institution, the Court held that this amendment does not impact the interpretation of Article 30, as establishment by a minority remains the primary indicium.

7. Overruling *Azeez Basha*: The Court overruled the *Azeez Basha* judgment's holding that an educational institution is not established by a minority if it derives its legal character through a statute. It found this interpretation too narrow and inconsistent with the purpose and scope of Article 30, as well as with subsequent judgments. The Court emphasized the need to consider the historical context and the intent behind the establishment of the institution, rather than focusing solely on the legal form of incorporation.

8. Decision on AMU's Minority Status: The Court concluded by stating that the question of whether AMU is a minority educational institution must be decided based on the principles laid down in this judgment. It referred the matter back to a regular bench for a factual determination of AMU's status, given the principles laid out in the judgment.

V. Dissenting Views:

Justice Dipankar Datta's Dissent:

Justice Datta's dissent centers on the procedural irregularities of the references leading to the constitution of the seven-judge bench. He argues that the initial two-judge bench in *Anjuman-e-Rahmaniya* lacked the authority to directly refer

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the five-judge *Azeez Basha* judgment to a larger bench, violating established principles of judicial propriety and the doctrine of *stare decisis*. He contends that a bench of lesser strength cannot directly challenge a decision of a larger bench; the proper procedure would involve a reference to a co-equal bench, which could then, if necessary, refer the matter to a larger bench. Justice Datta finds the subsequent three-judge bench's re-reference equally flawed, as it reopened issues already decided or implicitly settled in previous proceedings, including *TMA Pai Foundation*. He criticizes the lack of a meeting among the seven judges after reserving judgment, highlighting the rushed nature of the final opinion and the absence of a meaningful dialogue on the divergent views. He emphasizes the importance of judicial stability and finality, cautioning against lightly overruling long-standing precedents. While acknowledging the complexities of the *Azeez Basha* judgment, Justice Datta finds its core reasoning plausible and deserving of deference, particularly given its historical context and the lack of compelling reasons to overturn it. He concludes that the references are incompetent and unnecessary, and even if considered valid, the factual inquiry into AMU's minority status should have been decided by the seven-judge bench itself, given the extensive evidence presented. He ultimately disagrees with the majority's approach of establishing new indicia for determining minority status, preferring to uphold the existing legal framework and avoid historical revisionism through judicial pronouncements.

Justice Surya Kant's Dissent:

Justice Surya Kant largely agrees with the majority's conclusion regarding the need for a conjunctive reading of "establish" and "administer" in Article 30(1), meaning that both conditions must be met for an institution to be considered a minority institution. However, he differs on the interpretation of "establish," arguing that it should not be limited to a purely formalistic understanding of "bringing into existence." He emphasizes the importance of considering the genesis of the institution, including the minority community's role in conceiving the idea, gathering resources, and implementing the project. He acknowledges that statutory intervention is often necessary for the legal operationalization of a university, but argues that this does not automatically negate the minority community's role in establishing the institution. He distinguishes between institutions "registered in accordance with," "recognized by," and "created by" statute, arguing that only in the latter case would the statutory intervention preclude a finding of minority establishment. Justice Surya Kant also clarifies the meaning of "administer," emphasizing the need for both *de jure* and *de facto* control by the minority community, while acknowledging the possibility of some non-minority participation in the administration. He disagrees with the majority's view that the reference was limited to determining only the criteria for minority status under Article 30, arguing that the references also implicitly questioned the correctness of *Azeez Basha* itself. He concludes by providing his own set of indicia for determining minority status, emphasizing the need for a holistic and nuanced approach that considers the specific circumstances of each case.

Justice Satish Chandra Sharma's Dissent:

Justice Sharma's dissent focuses on the need for a more stringent test for determining minority status under Article 30(1). He agrees with the majority's conclusion that "establish" and "administer" must be read conjunctively, but emphasizes that the minority community must play a predominant role, almost to the exclusion of other forces, in bringing the institution into existence. He highlights the importance of examining the institution's genesis, purpose, and administration to determine its true character. He criticizes the majority's approach as

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potentially leading to the misuse of Article 30 by institutions merely claiming minority status without demonstrating genuine minority control. Justice Sharma also questions the validity of the references, particularly the initial two-judge bench's referral, citing established principles of judicial propriety and the doctrine of *stare decisis*. He provides his own set of indicia for determining minority status, emphasizing the need for a clear demonstration of minority control in all aspects of the institution's establishment and administration. He concludes that the AMU's unique historical context and its incorporation through a statute, coupled with the absence of clear indicia of minority control, preclude it from being classified as a minority institution under Article 30(1).

VI. Conclusion

The Supreme Court concluded that the reference in *Anjuman-e-Rahmaniya* questioning the *Azeez Basha* judgment was valid, and that Article 30(1) functions as both an anti-discrimination and a special rights provision. To qualify as a minority educational institution under Article 30(1), religious or linguistic minorities must prove they established the institution, a right applicable to universities established before the Constitution's commencement, with minority status determined at the Constitution's adoption. Statutory incorporation of a university doesn't automatically surrender minority character; courts must examine the circumstances surrounding the conversion to determine if minority character was relinquished. The Court established indicia for determining if a minority "established" an institution: evidence of ideation, purpose, and implementation by the minority community, and an administrative structure affirming the institution's minority character and purpose. The Court overruled *Azeez Basha*'s view that statutory character precludes minority establishment, holding that the question of whether AMU is a minority institution must be decided based on these principles, referring the matter to a regular bench for a determination on AMU's specific status.

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85. Property Owners Association & Ors. v. State of Maharashtra & Ors.

CHIEF JUSTICE DY CHANDRACHUD, JUSTICE HRISHIKESH ROY, JUSTICE J B PARDIWALA, JUSTICE MANOJ MISRA, JUSTICE RAJESH BINDAL, JUSTICE SATISH CHANDRA SHARMA, JUSTICE AUGUSTINE GEORGE MASIH, JUSTICE BV NAGARATHNA, JUSTICE SUDHANSHU DHULIA

Read the judgment here

I. Introduction

This Supreme Court of India judgment, 2024 INSC 835, addresses the constitutionality of Chapter VIII-A of the Maharashtra Housing and Area Development Act, 1976 (MHADA Act). The appellants, a Property Owners' Association and others, challenged the Act's provisions, arguing they violated Articles 14 and 19 of the Constitution. The respondents, the State of Maharashtra and others, countered that the Act was protected by Article 31C, as it gave effect to the principles of Article 39(b). The case's journey through multiple reference orders to larger benches ultimately led to a nine-judge Constitution Bench to resolve significant questions regarding Articles 31C and 39(b) of the Indian Constitution. The central issue revolves around the interpretation of "material resources of the community" within Article 39(b) and whether this includes privately owned resources, impacting the scope of protection afforded by Article 31C.

II. Facts and Background of the Case

Mumbai's dense population and aging infrastructure, particularly its numerous dilapidated pre-1940 buildings, presented a significant challenge. Building collapses resulted in loss of life and property, prompting the enactment of various laws to address the issue. The Bombay Housing Board Act, 1948, and the Bombay Building Repairs and Reconstruction Board Act, 1969, were initial attempts to improve housing and repair dangerous buildings, but proved insufficient.

The Maharashtra Housing and Area Development Act, 1976 (MHADA Act) consolidated and amended existing housing laws. Chapter VIII of the MHADA Act addressed the repair and reconstruction of dilapidated buildings in Mumbai, categorizing them into A, B, and C based on construction dates. A cess was levied on owners to fund these repairs.

A significant amendment in 1986 (Chapter VIII-A) introduced a mechanism for the acquisition of Category A buildings (pre-September 1, 1940) by the state and their transfer to cooperative societies of occupiers at a price of 100 times the monthly rent, provided 70% of occupiers applied. This amendment included a declaration that the Act aimed to give effect to the principles in Article 39(b) of the Constitution.

Property owners challenged the constitutionality of Chapter VIII-A before the Bombay High Court, arguing that it violated Articles 14 and 19 (right to equality and freedom of speech and property). The High Court dismissed the challenge, holding that the provisions were saved by Article 31C due to their nexus with Article 39(b). The Supreme Court then grappled with the question of Article 31C's continued validity post-Minerva Mills, and the interpretation of Article 39(b), leading to the eventual referral to the nine-judge bench. The case also involved related writ petitions challenging rent control legislation. The intervenors included the State of West Bengal, raising similar issues concerning their land reforms act.

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III. Arguments

A. Appellants' Arguments (Property Owners Association & Ors.)

1. Challenging the Maharashtra Housing and Area Development Act, 1976: The petitioners, a Property Owners' Association and others, challenged the constitutionality of Chapter VIII-A of the Maharashtra Housing and Area Development Act, 1976 (MHADA Act). This chapter dealt with the acquisition of "cessed properties" (buildings constructed before September 1, 1940) in Mumbai for transfer to cooperative housing societies of occupiers.

2. Grounds for the Challenge: Violation of Fundamental Rights: The petitioners argued that Chapter VIII-A violated Articles 14 and 19 of the Constitution of India. They contended the provisions were arbitrary and discriminatory, depriving property owners of their rights for inadequate compensation. The classification of buildings into categories (A, B, and C) was deemed irrational and lacking a rational nexus with the stated objective of the Act.

3. The State's Defense: Protection Under Articles 31C and 39(b): The respondents (the State of Maharashtra and others) argued that Chapter VIII-A was protected from challenge under Articles 14 and 19 by Article 31C. They asserted the Act gave effect to the principles specified in Article 39(b), which deals with the distribution of material resources of the community to subserve the common good. The inclusion of Section 1A in the MHADA Act, explicitly declaring its alignment with Article 39(b), further supported their claim.

4. The Question of Article 31C's Survival Post-Minerva Mills: A key contention revolved around the survival of Article 31C after the Supreme Court's decision in *Minerva Mills v. Union of India*. The petitioners argued that the invalidation of the 42nd Amendment's expansion of Article 31C's scope did not revive the pre-amended version. They posited that the omitted text could not be judicially reinstated, leaving Article 31C effectively inoperative. The respondents countered that the invalidation of the amendment restored Article 31C to its pre-amendment form.

5. Interpretation of Article 39(b): The Scope of "Material Resources: The petitioners argued for a narrow interpretation of "material resources of the community" in Article 39(b), limiting it to either natural resources or the means of production, even if privately owned. They rejected the broader interpretation that included all privately owned resources, arguing it was inconsistent with the text and the framers' intent. They emphasized the "community" element, suggesting that merely because a resource belonged to an individual did not automatically make it a community resource.

6. The "Distribution" Requirement Under Article 39(b): The petitioners argued that Article 39(b)'s "distribution" requirement implied a prior acquisition of the resource by the state. They contended that laws providing for acquisition alone could not be considered laws for distribution, and thus, did not qualify for protection under Article 31C. The respondents argued for a broader interpretation of "distribution," encompassing various methods, including nationalization, that served the common good.

7. Reliance on Precedents: Examining *Ranganatha Reddy* and *Sanjeev Coke*: The petitioners challenged the reliance in *Sanjeev Coke* on the minority opinion in *Ranganatha Reddy* regarding the interpretation

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of Article 39(b). They argued that the majority in *Ranganatha Reddy* had distanced itself from the minority's expansive view, making the *Sanjeev Coke* decision a violation of judicial discipline. The respondents argued that the interpretation of Article 39(b) in *Sanjeev Coke* and subsequent cases had established a consistent precedent.

8. The Role of Directive Principles and Fundamental Rights: The petitioners argued that the expansive interpretation of Article 39(b) to include all private property was incompatible with the constitutional right to property under Article 300A. They emphasized the need for a strict interpretation of Article 39(b) given its significant implications for fundamental rights. The respondents argued for a harmonious interpretation of Directive Principles and Fundamental Rights, emphasizing the importance of Directive Principles in achieving social and economic justice.

9. Historical Context: Constituent Assembly Debates: The petitioners analyzed the Constituent Assembly debates to support their contention that the framers did not intend for Article 39(b) to encompass all private property. They highlighted the rejection of amendments that explicitly included the vesting of resources in the state. The respondents argued that the debates showed an intention to leave the interpretation of Article 39(b) flexible, allowing for adaptation to changing circumstances.

10. Seeking Invalidation of Chapter VIII-A: The petitioners' ultimate goal was to have Chapter VIII-A of the MHADA Act declared unconstitutional. Their arguments centered on demonstrating that the Chapter violated fundamental rights and did not genuinely give effect to Article 39(b), thus lacking the protection of Article 31C. They sought a ruling that would invalidate the acquisition of private properties under the challenged provisions.

11. Constitutional Jurisprudence and Post-Minerva Mills Decisions: The petitioners also argued that post-*Minerva Mills* decisions that assumed the continued validity of Article 31C were based on an unchallenged assumption, not a reasoned conclusion. They further contended that the evolving constitutional jurisprudence on fundamental rights, particularly post-*I.R. Coelho*, made the abrogation of Articles 14 and 19 through Article 31C increasingly untenable.

B. Respondent's Arguments (State of Maharashtra & Ors.)

1. Constitutionality of the Maharashtra Housing and Area Development Act (MHADA) Act: The respondents argued that the MHADA Act, including Chapter VIII-A, is constitutionally valid. They contended that the Act's provisions, particularly those related to the acquisition of cessed properties, are not arbitrary or discriminatory but serve a crucial public purpose. The respondents emphasized the urgent need to address the issue of dilapidated buildings in Mumbai, which pose a significant risk to public safety and contribute to the city's housing shortage. They argued that the Act's provisions are a reasonable and necessary measure to achieve this public purpose.

2. Nexus with Article 39(b) and Protection under Article 31C: The respondents asserted that the MHADA Act gives effect to the principles specified in Article 39(b) of the Constitution, which directs the state to secure the equitable distribution of material resources to subserve the common good. They argued that Chapter VIII-A, in particular, aims to achieve this by facilitating the

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transfer of ownership and control of cessed buildings to the occupying tenants, thereby improving their living conditions and preventing building collapses. This nexus, they claimed, protects the Act from challenges under Articles 14 and 19 due to the immunity granted by Article 31C.

3. Revival of Unamended Article 31C after Minerva Mills: The respondents contended that the invalidation of the amendment to Article 31C in *Minerva Mills* resulted in the automatic revival of the unamended version of the article (as upheld in *Kesavananda Bharati*). They argued that the invalidation of an amendment negates its entire legal effect, including any repeals or substitutions it introduced. Therefore, the pre-amendment text of Article 31C, which grants immunity to laws furthering the principles in Article 39(b) and ©, remains in force.

4. Broad Interpretation of "Material Resources of the Community": The respondents advocated for a broad interpretation of the phrase "material resources of the community" in Article 39(b). They argued that this phrase encompasses all resources, both public and privately owned, that are essential for the well-being of the community. They cited numerous precedents where the Court had considered various resources, including housing, contract carriages, land, and industrial plants, as falling under this definition. The respondents emphasized that the inclusion of privately owned resources is crucial for achieving the goals of social and economic justice enshrined in the Directive Principles.

5. "Distribution" Encompasses Acquisition and Nationalization: The respondents argued that the term "distribution" in Article 39(b) is not limited to mere allocation or transfer of resources but includes the broader process of re-ordering ownership and control. They contended that nationalization or acquisition of privately owned resources can be a legitimate form of distribution if it serves the common good. They cited precedents like *Ranganatha Reddy* and *Sanjeev Coke* to support this interpretation.

6. Rejection of Narrow Interpretation of Article 39(b): The respondents strongly opposed any narrow interpretation of Article 39(b) that would limit its application to only public resources or exclude private property. They argued that such a narrow reading would undermine the provision's purpose and contradict the broader egalitarian goals of the Constitution. They emphasized that the Constitution aims to achieve social and economic justice, which requires addressing the distribution of resources, including those in private hands.

7. Consistency of Judicial Precedent: The respondents highlighted the consistent judicial interpretation of Article 39(b) to include privately owned resources, arguing that this interpretation has acquired the status of *stare decisis*. They pointed to decisions like *Sanjeev Coke*, *Abu Kavur Bai*, and *Mafatlal Industries* as examples of the Court's consistent approach. They urged the Court to uphold this established precedent and avoid unsettling settled legal principles.

8. Relevance of Mafatlal Industries Judgment: The respondents argued that the observation in *Mafatlal Industries* regarding the inclusion of privately owned resources in Article 39(b) is not *obiter dicta* but forms part of the ratio decidendi of the judgment. They pointed out that the issue was directly argued before the Court and addressed in multiple opinions, including the majority and concurring opinions.

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9. Constitutional Mandate for Redistribution: The respondents argued that the Constitution, particularly the Directive Principles, mandates the state to actively intervene in the distribution of resources to achieve social and economic justice. They contended that the power to acquire private property for public purposes is inherent in the state's sovereign authority and is consistent with the Constitution's commitment to a welfare state.

10. Common Good as a Guiding Principle: The respondents emphasized that the ultimate test for any action under Article 39(b) is whether it subserves the common good. They argued that the MHADA Act's provisions, despite involving the acquisition of private property, ultimately serve the common good by improving public safety and addressing the housing shortage. They contended that the Court should focus on the overall impact of the legislation on the community rather than getting bogged down in technicalities.

11. Flexibility in Constitutional Interpretation: The respondents urged the Court to adopt a flexible approach to constitutional interpretation, recognizing the evolving socio-economic context. They argued that the Court should not impose rigid interpretations that might hinder the state's ability to address contemporary challenges and implement policies aimed at achieving social and economic justice.

IV. Court's Reasonings (Majority Opinion by CJI Chandrachud)

1. The Genesis of the Reference: The case originated from challenges to the Maharashtra Housing and Area Development Act, 1976 (MHADA Act), specifically Chapter VIII-A, which dealt with the acquisition of cessed properties (buildings constructed before September 1, 1940) in Mumbai for transfer to cooperative societies of occupiers. Appellants challenged the Act's constitutionality, arguing violations of Articles 14 and 19. The respondents contended that the Act was protected by Article 31C due to its nexus with Article 39(b). The case went through three reference orders before reaching a nine-judge bench.

2. The Three Reference Orders: A Path to the Nine-Judge Bench: The initial three-judge bench referred the matter to a larger bench due to a dispute over the survival of Article 31C post-Minerva Mills v. Union of India (1980), which invalidated an amendment expanding Article 31C's scope. The subsequent five-judge bench, while hearing arguments on Article 31C's survival and the interpretation of Article 39(b), referred the matter to a seven-judge bench due to concerns about the interpretation of Article 39(b) in Sanjeev Coke. Finally, the seven-judge bench, noting a seemingly conflicting observation in Mafatlal Industries Ltd. v. Union of India (1997), referred the case to the present nine-judge bench.

3. Scope of the Nine-Judge Bench Reference: Defining the Issues: The nine-judge bench focused on two key issues: (a) the survival of Article 31C (as upheld in Kesavananda Bharati) after the Minerva Mills decision; and (b) the reconsideration of the interpretation of Article 39(b), specifically whether "material resources of the community" includes privately owned resources. Other challenges to the MHADA Act were deferred to a regular bench.

4. Article 31C: Survival Post-Minerva Mills: The Court analyzed the legal effect of invalidating a constitutional amendment that

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resulted in a substitution of text. It rejected the appellants' argument that the invalidation of the amendment (Forty-Second Amendment) did not revive the original text because the original text was "erased" by the amendment. The Court held that the amendment's effect was a single, indivisible act of repeal and enactment (substitution). Invalidating the amendment, therefore, invalidated the entire process, reviving the pre-amendment Article 31C. The Court found no constitutional flaw in the original text of Article 31C (as upheld in Kesavananda Bharati and Waman Rao), and its revival did not contradict the principles of Minerva Mills.

5. Judges' Disagreement on Article 31C: "Pen and Ink" Theory vs. Holistic Approach: The appellants argued for a "pen and ink" approach, asserting that the invalidation of the amendment only stopped the inserted text, not reviving the erased text. The respondents argued that invalidating an amendment restores the pre-amendment position. The Court sided with the respondents, emphasizing that a two-step analysis (erasure and insertion) would create unintended legislative vacuums and contradict the legislature's intent. The Court cited precedents (Laxmibai, Central Provinces Manganese Ore, DK Trivedi & Sons, and the NJAC Decision) supporting the holistic approach of reversing both the repeal and enactment steps when a substitution is invalidated.

6. Article 39(b): Interpretation and Judicial Discipline: The Court addressed the interpretation of Article 39(b) in Ranganatha Reddy and Sanjeev Coke. It found that Sanjeev Coke erred in relying on the minority opinion in Ranganatha Reddy, which the majority had expressly disagreed with. The Court clarified that a bench of lesser strength cannot overturn a larger bench's decision, and Sanjeev Coke violated judicial discipline. The Court also deemed the single-line observation in Mafatlal regarding private property as obiter dicta, not binding precedent.

7. Judges' Disagreement on Article 39(b): Ranganatha Reddy and Sanjeev Coke: The majority in Ranganatha Reddy upheld the Act on merits, avoiding discussion of Article 39(b). The concurring minority, however, interpreted "material resources of the community" expansively to include all resources meeting material needs, including private property. Sanjeev Coke adopted this expansive interpretation. The nine-judge bench disagreed, finding this interpretation too broad and inconsistent with the text of Article 39(b).

8. Analysis of Article 39(b): Textual Interpretation and Constitutional Values: The Court analyzed the text of Article 39(b), emphasizing the qualifiers "material" and "of the community." It rejected the interpretation that all private property falls under Article 39(b), arguing this would render the qualifiers meaningless and endorse a specific economic ideology. The Court held that while some privately owned resources might qualify, it's not all private property. The Court also noted that Article 39(b) is not a source of legislative power; the power to acquire private resources stems from other constitutional provisions.

9. Determining "Material Resources of the Community": A Context-Specific Approach: The Court outlined factors for determining whether a privately owned resource qualifies under Article 39(b): the resource's nature and characteristics, its impact on community well-being, its scarcity, and the consequences of its concentration in private hands. The Court also referenced the Public Trust Doctrine, emphasizing

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that the State's role is to ensure that the distribution of resources, even to private entities, serves the common good.

10. "Distribution" under Article 39(b): Beyond Simple Allocation: The Court addressed the meaning of "distribution" in Article 39(b), rejecting the narrow interpretation that it only applies post-acquisition. It held that "distribution" encompasses various methods, including vesting resources in the state or nationalization, as long as it serves the common good. The Court emphasized that determining the best method of distribution is a matter of policy for the legislature, not judicial review.

V. Dissenting Opinions

1. Justice Nagarathna's View on Article 39(b): Justice Nagarathna, while concurring with the majority on Article 31C's survival, presented a distinct analytical framework for Article 39(b). She emphasized that implementation of Article 39(b) requires a mandatory two-step process. The first step demands transformation of private resources into "material resources of the community" through specific legal mechanisms - nationalization, acquisition, vesting by law, state purchase, or voluntary conversion (such as donation, gift, or trust). Only after this crucial transformation can the State proceed to the second step of distribution. Her framework explicitly carved out "personal effects" of individuals from this scheme, establishing clear boundaries for state intervention. This approach differed from the majority by insisting on a formal legal transformation before any distribution could occur.

2. Justice Dhulia's Interpretation and Reasoning: Justice Dhulia's dissent, while agreeing on Article 31C's survival, presented a more fundamental challenge to the majority's interpretation of Article 39(b). He strongly supported the broad interpretation established in Ranganatha Reddy and Sanjeev Coke, contending that all privately owned resources inherently constitute "material resources of the community." His dissent was grounded in several key arguments: First, he emphasized that the Constituent Assembly deliberately chose broad language in Article 39(b) to allow flexibility and adaptation to changing circumstances. Second, he pointed to India's persistent inequality as justifying the need for State intervention in wealth distribution. Third, he highlighted how the historical context of India's independence and constitutional commitment to social and economic justice supported a broad interpretation.

3. Defense of Krishna Iyer Doctrine: Justice Dhulia particularly defended Justice Krishna Iyer's doctrine from Ranganatha Reddy, emphasizing its humanist principles of fairness and equity. He argued against imposing any pre-emptive limitations on what constitutes "material resources of the community," maintaining that this determination should be left to the legislature. The key factor, in his view, was whether the distribution serves the common good, not the private or public nature of the resource. This interpretation represented a significant departure from both the majority's contextual approach and Justice Nagarathna's transformation requirement.

VI. Conclusion

The Supreme Court's nine-judge bench concluded that Article 31C, as upheld in *Kesavananda Bharati*, remains in force. The Court found that the five-judge bench in *Sanjeev Coke* erred by relying on the minority opinion in *Ranganatha Reddy* regarding the interpretation of Article 39(b),

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as the majority in *Ranganatha Reddy* expressly disagreed with that interpretation. The Court deemed the single-sentence observation in *Mafatlal* about privately owned resources being included in "material resources of the community" to be obiter dicta and not binding. While acknowledging that the phrase "material resources of the community" in Article 39(b) may include some privately owned resources, the Court rejected the expansive view in *Ranganatha Reddy* and *Sanjeev Coke*, clarifying that not all privately owned resources meet the criteria of being "material" and "of the community." The Court established that determining whether a resource falls under Article 39(b) requires a context-specific analysis considering factors like the resource's nature, impact on the community, scarcity, and consequences of concentration in private hands, with the Public Trust Doctrine offering guidance. Finally, the Court held that "distribution" in Article 39(b) has a broad meaning, potentially encompassing vesting resources in the state or nationalization, but always subject to the requirement that the distribution must subserve the common good.

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86. Tej Prakash Pathak v. High Court of Rajasthan

CHIEF JUSTICE DR. DHANANJAYA Y. CHANDRACHUD, JUSTICE HRISHIKESH ROY, JUSTICE PAMIDIGHANTAM SRI NARASIMHA, JUSTICE PANKAJ MITHAL, JUSTICE MANOJ MISRA

Read the judgment here

I. Background:

The Rajasthan High Court issued a notification on September 17, 2009, inviting applications for 13 posts of Translators from Judicial Assistants and Junior Judicial Assistants who had three years of experience in the High Court establishment and possessed a Master's degree in English Literature. The recruitment was governed by the Rajasthan High Court Staff Service Rules 2002, framed under Article 229(2) of the Constitution. The minimum qualification specified was Post Graduate in English Literature, with preference given to law graduates.

II. Legal Action:

An examination was conducted on December 19, 2009, in which twenty-one aspirants appeared. When the results were declared on February 20, 2010, only three candidates were declared successful because the Chief Justice of the High Court had ordered that only candidates securing a minimum of 75% marks would be selected. This decision was challenged by unsuccessful candidates through writ petitions before the High Court, arguing that fixing the cut-off at 75% after the examination amounted to "changing the rules of the game after the game is played."

The High Court dismissed the writ petitions through a judgment dated March 11, 2011, holding that mere placement in the select list does not confer an indefeasible right to appointment and that the employer may fix a higher benchmark to ensure suitable candidates are appointed. The matter reached the Supreme Court through special leave petitions, where a three-judge bench referred it to a larger bench for an authoritative pronouncement on whether the procedure for selection could be changed after the recruitment process begins, particularly when such change imposes more rigorous scrutiny for selection.

The case primarily centered on the principle that rules of recruitment should not be changed midway through the process, and sought to determine whether this principle applies equally to both eligibility criteria and selection procedures. The matter raised important questions about fairness in public employment recruitment and the extent to which selection procedures can be modified during the recruitment process.

III. Key Issues:

1. Whether the decision in K. Manjusree case laid down the correct law regarding changes to selection criteria during recruitment process?
2. Whether rules of the game (selection procedure) can be changed after commencement of recruitment process or after completion?
3. Whether fixing minimum qualifying marks after completion of examination/interview violates Articles 14 and 16 of the Constitution?
4. Whether placement in select list gives candidates an indefeasible right to appointment against existing vacancies?
5. Whether recruiting bodies have discretion to devise selection procedures in absence of statutory rules governing recruitment?

IV. Court's Reasoning:

1. On Commencement and End of Recruitment Process: The Court established that recruitment process begins with advertisement issuance and concludes with vacancy filling. The Court reasoned

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that this comprehensive definition was necessary as it encompasses various steps like application scrutiny, examinations, interviews, and final selection. This interpretation ensures transparency and fairness throughout the entire recruitment cycle, protecting candidates' rights from the moment they decide to apply until final appointments are made.

2. On K. Manjusree's Compatibility with Earlier Precedents: The Court clarified that K. Manjusree and Subash Chander Marwaha addressed distinct issues. The Court reasoned that while Marwaha dealt with the right to appointment from an existing select list, Manjusree addressed the right to be placed in the select list itself. The Court emphasized that Manjusree prohibited changing selection criteria after interviews were conducted, as this would unfairly affect both candidates' preparation and evaluators' assessment approach. This distinction was crucial for establishing that the decisions complement rather than contradict each other.

3. On Recruiting Bodies' Discretion in Selection Procedures: The Court recognized recruiting bodies' authority to devise appropriate selection procedures, subject to existing rules. The Court reasoned that this flexibility was necessary for efficient recruitment but must be exercised within bounds of transparency and non-discrimination. The Court cited examples where procedures like shortlisting based on higher qualifications or conducting elimination tests were upheld when rationally connected to the selection objectives.

4. On Binding Nature of Statutory Rules: The Court emphasized that existing statutory rules bind recruiting bodies in both procedure and eligibility aspects. The Court reasoned that while administrative instructions could fill gaps where rules were silent, they couldn't override explicit statutory provisions. This interpretation stemmed from the principle that statutory rules have legislative force and reflect considered policy decisions that cannot be circumvented through administrative actions.

5. On Rights of Selected Candidates: The Court analyzed the nature of rights accruing to candidates placed in select lists. The Court reasoned that while selection doesn't create an absolute right to appointment, the State cannot arbitrarily deny appointments when vacancies exist. This balanced approach recognized both administrative discretion and the need to protect legitimate expectations of selected candidates, requiring the State to justify any decision to deny appointments from select lists.

V. Final Decision

1. The reference is answered holding that K. Manjusree lays down good law and is not in conflict with Subash Chander Marwaha, as they deal with different issues - right to be placed in Select List versus right to be appointed from Select List.
2. Recruitment process commences from advertisement issuance and ends with vacancy filling. Eligibility criteria notified at commencement cannot be changed midway unless Rules or advertisement permit such change.
3. Recruiting bodies may devise appropriate procedures subject to extant Rules, provided the procedure is transparent, non-discriminatory and has rational nexus to objectives.
4. Extant Rules having statutory force bind recruiting bodies both for procedure and eligibility. Where Rules are silent, administrative instructions may fill gaps.
5. Placement in select list gives no indefeasible right to appointment. State may choose not to fill vacancies for bona fide reasons but cannot arbitrarily deny appointment to selected candidates within zone of consideration.

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6. The appeals are directed to be placed before appropriate Bench for decision in terms of above answers, after obtaining administrative directions from Chief Justice.

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