ILS Law College, Pune

CENTRE FOR PUBLIC LAW'S

PUBLIC LAW BULLETIN

SPECIAL EDITION

SUNDAY

JULY 12, 2020

THEME: BIRTH CENTENARY CELEBRATION OF JUSTICE Y.V, CHANDRACHUD –FORMER CHIEF JUSTICE OF INDIA

PUBLIC LAW BULLETIN

CENTRE FOR PUBLIC LAW AT ILS LAW COLLEGE,
PUNE

EDITORIAL BOARD

CONTENT CONTRIBUTORS

Saranya Mishra, Former Editor, Public Law Bulletin

Soham Bhalerao IV BA LL.B

Bhargav Bhamidipati III BA LL.B

Dewangi Sharma II BA LL.B

Samraggi Debroy II BA LL.B

Vishakha Patil II BA LL.B

DISCLAIMER: ALL VIEWS EXPRESSED IN THE ARTICLES ARE AUTHORS' PERSONAL COMMENTS. THE BULLETIN DOES NOT ENDORSE IT IN ANY WAY.

INDEX

B. DEDICATION **9**

C. PROVIDING STABILITY TO FEDERALISM: CJ Y.V.CHANDRACHUD'S ROLE IN EXPANDING ARTICLE 131 **10**

D. JUSTICE Y.V CHANDRACHUD'S JOURNEY FROM KESHAVANANDA BHARATI TO MINERVA MILLS **18**

F. IRONING THE CREASES OF ANTICIPATORY BAIL: GENIUS OF JUSTICE Y.V. CHANDRACHUD **30**

G. BACHAN SINGH V. STATE OF PUNJAB: AN OPTIMISTIC APPROACH OR A LOST OPPORTUNITY? **35**

H. CRITICAL OUTLOOK AND CONTEMPORARY RELEVANCE OF THE JUDGEMENT BY JUSTICE Y.V. CHANDRACHUD IN THE CASE – 'OLGA TELLIS & ORS V BOMBAY MUNICIPAL CORPORATION & ORS' **43**

I. EXPANDING DIMENSIONS OF RIGHT TO LIVELIHOOD AMIDST COVID-19 PANDEMIC: OLGA TELLIS V. BOMBAY MUNICIPAL CORPORATION **49**

K. ADVANCING BEYOND BARRIERS OF JUDICIAL MINIMALISM AND FORMALISM: SOWMITHRI VISHNU V UNION OF INDIA **62**

L. ADM JABALPUR JUDGEMENT: BLOT ON THE LEGAL LANDSCAPE? **68**

O. MESMERISING QUOTES BY JUSTICE SHRI Y.V CHANDRACHUD **112**

CONTACT US **113**

A. MESSAGE FROM THE EDITOR

Date: 12th July 2020

Dear all,

Democracy is the telling truth to power so that power becomes truthful and truth becomes powerful." This axiom very aptly brings out the interplay between *power and truth and its realization in accountability* and it has constant echoes in the interpretive praxis of Chief Justice Y. V. Chandrachud. His reasoning in *Olga Telis* breaks new ground by delinking procedural fairness from positivist construction of rights and entitlements thereby guaranteeing fairness even to *de-facto* interests and upholding protection to the same on the anvil of *due process of law.*

We are extremely happy to present to the faculty and students at ILS and academia across the country this special issue of the Public Law bulletin dedicated to the celebration and reminiscence of the judicial acumen and contribution of Chief Justice Y.V. Chandrachud. I congratulate all the student authors for having worked ceaselessly in contributing articles within a very pressing deadline. The articles in this issue focus on landmark pronouncements delivered by CJI Y.V. Chandrachud, in varied domains of Law like Constitutional Law, Criminal law, Family Law, Tax Law. The student authors have also tried to demonstrate the significance of his judgements in the present turbulent times. Two student researchers have taken a bird's eye view of some of the landmark judgments delivered by CJI Chandrachud by citing excerpts. One of the alumni Ms Saranya Mishra has researched SCC to take stock of the enormity of the judicial acumen and contribution of CJI Chandrachud in Supreme Court through Charts. There is indeed scope for improvement in research and sharpening of arguments in these articles, but I singularly place on record my appreciation for the zeal, enthusiasm and earnestness with which, the team of researchers at Centre for

Public law, ILS Law College has gone on to accomplish the feat of releasing this issue on the eve of the 100th Birth Anniversary of Chief Justice Y.V. Chandrachud.

ILS Law College has special and cherished memories of CJI Y.V. Chandrachud both as he is one of it's an illustrious alumnus and being part of its administration for a long time. He was a distinguished alumnus of the ILS Law College during 1940-42 in the two-year LL.B. course. He was also the Vice-President of the Indian Law Society from 1967 to 1979, and then the President from 1979 to 2008.

Professor Baxi celebrates the adjudicative legacy of CJI Y.V. Chandrachud very tellingly, "Justice Chandrachud was a friend of mine as well as a favourite judge. Like all Indian appellate judges, he had a problem with adjudicative consistency, but how he addressed or resolved it was his very own. He is a pragmatic judge, in the best sense of that term. This he shared with Justice P.N. Bhagwati. This is not to say that either adjusted their judicial principles to the political exigencies of the day, but they did not let principles *alone* decide every case before them. The social and political context mattered to them certainly in cataclysmic situations. The situation of Emergency and post-Emergency was one of them, and how they dealt with them is fully explained in *The Indian Supreme Court and Politics* (Baxi, 1980), in *Courage, Craft, and Contention* (Baxi, 1985b), and some other writings of mine. These works commented upon them and even critiqued them, but they never attributed political motives to them unlike most grapevine criticism of our judges today." (Cited from unpublished Manuscript, *conversations with Upendra Baxi* to be published by Permanent Black)

One cannot get a better appreciation of adjudication than this and I fully endorse the same.

It is also interesting to see how Chief Justice Chandrachud conceived and construed the competence of the Parliament of India. Although he was categorical in conceding powers to its fullest extent, he did not forget to remind it the purpose behind such

categorical conferment. In *Kesavananda Bharati*, he very resoundingly observed, " *we have given you vast powers for the welfare of the country but woe betide you, woe betide you if you misuse these powers*'' *Professor* Baxi in his characteristic way has characterized the above observations as 'judicial curse'. In light of the above curse, the nuance position of Chief Justice Y.V. Chandrachud is very clearly visible in *Minerva Mills* case engaging with clauses 4 and 5 of Article 368 and enlargement of the scope of Article 31 C, providing total ascendency to all Directive Principles over Articles 14 and 19. He categorically declared the aforementioned constitutional changes introduced by 42nd amendment as unconstitutional, invoking the Basic structure plank. He very pithily observed, "The promise of a better tomorrow must be fulfilled to-day; day after to-morrow it runs the risk of being conveniently forgotten. Indeed so many tomorrows have come and gone without a leaf turning that today there is a lurking danger that people will work out their destiny through the compelled cult of their own "dirty hands". Words bandied about in marbled halls say much but fail to achieve as much.``

This borne out the Baxian pragmatism. Judgments like Gurupad and Shah Bano also demonstrate his judicial philosophy of interpreting rules to alleviate the sufferings of women. Thus in Gurupad, he realized the plight of the Hindu widow and interpreted Section 6 of the Hindu Succession Act in a manner that the widow was able to secure a share much larger than what she would have got if the provision had been interpreted textually. This is yet another case where law and the judicial process converged as agents of social change.

Let me also recall his extraordinary landmark and way ahead of time judgment in Shah Bano, wherein he expounded the reformist role of the court. "Inevitably*, the role of the reformer has to be assumed by the courts because it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts by courts to bridge the gap between personal Laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case."*

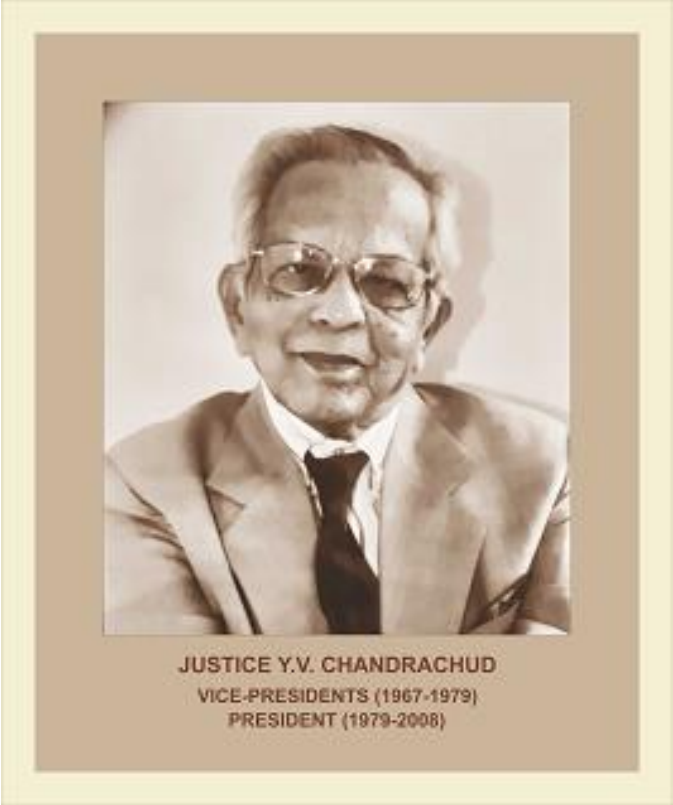
It is futile and in vain to engage with the extraordinary judicial contribution of Chief Justice Y V Chandrachud, the longest-serving Chief Justice of India, in silos and fragments, but as an ordinary mortal and with the limited ability to grasp and gathering the flashpoints of knowledge, this editorial is a very feeble but most genuine tribute to him, one of our own as Part of ILS Family and as one of the distinguished legal luminary and a very erudite Chief Justice of India.

Dr Sanjay Jain

Editor-in Chief, Public Law Bulletin

Associate Professor and Principal Additional Charge

B. DEDICATION



Justice Y.V. Chandrachud
President, Indian Law Society (1979 to 2008)
Vice-president (1967 to 1979)
Former Chief justice of India

We dedicate this special edition of Public Law Bulletin to our alumni, Justice Y.V Chandrachud, *former Chief Justice of India* (1978-1985) whose legacy continues to inspire and guide us.

C. PROVIDING STABILITY TO FEDERALISM: CJ Y.V.CHANDRACHUD'S ROLE IN EXPANDING ARTICLE 131

-AUTHORED BY: RASHMI RAGHAVANN IV BA LL.B

There have been wide ranging debates in our academia about the nature of India's constitutional set up. Having had a history under regional monarchies and being under foreign rule; both overlapping at times; made it necessary for a young and independent nation to pave its way through the muddled waters of Federalism.[1] Our constituent makers debated whether we should be a strong Centre or would we better off as provincial governments loosely tied up into a Union. Having debated the pros and cons of the American model, our drafters figured out a unique way that was most suited for India.[2] The drafters termed our inter-state relationship as a Union of States and over time it has been recognized as quasi-federalism or cooperative federalism.[3] Our

[1] See Book: Courts in Federal Countries, Manish Tewari and Rekha Saxena, The Supreme Court of India: The Rise of Judicial Power and the Protection of Federalism, available at http://www.jstor.com/stable/10.3138/j.ctt1whm97c.12

[2]See K.P.Singh, The Jurisdiction of the Supreme Court of India (Evolution of provisions relating to it in the Constituent Assembly of India), The Indian Journal of Political Science , JULY—SEPTEMBER—DECEMBER, 1964, Vol. 25, No. 3/4, CONFERENCE NUMBER FOR XXVI INDIAN POLITICAL SCIENCE CONFERENCE 1964: ANNAMALAINAGAR (JULY—SEPTEMBER—DECEMBER, 1964), pp. 192-199

[3] See B.N.Srikrishna, Beyond Federalism, India International Centre Quarterly, WINTER 2011 - SPRING 2012, Vol. 38, No. 3/4, The Golden Thread: Essays in Honour of C.D. Deshmukh (WINTER 2011 - SPRING 2012), pp. 386-407

Constitution recognizes the firm separation of powers but also the absorption of powers into the Union if the Constitutional functioning of these states themselves jeopardized. [4] However, the most interesting feature of such a unique federal set-up is to recognize the potential of the Supreme Court to be the ultimate arbiter of disputes among these Union of States.

The Supreme Court was designed to be the Court of First Instance for safeguarding the Fundamental Rights of citizens so that the soul of the Constitution is safeguarded by the most committed judicial officers in a fearless manner.[5] It was also conferred with the power of exclusive jurisdiction over federal disputes by virtue of Article 131. Navigating the tumultuous relationship between the Centre and the states has been one of the ordeals that the Supreme Court has overcome with a state of clarity and finesse. Tales of harmonious construction of the separation of powers doctrine by Judges are well etched in our rulebooks of constitutional interpretation. [6]However, my effort would be to focus on the scheme of Article 131 itself and Hon'ble Chief Justice Y.V.Chandrachud's role in giving it a purposeful meaning.

Ever since the adoption of the constitution, Article 131 has been a fertile ground for adjudication of Centre-State disputes. It allows *any state* to bring an action against the Union when there is a *dispute* on a question of fact or *law* that affects the existence of a *legal right*. The states used this provision and challenged Central laws as encroaching on their exclusive powers under the State List or as being incongruent with the Concurrent List. Notable among them is the case of the State *of West Bengal v Union of India*.[7] Here, West Bengal challenged the Act seeking to acquire lands for the regulation of the coal industry. A notable question that arose was whether the state was a 'person' within the

[4]Article 1 and Article 356 of the Constitution of India

[5]Article 32

[6]For instance, the Doctrine of pith and substance, substance over form etc.

[7] 1962 SC 438

scheme of Part III to claim protection for ultra vires acquisition of property under the erstwhile Article 31A. While the judges did not hold that the state was a juristic person, they did hold that the Scheme of Part III empowered the States to challenge Central laws under Article 13 even if they were not claiming any fundamental rights as naturalized people. Additionally, they gave the relief that although the Centre could pass laws that effectively acquired State property they must do so consistently within the scheme of 'public purpose' and 'compensation' as laid down by Article 31A.[8]Thus, it became *stare decisis* that under the meaning of '*law'* under Article 131 states could challenge Central laws by virtue of Article 13. Thus, the technical difficulty of having to establish personhood to challenge a Law under part III was removed.

A. UNDERSTANDING THE STATE

The most notable development in Article 131 arose in the nascent tenure of Y.V.Chandrachud as Chief Justice in the year 1977. Two cases, *State of Rajasthan v Union of India* and *State of Karnataka v Union of India* created situations that needed enormous clarity on the scope of the original jurisdiction of the apex Court with respect to the words *'state', 'dispute'* and *'legal right'*. Both cases challenged the maintainability of State governments to approach the Supreme Court. In the State of Rajasthan, it was argued that the legislative governments in function were only transient 'elements' and not the 'state' to constitute a valid Centre-State dispute within the scheme of Article 131. The Union argued that the state was to be a permanent entity and not only elected governments which came and went in a periodic cycle. CJ Y.V.Chandrachud was wise to call this an '*unpragmatic reading of the Constitution'*. [9]He analyzed that it would be incoherent to call State Governments as a political entity but the Central Governments as the Union of India. He visualized that the state is nothing but the government *in*

[8]Ibid, opinion by CJ Sinha

[9]Ibid, paras 52-55

action, either through its Legislative, Executive or Judicial organs. He explained that the state government is usually the first entity to be affected when a Central law seeks to regulate the functioning of its members and/or their portfolios and it is of utmost bearing for the state to gain clarity on such laws. Thus, it was wholly wrongful to suggest that if governments in power raised an issue under Article 131 it had no nexus with the functioning of their own states. He understood that "*the effort has to be to accept what the words truly mean and to work out the Constitutional scheme as it may reasonably be assumed to have been conceived"*. If the meaning suggested by the Union were to be accepted, the interpretation would ensure that no legislative assembly could effectively maintain an action in the Supreme Court. This wholesome interpretation of State has allowed it to break away from theoretical socio-political leanings accorded to it in textbooks to a realistic way of understanding it via its functioning in practicality.

B. CONTOURS OF A DISPUTE

The next question that CJ Y.V.Chandrachud unfolded was the meaning of 'dispute'. Could political warrings between two factions be disputes? Did they strictly need to be of a legal nature? Here, he took a view of why a dispute arose between the two parties. He theorized that the states had challenged the constitutional powers of the Centre to abrogate state assemblies.[10] He viewed that the states were fundamentally in disagreement with the Centre as to how it could/should legitimately exercise its power under Article 356. Such an arbitrary exercise of power by the Centre (by sending a letter to the respective states urging them to dissolve their functioning) went against the true scope of the Union's powers and could adversely affect the interest of the states. He emphasized,

[10] State of Rajasthan and others sought to injunct the President from issuing a Proclamation under Article 356 by approaching the Supreme Court

"*I find it difficult to accept that the State as a polity is not entitled to raise a dispute of this nature. In a federation, whether classical or quasi-classical, the States are vitally interested in the definition of the powers of the Federal Government on one hand and their own on the other. A dispute bearing upon the delineation of those powers is precisely the one in which the federating States, no less than the Federal Government itself, are interested. The States, therefore, have the locus and the interest to contest and seek an adjudication of the claim set up by the Union Government."*

Thus, a conflict in interests or interpretation was enough to constitute a dispute if it had bearings on the federal set-up. He had to consider the word in greater detail in the State *of Karnataka*.[11] The case, having arisen a few months after the verdict in the State of Rajasthan, posed whether the Centre could set up an inquiry commission to look into charges of uncouth behaviour by incumbent politicians of the Karnataka government. Here, the minority dissented on the issue of maintainability of the action by the state under Article 131.[12] They remarked that Article 131 was in *pari materia* to the provisions of the CPC and thus, plaintiffs must have a valid 'cause of action' claiming a breach of their own legal rights by the other party. If they are unable to prove the existence of their own legal right, there is effectively no dispute and the action automatically fails. Having gone through this opinion, Justice Y.V.Chandrachud countered it in his own judgment. He emphatically distanced the CPC from Article 131 by holding that the exclusive original jurisdiction of the court was not similar to the jurisdiction of the Court under the CPC. Article 131 was a self-contained code in itself and didn't need a specific cause of action but used the broader word 'dispute'. The broader word dispute meant that states could question the authority of the Centre without having to specify a denial of their own rights. In *State of Karnataka*, the dispute was a ***question of law*** brought before the Court. The question of law was who had the right to set up such

[11]1977 SCC (4) 608 [hereinafter Karnataka]

[12] Ibid, see the dissenting opinion of J Untwalia, Singh and Jaswant Singh JJ

commissions, the State or the Centre? Here, Karnataka not only challenged the legal right of the Centre to appoint a Commission of Inquiry but claimed that it was the only one with the exclusive right to set up such a body. Such a simultaneous assertion and denial between the contesting parties constituted a valid dispute that needed to be entertained by the apex Court. He viewed that a simplistic view of 'dispute' was intended to remove it out of the rigours of a 'suit' under the CPC.[13]

C. LEGAL RIGHTS AND DUTY BEARERS

Article 131 was also debated over the meaning of 'legal right'. It was certain that it consisted of rights actionable in a Court of law but an earlier case of the Court held that such a right 'should arise in the context of the constitution and the federalism it sets up.'[14]However,r Justice Y.V.Chandrachud distanced himself from this reading in the *State of Rajasthan* itself. He said that "a *'legal right' occurs in art. 131 has to be understood in its proper perspective. In a strict sense, legal rights are correlative of legal duties and are defined as interests which the law protects by imposing corresponding duties on others."*[15]

Thus, the legal right need not exist in the plaintiff but could operate as a co-relative duty imposed on them by virtue of the Union's exclusive rights. Similarly, such a duty imposed on the state would negate any liberty to not enforce the right of another. Justice Bhagwati took this line of approach further in the *State of Karnataka* by holding that under Article 131 *"a relational legal matter involving a right, liberty, power or immunity qua the parties to the dispute is enough to maintain a suit".*[16]This jurisprudential analysis is strikingly similar to the Hohfeldian theory of Rights and ensures that a party is not defeated plainly because it is a duty-bearer/ enforcer under the law. Thus, Justice

[13]Ibid, paras 98-100

[14]1970 AIR 1446

[15]Rajasthan, para 55.

[16]Karnataka, para 120

Y.V.Chandrachud summed that challenging the legal right of another to act in an intended manner is enough to attract Article 131 and the action cannot be dismissed *in limine* because it is not calculated to affect some affirmative rights that the plaintiff themselves hold. This interpretation takes notice of all stakeholders in a federal dispute where rights and obligations are of a mutual nature.

D. WRITS AND WRITTEN LAW

Finally, he responded to why states must be given the liberty to approach the Courts under Article 131 instead of using the Court's original writ jurisdiction. In both cases, it was argued (using the ratio in State of West Bengal) that since a central law seeks to be challenged it could be done so under articles 32 or 226. That was the more appropriate remedy to trace the vires of a Central law. Justice Y.V.Chandrachud gave a befitting reply to such an argument by saying that a writ petition was no substitute for the exclusive original jurisdiction. The disputes under article 131 are of utmost legal significance to the Union and the States and they cannot be embedded in delays arising out of an appeal from the High Court's decision under Article 226. Thus, he opened the route for the state to have remedies under its Writ and Exclusive jurisdiction simultaneously as per need and expediency. A recent case of *State of Jharkhand v Union of India* considers this very interpretation of Justice Y.V.Chandrachud and has referred this issue to a larger bench. It can only be hoped that this view is reaffirmed as being in the true spirit of our Constitution and the balance of the federal scheme.

Dr. B.R.Ambedkar rightly remarked that the working of the Constitution does not depend on the document itself but those tasked with implementing it.[17]Justice Y.V.Chandrachud certainly breathed life into the scheme of Article 131 by giving a

[17]See Meera Emmanuel, "If hereafter things go wrong, we will have nobody to blame", Dr. Ambedkar's final speech in Constituent Assembly, available at https://www.barandbench.com/columns/dr-ambedkar-1949-constituent-assembly-speech

futuristic reading to seemingly simple words like state, dispute and legal right to ensure the adherence to the federal principle. States have so far used this provision to protect their own interests and liabilities. It is hoped that in the future, states will use this provision and the guidance of Justice Y.V.Chandrachud to safeguard the rights of the masses and to be the guardian of the Constitution against the arbitrary and excessive rule.[18]

[18]See further, https://www.livelaw.in/top-stories/breaking-state-of-kerala-files-suit-in-sc-against-union-govt-challenging-citizenship-amendment-act-151600

D. JUSTICE Y.V CHANDRACHUD'S JOURNEY FROM KESHAVANANDA BHARATI TO MINERVA MILLS

-AUTHORED BY: SOHAM BHALERAO (IV BA LL.B) AND BHARGAV BHAMIDIPATI (III BA LL.B)

The Constitutional journey from Shankari Prasad to Minerva Mills has undoubtedly played a pivotal role in safeguarding the rights of the citizens and people of India. From the Parliament enjoying the power to amend the Constitution as held in Shankari Prasad[19] to limiting the parliament's power to ordinary law-making *only* as held in Golak Nath[20], from recognizing the inherent limitations of the Parliament in Kesavananda Bharati[21] to finally putting to rest the Parliament's law-making and Constitution amending power in Minerva Mills[22] the journey indeed has been tumultuous, to say the least. Fresh from the darkest period of Indian polity that is the Emergency from 1975 to 1977, Justice Yeshwant Vishnu Chandrachud was appointed as the Chief Justice of India on 22nd February 1978 by the Janta government. Out of all his notable cases, Justice Chandrachud was not only a part of the now overturned ADM Jabalpur judgement but also was part of the minority opinion of the Keshavananda Bharati judgement. The evolution of his views from the ADM Jabalpur judgement to the Keshavananda Bharati judgement to the Raj Narain judgement to the Minerva Mills

[19]Shankari Prasad vs Union of India AIR (1951) SC 455

[20]Golaknath v. State Of Punjab AIR (1967) SC 1643

[21]Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr. AIR (1973) 4 SCC 225

[22]Minerva Mills Ltd. and Ors v. Union of India and Ors, AIR 1980 SC 1789

judgement not only makes for an enriching read but forms an indispensable part of Constitutional jurisprudence.

KESHAVANANDA BHARATI

The crux of Justice Chandrachud's opinion is based on the minority opinion of the Golak Nath case wherein the majority opinion held that Article 368 merely provided the Parliament with the procedure to amend the Constitution without granting them the power to do so. The necessary implication of this analysis was that amending the Fundamental Rights provided in the Constitution was beyond the purview of the Parliament. Justice Chandrachud being part of the minority opinion in the 13-bench panel in Keshavananda Bharati wrote a dissenting judgement of his own analyzing the same argument. Even though all the judges unanimously agreed that the Parliament had the Constituent power to amend the Constitution thereby overturning the ratio of Golak Nath, the 7 majority opinions observed that it was subject to 'inherent limitations' of the Constitution on the shoulders of which the basic structure doctrine was formed.

Justice Chandrachud while arguing that the theory of natural law and 'Inherent limitations' find no place in the Constitution placed his reliance on Gopalan's case wherein it was observed that "*a wide assumption of power to construction is apt to place in the hands of judiciary too great and to indefinite a power, either for its own security or the protection of private rights. The argument of 'spirit' is always attractive and quite some eloquence can be infused into it. But one must gather the spirit from the words or the language used in the Constitution*"[23]. Rejecting the arguments of the possibility of abuse by the ones in power, Justice Chandrachud reposed his faith in the system of Parliamentary democracy. Hence the argument of "basic structure" did not find favour with Justice

[23] Supra note (23) para 2101

Chandrachud. Therefore, he held that the amending power of the Parliament under Article 368 is not subject to any limitations per se.

The premise of the learned judge's opinion was that there exists a meritorious difference between Article 13 which defined 'law' and Article 368 which prescribed the procedure for 'amending' the Constitution. The Learned judge argued that since the word 'amendment' finds no place in Article 13 as well as Article 245 while the word 'law' is absent in Article 368, all three articles are mutually exclusive. Therefore, using the principles of statutory interpretation, he held that the word "amendment" in Article 368 should be interpreted in a wide manner so as to include repealing or abrogating any part of the Constitution. He held that *"no provision of the Constitution can claim immunity from the sway of the amending power. The amending power can amend each and every provision of the Constitution including the Preamble and Part III."*[24] Hence him rejecting the basic structure doctrine along with his interpretation of Article 368 in effect made the Parliament's amending power immune from Article 13 which rendered laws in derogation with Part III void.

Taking forward his opinion that in the lack of objective standards for determining the core essence and 'spirit' of the Constitution the Learned judge rejected the argument that the Directive Principles of State Policy are subservient in magnitude to the Fundamental Rights guaranteed by Part III. He stated that "*Fundamental Rights which are conferred and guaranteed by Part III of the Constitution undoubtedly constitute the ark of the Constitution and without them a man's reach will not exceed his grasp. But it cannot be overstressed that the Directive Principles of State Policy are fundamental in the governance of the country. What is fundamental in the governance of the country cannot surely be less significant than what is fundamental in the life of an individual*"[25]. Hence clearly, he took the

[24] Supra note (23)para 1897

[25] Supra note (23)para 2134

view that for the attainment of public good, it is permissible to abridge the fundamental rights in favour of the directing principles.[26]

Based on the above reasoning i.e. His interpretation of Article 368, Article 13, rejection of the basic structure doctrine, interpretation of the interplay between Fundamental Rights and Directive Principles, and his opinion that the amendment made explicit what was already implicit in the Constitution, he upheld the Constitutional validity of the 24th Amendment which was challenged by Kesavananda Bharati. It is notable that even though the Learned Judge rejected the theory of 'basic structure', in the case of Raj Narain, he recognized the same principle and held that the theory of 'separation of powers' was part of the basic structure of the Constitution.[27]

MINERVA MILLS

The *Minerva Mills case*[28] is the decision that cemented the 'basic structure doctrine' and thus undoubtedly shaped the future of Indian Constitutional jurisprudence. But it is often said that the decision saw the uncomfortable dynamics between Chandrachud CJ and Bhagwati J. This dynamic was something which Chandrachud J themselves faced in the *Kesavananda Bharati* decision. But more than this dynamic, we will closely look at the decision of Chandrachud CJ in *Minerva Mills case* and harmonize his opinion with his radical dissent in *Kesavananda Bharati case*.

The majority in *Minerva Mills* through Chandrachud J struck down section 55 of the Amendment Act of 1976 for it removed all restrictions on the power of Parliament

[26] Dr. Sanjay Jain and Sathya Narayan, Basic Structure Constitutionalism, pg.110, Eastern Book Company, 2011 edition

[27] Indira Gandhi v. Raj Narain, AIR (1975) SC 2299

[28] Supra note (24)

under Article 368. But this is in contrast to the dissenting opinion of Chandrachud J in *Kesavananda Bharati* which held that "the word 'amendment' in Article 368 furnishes has a clear and definite import and it connotes a power of the widest amplitude to make additions, alterations and variations".[29] Chandrachud J then concluded that the power of Parliament to amend the Constitution is wide and unfettered and it encompasses every provision of the Constitution.

The opinion of Chandrachud J in *Minerva Mills* upheld the power of judicial review over constitutional amendments as well as maintained that clauses (4) and (5) of Article 368 conferred unlimited power to Parliament thus, violating basic structure of the Constitution.[30] The majority, in concurrence of Bhagwati J, built on the idea that the unquestioned power of Parliament seems contrary to the philosophy of separation of powers that characterise the structure of governance in India. Justice Chandrachud further held the amendments to 31C unconstitutional as it destroyed the harmony and balance between fundamental rights and directive principles which is an essential or basic feature of the Constitution.[31]

CONCLUSION

A key link to these observational changes from *Keshavananda Bharati* is the size of the Bench. Post *Keshavananda Bharati* all pertinent questions before the Supreme Court have been before a 5 or 7 judge Bench only. And thus, the jurisprudence thereafter has been one upholding that all constitutional amendments after the date of *Keshavananda Bharati*

[29] Supra note (23), para 2059

[30] For a general discussion see, <http://constitutionnet.org/vl/item/basic-structure-indian-constitution> last accessed on 9th July 2020.

[31]Bhagwati, J. upheld its validity and concurred that the government's takeover of the sick mill was valid.

judgement were open to judicial review.[32] Thus, Chandrachud J's approach in the *Kesavananda Bharati* seems to be contingent on the size of the bench and thus he addresses on whether the truer constitutional scheme restricted the power of Parliament as opposed to his views in *Minerva Mills* which were limited by precedent and comity with the earlier decision. One may also argue that his opinion may have evolved in the post-Emergency period after the experiencing of unrestricted exploitation of power by the Executive and the impact of this excessive use of power on the constitutional framework. Thus, Y.V. Chandrachud J's views are the manifestation of his opinions galvanized with his commitment to precedent and his ability to gauge through socio-political developments of his time.

[32]Waman Rao v Union of India 1981 2 SCC 362 (The Supreme Court decided this case along with that of *Minerva Mills*)

E. "KISSA KURSI KA": THE CASE OF INDIA'S FIRST POLITICAL SPOOF

- AUTHORED BY : POORVI SHARMA AND AAKANKSHA RANJAN (BOTH II BA LL.B)

In his decade-long spanning career, Y.V. Chandrachud oversaw and adjudged numerous monumental cases of importance bringing huge legal reforms within the field. While he left a long-lasting legacy for the judiciary, he fairly often bore the brunt of being in such a position of power and responsibility. One such case in his career was the *State (Delhi Administration) v Sanjay Gandhi*[33] popularly known as the case of "KissaKursika". India's first political spoof and a movie made at the time of emergency, it sparked an outrage amongst the political class, wherein J Chandrachud confronted lots of reaction to the extent of getting undermining calls from individuals to not proceed with adjudging this case.[34] This resulted in the judiciary being hauled into the poll skulduggery foreboding dangers to an already harassed, previously pestered, and maybe the sole uncorrupted arm of the state. The case witnessed the conviction of Sanjay Gandhi and former Information and Broadcasting minister VC Shukla, who was found guilty by the means of the Shah commission, which was instituted during the

[33] AIR 1978 SC 961

[34] Arul B. Louis, "Supreme Court judges hearing appeals in Kissa Kursi Ka case get threatening calls", *India Today*, Dec. 15, 1979

time of Janata party rule for investigating cases of atrocities during the Emergency and both of them were imprisoned for a month.[35]

This case brought Chandrachud to the forefront for making a bold judicial decision in his judgement. From witnesses turning hostile with ominous regularity to fading public interest in the case, this case had its fair share of high legal drama and made it very clear that Sanjay Gandhi was not destined for political martyrdom.[36] The public perception of the case hinged on the mistaken belief that the doings of the accused is a relatively minor offence, oblivious to the consequent legal repercussion of a maximum of life imprisonment if convicted. The prosecution side of the case was advocated by the legal luminary Ram Jethmalani and this case is a landmark in itself often noted while reminiscing the rich legacy of J Chandrachud as the one in which he sent such an eminent political figure into month-long confinement and took the side of fairness, acting in a non-partisan and ideal manner.

THE EXEMPLARY STAND OF THE JUDICIARY

The events that had set the scene for the judgement were no less dramatic than any movie. The quintessential premise follows that the movie, "Kissa Kursi Ka" was based on the political doings of Smt. Indira Gandhi and was denied the certificate of exhibition. Subsequently, the producer, Shri Nahata filed for a writ of mandamus before the Hon'ble Supreme Court. The Hon'ble court ordered a screening of the movie for evaluation.

---

[35]"1978- KissaKursiKa: Celluloid chutzpah", *India Today*, Dec. 28, 2009 Available at: https://www.indiatoday.in/magazine/cover-story/story/20091228-1978-kissa-kursi-ka-celluloid-chutzpah-741608-2009-12-24(Last Visited: July 8, 2020)

[36]Dilip Bobb, "The Case of The Missing Film", *India Today*, June 1-15, 1978

Sanjay Gandhi, along with Indira Gandhi's former Information and Broadcasting Minister, V.C. Shukla had allegedly conspired to destroy the prints of the feature film. The writ petition filed by Shri Nahata came to an abrupt end upon an affidavit filed by Ghose that the spools of the film had got mixed up with some other films received by the Government in connection with the International Film Festival.

However, post-emergency when the Janata Party came into power, the case was reopened before the sessions court with the prosecution case being instituted by the CBI. Out of the 138 witnesses cited, the two crucial approvers had turned hostile. Subsequently, the public prosecutor filed an appeal in the Delhi High Court on behalf of the Delhi Administration asking for the cancellation of Sanjay Gandhi's bail on the grounds that he was "tampering with key prosecution witnesses"[37]. While the original appeal was rejected by the High Court of Delhi, a subsequent appeal filed in the Supreme Court was upheld.

The primary issue before the Court was to determine as to the whether, "by the application of the test of probabilities, the prosecution has succeeded in proving its case that the respondent has tampered with its witnesses and that there is a reasonable apprehension that he will continue to indulge in that course of conduct if he is allowed to remain at large."[38]

The State (Delhi Adm.) v. Sanjay Gandhi[39] was one of the earliest cases that had laid down significant precedence in the domain of cancellation of bail with respect to section 437 and section 439 of the CrPC. It was observed that the cancellation of bail stands on a different footing from the rejection of bail. Justice Chandrachud had elucidated that the power to take back in custody an accused that is on bail has to be exercised with due

[37] *Supra*. Note 35

[38] State (Delhi Administration) v Sanjay Gandhi, AIR 1978 SC 961

[39] Ibid.

care and circumspection further propounding that such power can be exercised where, by a preponderance of probabilities, it is clear that accused is interfering with course of justice by tampering with witnesses. Thus, cancellation of bail can be permitted only if it is no longer conducive to a fair trial to allow the accused to retain freedom during the trial - for cancellation of bail the fact that the prosecution witnesses have turned hostile cannot be a valid ground; there must be a causal connection with some act or conduct of the accused, which had been sufficiently established by the prosecution at the time.

With the purview of justice being "tempered by mercy"[40] in any situation even as against persons who attempt to tamper with its processes, the Court set aside the judgment of the High Court and cancelled the respondent's bail for a period of one month. Granting that the respondent shall, in the normal course, be entitled to be released on fresh bail on the expiry of the aforesaid period.

Y.V. CHANDRACHUD-THE "IRON HANDS" WHICH SAFEGUARDED THE JUDICIAL INDEPENDENCE

The Kissa kursi ka case holds an important place in the legal history as the ruling given by Justice YV Chandrachud undid the perception that the Judiciary had abdicated to political influence and the high-profile case of the "missing" film brought to light the repression of the Indira Gandhi government. The regime of Indira Gandhi and the Emergency always looked upon the Judiciary with suspicion and the Congress, while in power, had earned the backlash of the legal fraternity by its attempts to harass judges through supersession and transfers in order to get rulings in their favour. Judicial independence was relegated and put in jeopardy during that time while the party also tried to make the Judiciary a scapegoat in order to compensate for its failure to implement socio-economic reforms. The concept of "committed judiciary", in a way

[40]Ibid.

palatable to the Government in power, emerged prior to the post-emergency era and the courts were subjected to carping criticism.[41] The Janata party rule tried to restore the damaged autonomy of the Judiciary and to revive in the judges some degree of confidence in themselves, but the return to power of Congress brought back memories of the old Emergency regime.[42] After the fall of the Congress party in the elections post the emergency era, Justice Chandrachud was appointed as the Chief Justice during the term of the Janata Government. He was a staunch advocate of the independence and autonomy of the Judiciary and became a strong opponent of the Congress party especially after his ruling in this case. The estrangement between J Chandrachud and the ruling Congress party reached an incredible peak in the mid-1980s but unflinching, the Chief Justice kept on safeguarding the judiciary against the executive interference. However in April 1980, a three-member bench dismissed the conviction of both Sanjay Gandhi and VC Shukla in this case and a politically expedient judgement was delivered, neglecting the previous findings of the Court, which was inadequate and left many questions to be answered.[43] The Supreme Court in its final verdict did not discuss many aspects of the case and rejected the claims of the prosecution. Moreover, the counsel representing the State was also changed with the change of the government leaving the prosecution on a weak side. The highest court in India took no notice of judicial precedents and clamoured to appease the existing Congress government, while Sanjay Gandhi's aides welcomed this move by the SC "celebrating the belated triumph of truth and justice over the Janata party's campaign against him".[44] Thus, the case which once showed exemplary boldness of the Judiciary by not shying away from

[41]*Supra* Note 36

[42]Dua, Bhagwan D. "A Study in Executive-Judicial Conflict: The Indian Case." *Asian Survey* 23.4 (1983): 463-483.

[43]Noorani, A. G. "Kissa Kursi Kaa Case." *Economic and Political Weekly*, vol. 15, no. 24/25, 1980, pp. 1067–1074.

[44]Malhotra, Inder. *Indira Gandhi: A personal and political biography*. Hay House, Inc, 2014.

sending an influential political figure to jail, unfortunately, resulted in an absolute resignation to political influence in the end. This culminated with the independence of Judiciary being compromised and reputation being tarnished despite the able efforts of Justice Y.V.Chandrachud.

F. IRONING THE CREASES OF ANTICIPATORY BAIL: GENIUS OF JUSTICE Y.V. CHANDRACHUD

~ AUTHORED BY: OJASWI SHANKAR & AMAN MISHRA (BOTH IV BA LL.B)

The working of a sound democracy illustrates a perfect blend of individual freedom and state action. In no case can either of them cast a shadow over the other, for the democracy would topple and the state machinery would take a flip. Similarly, remedying criminal mischief from the society creates an imbalance in the otherwise balanced scale of orderliness; owing to the fact that it affects the personal liberty of the individuals involved in any particular instance of crime at various stages of the process, till finality is attained by way of conviction.

To take up this herculean task head-on would require no lesser a personality than the Hon'ble Justice Y.V. Chandrachud (addressed hereafter, Chandrachud J). In one such instance, in the case of **Gurbaksh Singh Sibbia &Ors. v. State of Punjab (1980),**[45] Chandrachud J, among others, were called on to balance the interests of personal liberty and investigational powers of the police, both of which are vital stakes for the society, and at the same time, determine the scope of Section 438 of the Code of Criminal Procedure, 1973 (hereafter referred, CrPC). In what was an attempt to determine the scope of Section 438 of CrPC(grant of bail to a person who apprehends arrest), the genius of Chandrachud J laid down an all-in jurisprudence regarding anticipatory bail which served as a guiding light for all the subsequent judgments of the courts thenceforth, and still holds ground, without losing any of its relevance even in the present day when the Constitution bench in the case of **Sushila Aggarwal and Ors. v.**

[45] AIR 1980 SC 1632 [hereafter referred, **Gurbaksh Singh**].

State (NCT of Delhi) and Ors.[46] fondly refers to the judgment of Gurbaksh Singh and bases its observations upon the reasoning given in the same.

The special leave petition in Gurbaksh Singh arose out of a judgment of the High Court of Punjab & Haryana which rejected the application for anticipatory bail of Shri Gurbaksh Singh Sibbia, Minister of Irrigation and Power, against whom allegations of political corruption were levelled. The Constitution Bench of the High Court while dismissing the application laid down the legal position as regards Section 438 of CrPC is concerned, which was reversed substantially later in the present case.

In tracing the history of the provision of anticipatory bail in India, the Court referred to the 41st Law Commission of India Report (1969) which highlighted the necessity for granting bail in anticipation of arrest on account of a steady increase in political rivalry wherein influential persons try to implicate their rivals in false cases for their ulterior purposes; and the futility of keeping an accused person in custody when he is not likely to abscond or otherwise misuse his liberty while out on bail.[47]

The major question with which the Supreme Court was concerned in this case, simply put, was whether the restrictive conditions laid down by the High Court of Punjab & Haryana can be imposed so as to fetter the judicial discretion afforded to the Courts in granting bail under Section 438 of CrPC when the statute itself does not provide any such conditions. The Supreme Court, while answering the same in the negative and holding that the High Court and/or the Sessions Court have absolute discretion without any condition to determine the grant of bail under the impugned Section, tried to make a distinction between the language of the provisions of granting bail under Section 437, Section 439 of CrPC which lay down the conditions to be imposed by the courts when

[46] AIR 2020 SC 831 [hereafter referred, **Sushila Aggarwal**].

[47] 41st Law Commission of India Report dated September 24, 1969.

granting bail and Section 438 which leaves the decision totally to the discretion of the court. It was emphasized that the departure in the terms of these sections was made by the legislature mainly due to the inability to enumerate the conditions under which the anticipatory bail would or would not be granted and to give the higher courts a free hand in granting relief in the nature of anticipatory bail. Chandrachud J, writing for himself and the other fellow Justices, further added that the facts are bound to differ from case to case and thus any attempt to make a generalized formula of universal application would frustrate the very purpose of conferring the discretion.

Similarly, the condition stating that the bail under Section 438 of CrPC cannot be exercised in regard to offences that are punishable with death or imprisonment for life was frowned upon by the Supreme Court. It observed that such an exception of granting bail may be valid under Section 437 of CrPC where the bail is to be granted after an accused person is detained or arrested and there is some concrete data to show that there are reasonable grounds to believe that the accused has committed such an offence. However, to say that reasonable grounds exist for so believing is a little difficult and premature in the absence of data under Section 438 of CrPC when the arrest is yet to be made and the stage of forming a requisite belief is yet to come. It also expressed its disharmony with the proposition of the High Court of Punjab & Haryana that warranted for the petitioner to make a 'special case' for the exercise of power under Section 438(1).

Another grave concern was that an order of anticipatory bail may make Section 27 of the Indian Evidence Act, 1872, which provides for discovery of facts in consequence of information supplied by the accused in custody, a dead letter as regards those accused persons who have been granted an anticipatory bail are concerned. In addressing the same, Chandrachud J showed his brilliance in using the concept of 'limited/deemed custody' in holding that when any person not in custody gives any information which leads to the discovery of a fact to a police officer in reference to a charge against him, he

shall be deemed to have surrendered himself to the police, and the prosecution is well within bounds to claim the benefit of that provision. Further, he also held that the grant of anticipatory bail does not, in any way, hamper the investigation of an offence because any order under Section 438 (1) of CrPC usually incorporates the conditions that the applicant shall co-operate with the police and that he shall not tamper with the evidence or witnesses during or after investigation to ensure that the investigation is uninterrupted.

The Court while referring to the observations in its previous judgment of **Balchand Jain v. State of MP**[48] acknowledged the extraordinary character of the power conferred under Section 438 of CrPC but refused to narrow its application to only exceptional cases. Chandrachud J explained the position of the Court by stressing that the discretion in an application under Section 438 of CrPC ought to be exercised judiciously with caution, having full regard to the merits of a case, rather than limiting it to only a few of the exceptional cases.

Furthermore, in the course of addressing the issue pertaining to the interface between the cardinal right of personal liberty enshrined under Article 21 of the Constitution of India[49] and the denial of bail, the Supreme Court paid heed to strike a balance between the two, and Chandrachud J, being a champion of the individual rights, observed that an over-generous infusion of constraints and conditions which are not found in Section 438 of CrPC can make its provisions constitutionally vulnerable. It is important that Section 438, being a procedural provision concerned with the personal liberty of the individual, is untrammelled by unnecessary and unreasonable restrictions to stand the test of 'fair procedure' as implicit under Article 21.[50] He yet again maintained his liberal

[48] (1977) 2 SCR 52.

[49] Art. 21 Constitution of India 1950.

[50]

position by subscribing to the observations made by Krishna Iyer J in **Gudikanti**[51] case, that the issue of bail involves questions of liberty, justice, public safety and burden of the public treasury, all insisting that a developed jurisprudence of bail is integral to a socially sensitized judicial process.

The judgment finally culminated into the following five significant guidelines which had a tremendous impact on the criminal justice system in India, to wit:

(i) That the grounds of belief that the applicant may be arrested must be capable of being examined objectively by the court, and should not be based on vague and general allegations.

(ii) That the High Courts or the Courts of Session apply their own mind to the question and not leave it to be decided by the Magistrate under Section 437 of CrPC.

(iii) That the filing of a First Information Report is not a condition precedent to granting anticipatory bail.

(iv) That the anticipatory bail can also be granted after a First Information Report is filed, however always before the applicant is arrested.

(v) That the anticipatory bail cannot be granted after the arrest of the accused applicant, and the suitable remedy would lie under Section 437 and Section 439 of CrPC.

The genius of Chandrachud J has ensured that the intent of the statutory provision did not take a beating while tackling with the practical roadblocks that encountered its enforcement. These broad pointers laid down by the Supreme Court, in this case, have acted, and would continue to act, as a foundation upon which other cases concerning issues with respect to anticipatory bail are constructed.

[51]1978 CriLJ 502,

G. BACHAN SINGH V. STATE OF PUNJAB: AN OPTIMISTIC APPROACH OR A LOST OPPORTUNITY?

-AUTHORED BY: NAMRATA CHANDORKAR & ROHAN TYAGI (BOTH IV BA LL.B)

Capital Punishment, in the global context, as of today, has no consensus on its legality. Despite International instruments condemning it, many countries retain it, our nation being one of them.

India retains the death penalty for a number of serious offences. Time and again, the Indian Parliament and the Indian Courts have attempted to revise the country's stand on it. Several Bills, in the early years of our independence, were introduced in the Parliament to abolish the death penalty but did not pass. In 1967, the Law Commission of India, in its 35th Report[52], recommended that the death penalty be retained. In 1972, a case presented itself before the Supreme Court. *Jagmohan Singh v. State of Uttar Pradesh*[53] was the first time the constitutionality of the death penalty was challenged. The challenge failed and the death penalty was declared constitutional.

Several jurisprudential developments from 1972 to 1980, like the *Maneka Gandhi v. Union of India*[54] judgment that laid down the inter-relationship between Articles 14,19

[52] http://lawcommissionofindia.nic.in/1-50/Report35Vol2.pdf

[53]Jagmohan Singh v. The State Of U.P 1973 AIR 947

[54] Maneka Gandhi v. Union Of India 1978 AIR 597

and 21 of the Indian Constitution, the 1973 Amendment to the Code of Criminal Procedure and the adoption of the International Covenant on Civil and Political Rights by the United Nations General Assembly in 1976 that enunciated the right to life, led to an accumulation of Writ Petitions in 1980 before the Supreme Court challenging the constitutionality of the death penalty once again.

This case was *Bachan Singh v. State of Punjab*[55]. Chief Justice Y.V Chandrachud, as a part of the Bench, with his profound legal acumen, decided the case in favour of the constitutionality of the death penalty again. Ordinarily, such a question would have been covered by the *doctrine of stare decisis* as the judgment in the Jagmohan Singh's case had fairly addressed this issue. Yet, the judgment in Bachan Singh's case implicitly states that questions like the death penalty, whose nature is forever evolving, must be subjected to the constant review. Such socio-legal issues, upon which the public discourse is always changing, cannot be decided once and for all.

Whether the death penalty is justified or not has been a debate for eminent thinkers, penologists, sociologists, jurists, judges, legislators, law enforcement officials and at the same time school students as well. But any legal position cannot be decided on the basis of juxtaposition. It is slightly more complex than that. In India, the death penalty has been on the statute books since before independence. As long as it is in consonance with the tenets of the Indian Constitution, which recognizes certain human rights as fundamental, the retention of the death penalty is valid. The same has been laid down in the judgment in the case of Bachan Singh.

The standard arguments, often cited by the Abolitionists, were presented by the Petitioner in this case too. The death penalty is irrevocable, purposeless, retributive,

[55]Bachan Singh v. State Of Punjab AIR 1980 SC 898

cruel and degrading. This judgment not only justifies the death sentence on constitutional dilemmas but also fends off attacks on a sociological front. The Court, in answering this issue, adopted a different approach. Instead of choosing between two antithetical views, that of the Retentionists and the Abolitionists, it recognized that in India, public opinion, displayed through the People's representatives in the Indian Parliament, had rejected attempts to abolish the death penalty. The Court further recognized that the framers of the Indian Constitution were fully aware of the existence of death penalty as a punishment under the Indian Penal Code. This evidence suggests that the death penalty has credit to it and its abolition is unwarranted for.

The judgment of the Court with regards to the death penalty and Article 21 was crisp and only probed till required. It was held that the converse interpretation of Article 21 proves that a person may be deprived of his life or personal liberty in accordance with a fair, just and reasonable procedure established by valid law. The judgment expounds that the procedure laid down by the Code of Criminal Procedure, 1973 is one with ample checks and balances and thus, the death penalty is within the four corners of Article 21.

Apart from deciding on the constitutionality of the death penalty, the Court also considered the question whether the provisions of Section 354(3) of the Code of Criminal Procedure, 1973 are unconstitutional. Section 354(3) of the Code delegates to the Court the duty to legislate in the field of "special reasons" for choosing between life imprisonment and death sentence. There was a sharp shift in the legislative policy on this issue and it is worth mentioning. With the 1973 Amendment of the Code of Criminal Procedure, the normative punishment for serious offences became life imprisonment and the death penalty was the exception, and in case the death sentence was awarded, "special reasons" would have to be given for the same. The term "special reasons" signals at the listing of *"exceptional reasons as founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal."* It was held

that Section 354(3) of the Code of Criminal Procedure, 1973 was constitutional as arbitrary sentences could be checked with methods of revision or appeal.

The last question the Supreme Court dealt with in this case was: whether the Court can lay down standards for imposing the death penalty only to a certain category of offences? The Court considered that the standard of 'intensity of any offence' cannot be gauged and hence, deciding, in black and white, the applicability of the death penalty, is impractical. The Court held that the standardization of the sentencing procedure may sacrifice justice at the altar of uniformity. This judgment extended the rationale laid down in Jagmohan Singh's case, stating that sentencing discretion is to be exercised judicially on well-recognized principles, after balancing all the aggravating and mitigating circumstances of the crime. It added that, firstly, *"the extreme penalty can be inflicted only in gravest cases of extreme culpability,"* and second, "*in making choice of the sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender also."* And hence, the doctrine of the *"rarest of the rare case"* was born. This doctrine cautioned the Indian Courts against the excessive resort to the death penalty and made it the metaphorical *"road less taken."* The amalgamation of all laws, studies, arguments and statistics in this judgment served as a complete guide to the issue in question.

However, we later witnessed exactly what Justice P.N. Bhagwati, the sole dissenter in Bachan Singh's case, had warned against. He had said, *"the safeguards under the Code of Criminal Procedure cannot be of any help in eliminating arbitrariness and freakishness in the imposition of the death penalty. Judicial ad hocism or waywardliness would continue to characterize the exercise of sentencing."*

Indeed, recent trends suggest that a certain level of subjectivity has crept in the entire spectrum of sentencing. It is evident that there exists no uniform understanding of the requirements of the *"rarest of rare"* doctrine and this has given rise to judge-centric

sentencing. The execution rate in India has spiralled down since 2000. However, the data gathered by the National Crimes Record Bureau on death sentences indicates that between 2000 and 2012, 1677 death sentences were awarded by the Indian courts. This implies that India sends, on average, 129 persons to death row every year, or roughly one person every three days[56]. The path of cautioned usage of the death penalty, which the judgment in Bachan Singh's case, wished to put the judiciary on, has clearly not been achieved.

Although the judgment in the case of Bachan Singh strikes a beautiful balance between shunning the death penalty and aggressively pursuing it, somewhere in the course of time, the stringent standards of application of the death penalty have watered down. It is time, the issue of the sentencing of the death penalty is revisited by the Legislature in the form of comprehensive laws. Nonetheless, the judgment rendered in the case of Bachan Singh has, to a great extent, protected the citizens of this country against arbitrary death sentences.

But the issue did not rest here. Three years after the judgment in the case of Bachan Singh, another case was placed before the Supreme Court for consideration, diving into a new dimension of the death penalty. In the case of *Deena and Ors. v. Union of India (*AIR 1983 SC 1155) the constitutionality of the mode of death penalty, as provisioned by the Code of Criminal Procedure, was challenged.

The primary contention in this case was that the procedure of executing the death sentence, that is death by hanging, as mentioned in Section 354(5) of the Code of Criminal Procedure, 1973, is unconstitutional on the grounds that:

[56] (http://lawcommissionofindia.nic.in/reports/Report262.pdf)

➢ the mode prescribed by the Code violates Article 21 on account of being barbaric and degrading to human values.

➢ it is immoral to subject humans to the undue suffering and pain that will be caused by this mode of execution of the death sentence.

➢ it is the constitutional obligation of the State to provide for a humane and dignified, method for executing the death sentence, which does not involve torture of any kind.

Arguments from both sides proceeded with great fervour. Various sources of literature on the subject were reviewed. After looking at scientific submissions in forms of Commission Reports, analyses by various Scholars, Penologists and Doctors, Justice Y.V. Chandrachud reached the conclusion that although there were a plethora of alternative options available to the method of death by hanging, for instance, electrocution, lethal gas or lethal injection, there is not enough evidence to suggest that one of these has an advantage over the method in question.

Eventually, the Court decided that the constitutionality of hanging as a method of executing the death sentence must be considered in isolation without comparison with other methods.

The judgment reveals the inherent connection between pain and punishment. It reads that all forms of punishment are innately painful to some degree. The argument that a punishment should not be awarded because it inflicts pain on the offender cannot be accepted as it would result in bringing every penal punishment into contest, be it simple imprisonment or the death penalty! With that said, the Court upheld the constitutionality of death by hanging for the following reasons:

➢ the system of hanging consists of a mechanism which is easy to assemble.

➢ the preliminaries to the act of hanging are quick and simple. They are free from anything that would unnecessarily sharpen the poignancy of the prisoner's apprehension.

➢ the chances of an accident during the course of hanging can safely be excluded.

➢ the method is a quick and certain means of executing the extreme penalty of law. It eliminates the possibility of a lingering death. Unconsciousness supervenes almost instantaneously after the process is set in motion and the death of the prisoner follows soon.

➢ the system is consistent with the obligation of the State to ensure that the process of execution is conducted with decency and decorum without involving degradation of brutality of any kind.

The Court has eliminated all doubts by taking a step further and by stating that the concern of law is to ensure that the execution of the death penalty does not consist of torturous acts that constitute as punishments by themselves. If a prisoner is sentenced to death, it is lawful to execute that punishment and that only. He cannot be subjected to humiliation, torture or degradation. The process of hanging does not involve any of these, directly, indirectly or incidentally, and hence, cannot be said to be unconstitutional.

Bachan Singh's judgment read alongside with the judgment in the case of Deena has, *in toto,* decided the issues revolving around the death penalty. The concept of death penalty and its mode of execution in India are decidedly within the constitutional realms. Justice Y.V. Chandrachud, being the shared member of the Benches that decided these two cases, has contributed greatly to this avenue of Constitutionalism.

In 1983, Justice Y.V Chandrachud decided another case[57] that declared Section 303 of the Indian Penal Code, which lays down a mandatory punishment of death sentence for a person who commits murder while being under sentence of imprisonment for life, as unconstitutional. In the same year, he decided a case[58] pertaining to the constitutionality of the method of the death penalty, i.e. death by hanging. The judgment held the method of the death penalty in India is well within the permissions of the Constitution. The same judge, on one hand, declares the death penalty and its method as constitutional, and on the other, strikes it down because the mandatory nature makes it arbitrary. This speaks of the thought clarity Justice Chandrachud harboured and how he deciphered the Indian Penal Code's most rigorous punishment; the death penalty.

The debate on the death penalty continues and will exist as long as democracy reigns. Although the application of the judgment in the case of Bachan Singh has not actualized as envisioned by it, the judgment in its essence is one of the best to be penned down. India's stand on the issue and the reasons behind it were beautifully enunciated in it. 40 years from then, it still holds relevance. 40 years from then, it still stands as good law.

[57]Mithu v. State Of Punjab 1983 AIR 473

[58]Deena Dayal v. Union of India and Ors. 1983 AIR 1155

H. CRITICAL OUTLOOK AND CONTEMPORARY RELEVANCE OF THE JUDGEMENT BY JUSTICE Y.V. CHANDRACHUD IN THE CASE – 'OLGA TELLIS & ORS V BOMBAY MUNICIPAL CORPORATION & ORS'

-AUTHORED BY: STUTI DHAWAN **(I BA LL.B)**

India beholds a legion of historical judgments that have evolved and made our Constitution of India an epitome of justice, equality and good conscience. One of those landmark judgments was given by the Hon'ble Justice Y.V. Chandrachud in the case of Olga Tellis & Ors V Bombay Municipal Corporation & Ors (1986 AIR 180, 1985 SCR Supl(2) 51)[59] that not only broadens the purview of the meaning of the fundamental rights but also confers the implementation of judicial activism in the coming cases.

In the contemporary world, we need such eminent jurists who will take such balanced decisions so that none of the aspects of the society are compromised. Stability resides between the priority given to the individual's rights and to societal rights.

[59]1986 AIR 180, 1985 SCR Supl. (2) 51

CASE BRIEF

1) FACTS OF THE CASE-

This case came before the Supreme Court as a writ petition under Article 32 of the Constitution of India[60] by slum and pavement dwellers that constitute nearly half of the population of the city of Bombay. The respondents had taken a decision to evict all the pavement dwellers and deport them to their respective places of origin under Section 314 of the Bombay Municipal Corporation Act, 1888. Challenging this decision the petitioners called the eviction as being unreasonable and unjust. They also claimed the right to livelihood under Article 21 of the Constitution[61] i.e. Right to Life and Liberty and also violation of Article 19 of the Constitution of India[62]. Moreover, they prayed that Section 312, 313 & 314 of the Bombay Municipal Corporation Act, 1888[63] be declared violative of Article 14, 19 and 21 of the Constitution of India.[64]

2) ISSUES HELD

The following issues were raised before the Hon'ble Supreme Court of India for scrutiny:

i. Whether the eviction order is in infringement of their Right to livelihood and in turn encroaches over their right guaranteed under Article 21 of the Constitution.
ii. Whether the impugned action of the state government and the Bombay Municipal Corporation is in violation of the provisions contained in Article 19 and Article 21 of the Constitution of India.

[60] Article 32, The Indian Constitution

[61] Article 21, The Indian Constitution

[62] Article 19, The Indian Constitution

[63] Section 312-314, The Bombay Municipal Corporation Act, 1888

[64] Article 14, The Indian Constitution

iii. Whether the procedure prescribed by Section 314 of the Bombay Municipal Corporation Act, 1888 for the removal of encroachments from pavements is arbitrary and unreasonable.

iv. Whether pavement dwellers are "trespassers" under the Indian Penal Code.

3) DECISION BY THE COURT

Justice Y.V.Chandrachud delivered the unanimous judgment by the five-judge bench consisting of himself, Justice A.V. Varadarajan, O Chinappa Reddy, Syed Murtaza Fazal Ali and V.D. Tulzapurkar. Highlighted points of the decision are:

1. No one has the right to encroach on trails, sidewalks or any other place reserved for public purposes.
2. The provision of Section 314 of the Bombay Municipal Corporation Act is not unreasonable in the circumstances of this case.
3. Sites must be provided to censored residents in 1976.
4. Slums existing for 20 years or more should not be removed unless the land is required for public purposes and, in this case, alternate sites must be provided.
5. High priority should be given to resettlement.

CRITICAL ANALYSIS OF THE JUDGEMENT BY JUSTICE Y.V. CHANDRACHUD

Justice Chandrachud has emphasized some of the concepts through the judgment laid by him while deciding this case. Some of them are discussed below-

I. POSITIVISM

The judgment delivered by the then Chief Justice of India Y.V. Chandrachud focuses on both the premises that are reformation and superiority of the law. He neither compromised nor neglected the fundamental rights nor tarnished the image of the 'paramount law'. In para 28, he observed:

"There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Their provisions are concerned in public interest and are intended to serve public purpose."[65]

In this way, his judgment propagated the concept of "positivism" which needs its application in society.

II.REFORMATIVE

Article 21 is not an ordinary right. It is a fundamental right granted by our Constitution that cannot be taken away by any ordinary legislation. Justice Y.V. Chandrachud very well established the fact that with the passage of time the content of rights also undergoes a lot of changes and thereby Article 21 was enlarged to engulf the "Right to livelihood" as being a part of life and liberty of an individual. On this basis he states,

"The right to life conferred by Section 21 is vast and far reaching. It does not simply mean that life can be extinguished or removed only in accordance with the procedure established by law. This is just one aspect of the right to life. The right to livelihood is an equally important aspect of this right because no one can live without means of subsistence.

If the right to subsistence is not treated as part of the constitutional right to life, the easiest way to deprive a person of their right to life would be to deprive them of their means of subsistence to the point of repealing. Such deprivation would not only negate the life of its content and meaning but render life impossible."[66]

This view indicates the 'Bentham's Philosophy of Reformation of Law' that needs to be implemented within the society from time to time as the change percolates into the system.

[65] Supra note at 61

[66] Supra note at 61

III.THE PRINCIPLE OF UTILITY

The principle of utility by Bentham states that one must choose, that option that gives the greatest happiness to the greatest number. Justice Y.V. Chandrachud followed this principle entirely while deciding this case as the greater good of the pavement dwellers was being kept in focus. According to him, although the petitioners are using unauthorized pavements but they can't be considered as "criminal intruders" under Section 441 of the Criminal Code of India[67], since their objective, motive and intention is not to commit a crime or intimidation, insults or annoy any person.[68] They only manage to find a habitat which is mostly filthy, out of sheer helplessness. The encroachments committed by these persons are involuntary acts, that are not guided by choices. Therefore, he analyzed the happiness and utility of petitioners and made a rational judgment.

Hence, we can very well conclude that Justice Y.V. Chandrachud possessed an incredible quality to analyze and scrutinize over different cases and lay down various landmark judgments from a philosophical bent of mind creating turning points in our legal system.

CONTEMPORARY RELEVANCE OF THE CASE

Seeing the present catastrophe, this case stands comparable to the plights faced by the poor pavement dwellers and migrant laborers. They are the ones who are the most affected and the most neglected by the society during this unprecedented crisis. Thousands of them, without the availability of basic needs and services such as food

[67] Section 441, Criminal Code of India

[68] Sri Vaishnavi.M.N., All about Olga Tellis v. Bombay Municipal Corporation, (IPleaders, 15 June 2019) https://blog.ipleaders.in/olga-tellis-v-bombay-municipal-corporation/. (accessed at 08 July 2020)

and shelter are compelled to abandon the very cities they have built with their sweat, toil and hard work. Several people even lost their lives in such inhumane conditions. Not only this, but there are also no guidelines or no steps taken by our judicial system or the present government regarding the street vendors or dwellers who are suffering the most. They are not able to run their business properly as social distancing cannot be followed if they gather on the pavements of the roads. They are the ones who are facing many problems to earn their livelihood. Is this not called a violation of Article 21? They also rightfully possess the Right to Life and Liberty that includes Right to livelihood. So why is their right being compromised and no just action is taken in favour of them?

The government must take urgent measures to mitigate the disastrous consequences of the pandemic on the migrant workers and dwellers. There must be easy and equal access to rations, safe shelters with proper food and health care facilities, presence of active urban local bodies, trade unions, strict orders and actions against the harassment and discrimination faced by these destitute dwellers and workers and a lot more necessary and efficient measures required to be taken. Michelle Bachelet, the high commissioner for human rights also pointed out that, "This is the time for domestic solidarity and unity." She encouraged the Government of India "to work shoulder-to-shoulder with civil societies to reach to the most vulnerable sectors of society, ensuring no one is left behind in this time of crisis."[69]

Lastly, to conclude, all of this can be summarized by a single sentence of Justice Y.V. Chandrachud who states that – "*Human compassion must soften the rough edges of justice in all situation."*[70]

[69] Sandeep Datta, India: Migrant workers' plight prompts UN calls for 'domestic solidarity' in coronavirus battle, (UN news, 2 April 2020) http://news.un.org/en/story/2020/04/1060922. (accessed on 13 April 2020).

[70] Supra note at 61

I. EXPANDING DIMENSIONS OF RIGHT TO LIVELIHOOD AMIDST COVID-19 PANDEMIC: OLGA TELLIS V. BOMBAY MUNICIPAL CORPORATION

-AUTHORED BY: SNEHA PALEKAR (IV B.A.LL.B)

The Constitution of India guarantees to every man the Right to a dignified life,[71] which is something more than mere animal existence,[72] under Article 21 of the Constitution. The object of this Right is to prevent the curtailment of life and encroachment upon the personal liberty of a person. In furtherance of this objective, the Supreme Court of India ("SC") has progressively deciphered the meaning of term 'Life' in the Article, so as to encompass various Rights within its purview which enhance the quality of life and without the exercise of which, life would not be worth living. One such fruitful outcome of this venture is the 'Right to Livelihood' recognised by the esteemed bench of the SC headed by the former Chief Justice of India ("CJI") Shri Y.V.Chandrachud, in the remarkable judgment of the Pavement Dwellers Case of *Olga Tellis v. Bombay Municipal Corporation,*[73] ("Olga Tellis case"). The case was initiated by a group of petitioners, who were pavement and slum dwellers forcefully evicted by the Bombay Municipal Corporation for encroaching upon public pathways. Their primary contention was that their livelihood was dependent upon their houses on the pavement and their jobs

[71] *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi,* MANU/SC/0517/1981.

[72] *Kharak Singh v. The State of U.P.*, MANU/SC/0085/1962.

[73] AIR 1986 SC180.

nearby the slum, and eviction would imply loss of work, home, thus Livelihood and therefore Life. Hence they contended that "*right to life means that they have a right to live, a right which cannot be exercised without the means of livelihood, because the right to life is illusory without a right to the protection of the means by which alone life can be Lived*".[74] The Court triumphed in the favour of the petitioners and auspiciously laid down that life bears a close nexus with means of livelihood because life cannot be lived without 'means of living', so deprivation of livelihood means deprivation of life. Thus Right to Life conferred by Article 21 was deduced to include Right to Livelihood and this meaning of 'Livelihood' has been the touchstone at the perusal of which SC has over the years examined facets of 'Livelihood' within the meaning of Article 21.

It has been 35 years since the Honourable SC has bestowed us with this benevolent judgement which has helped the needy in attaining right over basic necessities of life. However, it is pertinent to note that the law of the land is dynamic. It has to change in accordance with the socio-economic conditions of the country[75] and therefore it is the duty of the Courts to ensure that its judgements are relevant to the present-day needs of the society.[76] The ambit of Livelihood as a concept, is no more confined to physical means of living such as food, shelter or clothing, but has evolved to include other basic necessities of life like education, medical care among others.[77] One such issue of the present demanding an evaluation of law is the outbreak of Pandemic of the Novel CoronaVirus. The Covid-19 virus, which emerged in the Mainland of China, spread across the whole of India like wildfire, to the extent that it demoralised the entire population of the country and brought the national economy to a standstill. To reduce the spread of the virus and mitigate the effect of the spread, the Prime Minister of India

[74] *Id.*

[75] *M.C Mehta v. Union of India*, (1987) AIR 1086 (SC).

[76] *Joseph shine v. Union of India,* (2018) AIR 4898 (SC).

[77] *Subramaniam Balaji v. state of T.N*, (2013) 9 SCC 59.

in furtherance of its protocol under the Disaster Management Act, 2005[78] and Epidemic Diseases Act, 1897,[79] initiated the Nation-wide lockdown putting restraints on movement of people.[80] As a result of the lockdown, all public places and areas of the public gathering were ordered by the Government to remain closed until further notice. Though the object of lockdown was public benefit, the initiative gave rise to a discriminatory behaviour by the Housing Societies against all the doctors, recovered positive patients residing within the societies, and the entry of maids and newspapers in the premises of the societies. On the release of the lockdown, the Maharashtra Government issued a letter, that Housing Cooperative Societies cannot frame rules to ban the entry of maids and such rules would be attracting legal action.[81]

However, during this brief phase before the letter was issued, the class most affected by the prohibition of access to domestic services was the Dependent class. A Dependant, in common parlance, means a person who relies upon another person for support,[82] such as the aged, bedridden, physically and mentally challenged and incompetent minor

---

[78] 'The Disaster Management Act, 2005', <https://www.ndmindia.nic.in/images/The%20Disaster%20Management%20Act,%202005.pdf> Visited on … July 8, 2020.

[79] 'The Epidemic Diseases Act, 1897', <https://indiacode.nic.in/bitstream/123456789/10469/1/the_epidemic_diseases_act%2C_1897.pdf> Visited on … July 8, 2020.

[80] 'India Will be under complete lockdown for 21 days: Narendra Modi', <https://economictimes.indiatimes.com/news/politics-and-nation/india-will-be-under-complete-lockdown-starting-midnight-narendra-modi/articleshow/74796908.cms> Visited on … July 9, 2020.

[81] 'Maharashtra**:** Now, housing societies can**'**t stop maids/househelps from entering building – Read govt order', <https://www.timesnownews.com/india/maharashtra-news/article/maharashtra-now-housing-societies-can-t-stop-maidshousehelps-from-entering-building-read-govt-order/612737> Visited on … July 9, 2020.

[82] <https://www.merriam-webster.com/dictionary/dependant>Visited on … July 9, 2020.

among others. As of 2018, the ratio of dependents to the working population in India according to records of the World Bank is 49.78%.[83]Their life is already arduous wherein for the most basic postulates of their life, like eating or even attending nature's call; they are dependent on the help which they receive from others. In other words, caretakers or helpers of dependents are like 'means' which help them in living their lives. That's why even after the release of lockdown Dependants are prohibited by Societies from receiving help maids or servants, that is, domestic help, for sustaining their daily aspects of life, then it can be rightly said that they are deprived of their means of living. Thus, the present usurping has posed a question before us as to, whether domestic helps qualify as means of living, that is, livelihood for the dependent population of our country and can retraining a person from using such help amount to a violation of Right to Livelihood, ultimately Right to Life under Article 21 of the Constitution. To elucidate this analogy, reference can be drawn from the interpretation given in the *Olga Tellis case* as to what constitutes "Livelihood".

Article 21 guarantees to every man the Right to not be *deprived of his life except by procedure established by law*. However, life is not necessarily curtailed only by actual restrain and death. Since no man can live without the means of living, the easiest way to deprive a person of his life would be to deprive him of his means of livelihood. Such deprivation not only renders life as ineffective and meaningless but also makes it impossible to live in. Hence every aspect of life which alone enables a man to live, in other words, alone on which living is dependent is deemed to be an integral constituent of the Right to Life. To summarise, the Court elaborated that livelihood is the means solely by which life can be Lived. However, what amounts to the livelihood of a person

---

[83] 'India-Age Dependency Ratio (% of Working-age Population', <https://tradingeconomics.com/india/age-dependency-ratio-percent-of-working-age-population-wb-data.html#:~:text=Age%20dependency%20ratio%20(%25%20of%20working%2Dage%20population)%20in%20India,compiled%20from%20officially%20recognized%20sources> Visited on … July 9,2020.

is contingent upon the facts and circumstances of each case. For instance, in the *Olga Tellis case*, the fact that eviction would make pavement and slum dwellers homeless and jobless was construed as violating their livelihood. Therefore keeping in view the natural incompetency of dependents to take care of themselves due to their bodily and mental incapacities, it would be correct to infer that domestic or manual help in their lives is nothing but a '*means of living*', without which their life *per se* would become difficult to live. 'Life' in Article 21 of the Constitution does not mean a physical right and act of breathing[84] and every aspect of life which makes living possible is nothing less than livelihood, in this case, domestic help. If, such help is deemed to be a livelihood, then it would be only logical to infer that its deprivation would amount to a deprivation of life.

It is essential to note that Cooperative Housing Societies are Societies registered under the Maharashtra Cooperative Societies Act, 1960,[85] and a Co-operative Society can also be deemed as State under Article 12 of the Constitution provided it is an instrumentality of the State.[86] Even if it is otherwise, a writ could be issued against them under Article 226 considering the public nature of their functions.[87] Though it is true that the aforesaid circular has given relief to the general public against arbitrary decisions of Housing Societies, in reality, residents are still found to succumb to such discriminatory rules of the Society because the law regarding the same is not well formulated. In such times of Pandemic and otherwise, why shouldn't remedies by way of writs be available to the dependent population of the country to protect their means

[84] *Maneka Gandhi v. Union of India,* 1978 AIR 597.

[85] 'Maharashtra Co-operative Societies Act, 1960', <https://www.maharashtra.gov.in/site/Upload/Acts%20Rules/Marathi/1.Maharashtra_Co-operative_Societies_Act_1960%20%28XXIV%20of%201961%29.pdf> Visited on … July 8, 2020.

[86] *The ShamraoVithal Co-Operative v. PadubidriPattabhiram Baht and ors*, AIR 1993 Bom 91.

[87] *Jagveer Singh v. Chairman Co-operative Textile Mills Ltd*., 2000 AIHC 294 (All).

of livelihood, especially when even during Proclamation of National Emergency under Article 352, Article 21 is not suspended?[88] This question can be answered only if doors of Article 21 are opened to recognise 'Domestic help to Dependents' as a facet of Right to Livelihood, ultimately as Right to Life, so as to help those people whose means of living is not bread or water, but on a helping hand.

Therefore this judgment of CJI Shri V.Y.Chandrachud in *Olga Tellis case* has found relevance even with changing dynamics of worldly affairs.

[88] Constitution of India, Article 359.

J. EVOLUTION OF INDIAN JURISPRUDENCE WITH REGARDS TO THE LAW OF ADULTERY IN INDIA

-AUTHORED BY: SHRIRANG ASHTAPUTRE *(*IV BA LL.B*)* AND SHRUSHTI GOSAVI (II BA LL.B*)*

INTRODUCTION

Patriarchal rule, which suppressed feminine independence and expression for centuries, is largely attributed to the idea of perpetuating inheritance over agricultural property. Amidst the unjust and unsympathetic treatment towards women, under the guise of "sacrament" and "religion", this other half of the society was cunningly deprived of its right to enjoy sexual freedom. Married women were expected to showcase the utmost sincerity towards their husband and the prevailing customs and traditions back then classified them as the former's commodity. The institution of marriage seemed to be a patriarchal tool that mandated women to submit their sexual freedom to their husbands, thereby allowing them to utilize it as per their convenience. In simple words, a marital bond prohibited the wife from maintaining sexual relations with any other man since it was considered a transgression against the husband. Moreover, such an endeavour was considered immoral and punished in every possible way – capital punishment was imposed upon the adulterer and the adulteress, though unlike other punishments, the husband had the chance of forgiving his wife. Be it the Bible[89], the Quran[90] or numerous scriptures of Hinduism[91], its authors sought to refrain the masses

[89] What Does the Bible Say About Adultery? As retrieved from: (https://www.christianbiblereference.org/faq_adultery.htm).

[90] The Noble Quran. As retrieved from: (https://quran.com/search?q=adultery).

from committing the mortal sin of Adultery, which was understood as an act which can be committed only by a man by having sexual intercourse with the wife of the other without the consent of her husband[92]. The primary intention was safeguarding the unit of family and any violation of these sacred verses was punishable in the eyes of Law since it was equivalent to committing blasphemy. This is precisely why the Greeks[93], the Romans[94], and even the English declared this as a grave sin against husbands and on one instance rendered it as the "highest invasion of property"[95]. Ironically, the United Kingdom had restricted adultery solely as a ground for divorce in 1857 itself[96] and this had influenced Lord Macaulay to not declare Adultery as a criminal offence in British India. However owing to its "private" characteristics, the Law Commission refused to incorporate the same within the Indian Penal Code, 1860. Opposing him, it opined that maintaining it as a public wrong would act as an adequate remedy for ensuring sufficient compensation to the disgruntled husband[97]. And thus, Section 497 of the Indian Penal Code, 1860 declared Adultery an offence against the male consort and sought to punish the offender with imprisonment up to 5 years or fine or both. This was

---

[91] Hinduism and Adultery. As retrieved from: (https://www.hinduwebsite.com/hinduism/h_extramarital.asp).

[92]GansapalliAppalamma V. GantapalliYellayya[(1897) ILR 20 Mad 470].

[93] Peter Jones *Why the Ancient Greeks thought adultery was worse than rape* The Spectator Oct 25, 2014. As retrieved from: (https://www.spectator.co.uk/article/why-the-ancient-greeks-thought-adultery-was-worse-than-rape).

[94] Weddings, Marriages and Divorce As retrieved from: (https://www.pbs.org/empires/romans/empire/weddings.html).

[95] R V. Mawgridge[84 ER 1107]

[96] Kelly Hager *Chipping Away at Coverture: The Matrimonial Causes Act of 1857*. As retrieved from:(https://www.branchcollective.org/?ps_articles=kelly-hager-chipping-away-at-coverture-the-matrimonial-causes-act-of-1857).

[97] A Penal Code prepared by the Indian Law Commissioners (1838), Notes of Lord Thomas Babington Macaulay, Note Q.

supplemented by Section 198(2) of the Cr.P.C, 1973, which consolidated the position that the execution of adultery violated the rights of a husband over his wife.

The established Common Law forums on the Indian soil have dealt with and elaborated upon the limitations and scope of this offence – its commission was termed as a breach of matrimonial ties[98] and declared as a "secret act"[99]. The Judiciary, despite the implementation of the Constitution post-independence it was largely driven by public morality in this regard in its early year and undertook a regressive interpretation of Right to Equality in India for validating the offence of Adultery - it opined that the said provision was a means of sheltering the interests of women and therefore, had constitutional support[100].

Such irrational classification was challenged in ***Sowmithri Vishnu V. Union Of India &Anr[101].***, a case, wherein the Respondent (husband) expressed his willingness to secure a divorce against his Petitioner (wife) on the grounds of desertion and for "living in adultery" with another man, i.e. they were exercising sexual rights and duties[102]. Although the divorce was granted in favour of the husband on the former ground, during the pendency of the proceedings of the divorce petition, he filed a case against the adulterer under Section 497 of IPC, 1860. As a reaction to this, the wife, filed the Writ Petition for quashing the complaint and asserted the unconstitutionality of the said provision on the following grounds:

1. *Wife had no privilege of prosecuting the woman with whom her husband committed Adultery or her husband, who committed adultery with another woman*

[98]Supra 4.

[99]PattayeeAmmal V. ManickamGounder And Anr[AIR 1967 Mad 254].

[100] Yusuf Abdul Aziz V. The State of Bombay [[1954 AIR 321].

[101][(1985) Suppl.*SCC* 137].

[102]Ramsaran V. Soman Wati [(1964) 1 Cri LJ 483 (Punj)].

2. *The Adultery Law in India did not consider instances of husband engaging in sexual relations with an unmarried woman.*

3. *Right to reputation, a Fundamental Right is tarnished during the trial for proving the offense of Adultery as the wife is not given any chance to express her stance on such allegation.*

Interestingly, *Justice Y.V. Chandrachud*, speaking on behalf of the Bench, conveyed dissatisfaction with the said arguments primarily because, in his opinion, a woman was always the victim of seduction and deception played against her by the adulterer for selfish gains. Holding the act of luring someone's wife to be a greater evil than a married man having illicit sexual intercourse with a maiden, the demands of the Petitioner were branded to be aspects of policy decisions, which were designated to be within the realm of the Government and not the Court. Furthermore, Section 497 of IPC, 1860 was held to be *intra-vires* of Article 21 of the Constitution since she had a right to be heard before the Court of Law in matters relating to adultery, by filing an application before it to that effect.

Nevertheless, it appears that *Justice Y.V. Chandrachud* was indeed moved by the emotive appeal by the Petitioners for curbing romantic paternalism but was unwilling to declare the offence redundant despite its "desirability" since such a move was capable of undermining the very sanctity of marriage. In doing so, he placed public morality over the individual rights of women in the country, which as of today, in the light of several landmark verdicts, would be constitutionally impermissible.

CONCLUSION

Such an orthodox stance of *Justice Y.V. Chandrachud* stems from the categorical faith in the law-makers and the responsibility of the Judiciary to uphold these averments, bearing in mind the fabric of the society. Although accredited with widening the scope of the Constitution for catering to the interests of the deserving and for promoting better governance, he somehow ignored the foremost duty of the Judicature in a Constitutional Democracy - that of rectifying the Legislature when it unreasonably curtails the rights of the citizenry. Regarded as Transformative Constitutionalism, it involves questioning the Legislature of its intention and curbing laws or distancing such actions of the State which contravene the principles of Constitution, is an approach regularly applied by his son, *Justice D.Y. Chandrachud* for bringing about the much-needed reformation and ensuring that the laws keep pace with the changing times and needs of people. It comes as no surprise that he overturned the aforesaid statement of his renowned and distinguished father in ***Joseph Shine v. Union of India***[103] .In a separate Judgment, he exposed the failure of the 3 Judge Bench in ***Sowmithri Vishnu*** to expound upon the constitutional validity of criminalization of adultery. Consequently, he sought to answer the question raised in the previous verdict, evaded by his honorable father and declared adultery to be founded on morality and therefore, was unconstitutional. Citing the ambiguous classification of Law to treat two individuals in a marriage equally, which rather labels her as a subordinate of her husband, he refused to accept that only a husband could be aggrieved due to adultery and held Section 497 of IPC and Section 198(2) of Cr.P.C., 1973 to be in violation of Article 14 of the Constitution. Clamping down on the enforcement of stereotypes by the said provisions, he concluded that the failure of the State to criminalize the husband as well for having illicit relations with a single woman to be an unjust classification on the grounds of sex which amounted to prohibited discrimination within the confines of Article 15 of the

[103] [2018 SCC OnLine SC 1676]

Constitution. He also pointed out that vesting the husband with his wife's right of exercising her own sexual agency was destructive of her dignity since it contradicted her right to self-autonomy, a fundamental right so guaranteed through ***Justice K. S. Puttaswamy (Retd.) and Anr. V. Union Of India And Ors***[104]. To put it simply, the offence of Adultery restricted a married woman from making choices about her life and not only violated her right to privacy but also, her right to choose a sexual partner of her choice. Concurring with the other four Judges of the Bench in the said matter, such a transformative approach by *Justice D.Y. Chandrachud* was instrumental in not only overruling ***Sowmithri Vishnu*** but helped a married woman achieve an independent identity in the eyes of Law and retain her right to enjoy her sexual freedom.

Loyalty is a very subjective and private aspect of a person's life and in a democracy like ours; the Government has no right to dictate the same. And yet, the Adultery law not only tried enforcing the ideology of a "perfect wife" upon women but provided no remedy for the loss of her reputation, merely for exercising her inherent right. Today, the Courts are required to eradicate those laws which perpetuate customs that prohibit women from exercising their fundamental freedoms and adultery, largely based on customs and traditions cannot sustain as a public wrong[105].Likewise, they are also required to be in consonance with other revolutionary changes in the country – where homosexuality was decriminalized[106], the offence of Adultery would have been *prima facie* unconstitutional since such co-existence would imply the failure of homosexuals to violate the sacred marital bond, which seems ambiguous to the authors. By confirming the unconstitutionality of the aforesaid provisions and confining Adultery to a mere civil law remedy (that of claiming divorce), the Apex Court ended the debate so

[104] [(2017) 10 SCC 1]

[105]Indian Young Lawyers Association V. The State Of Kerala [2018 SCC OnLine SC 1690]

[106]Navtej Singh Johar V. Union of India [(2018) 10 SCC (1)]

initiated by the averments of *Justice Y.V. Chandrachud* in ***Sowmithri Vishnu***, thereby upholding the rule of law in the country.

K. ADVANCING BEYOND BARRIERS OF JUDICIAL MINIMALISM AND FORMALISM: SOWMITHRI VISHNU V UNION OF INDIA

- AUTHORED BY: RONAK SHAH & TAPAN RADKAR (BOTH IV BA LL.B)

INTRODUCTION

The law relating to adultery is well settled now in light of the decision in *Joseph Shine v. Union of India ("**Joseph Shine**").*[107] However, much before this decision, § 497 of the Indian Penal Code ("**IPC**") constituting the offence of adultery met with a number of constitutional challenges and stood the test. The reasons varied from protective discrimination in favour of women to the matter falling within the domain of the Legislature, despite the provision being based on an anachronistic assumption that "man is a seducer and woman is the victim", a position accepted by the Hon'ble Supreme Court ("**SC**") in *Sowmithri Vishnu v. Union of India ("**Sowmithri Vishnu**").*[108]The authors seek to point out the minimalistic approach adopted by the judiciary in *Sowmithri Vishnu*. Moreover, keeping in mind the subsequent judicial developments, the article seeks to apply the newly evolved jurisprudence surrounding Art. 14 to the judgement in *Sowmithri Vishnu* and explore a different way in which the SC could have decided the matter, had it come up for adjudication during the present day.

[107] 2018 SCC OnLine SC 1676.

[108] AIR 1985 SC 1618.

DECODING THE JUDGEMENT IN *SOWMITHRI VISHNU*

The petitioner in *Sowmithri Vishnu* challenged the constitutional validity of § 497 of the IPC on the grounds that the provision violates Arts. 14, 15 and 21 of the Indian Constitution. The petitioner based her arguments on the following plinths:

1) § 497 confers upon the husband the right to prosecute the adulterer but does not confer any right upon the wife to prosecute the woman with whom her husband had committed adultery.
2) § 497 does not confer any right upon the wife to prosecute the husband who has committed adultery.
3) § 497 does not contemplate a situation where the husband may commit adultery with an unmarried woman.
4) Lastly, the petitioner alleged a violation of Art. 21 on the grounds that where a person intends to prosecute the accused of adultery, it tarnishes the reputation of the woman so involved, thereby affecting her dignity.

The judgement delivered by Justice Y.V. Chandrachud is rather striking on account of the judicial restraint exercised by him. He summarily dismissed the aforementioned arguments as having an emotive appeal only, rather than being of constitutional significance. He observed that making an act punishable must be left to the wisdom of the Legislature. In other words, what is to be made punishable and what not is strictly a matter of policy based on societal attitudes and tendencies. Moreover, he addressed the question of violation of Art. 21 by citing other appropriate remedies for the same like filing applications to that effect before the trial court as a means of exercising the fundamental right to be heard without addressing the question of dignity.

DEFERRING THE QUESTION TO THE LEGISLATURE: WHETHER JUDICIAL MINIMALISM?

Justice Y.V. Chandrachud seems to have incorporated in his decision a minimalistic approach. Such an approach consists of making narrow rulings.[109] He refused to address broader questions of an ultra vires legislative policy or to even apply the two-fold test and merely quashed the complaint by refusing to intervene in policy matters falling within the domain of the Legislature. His Lordship merely observed how § 497 was aimed at punishing only a limited class of adulterous acts in the interests of the society. Such a minimalist attitude is not peculiar of the SC considering the fact that decisions involving liberal constitutional interpretations had already been made in *Maneka Gandhi*[110]and a few others prior to *Sowmithri Vishnu*. As against the existing judicial trends, this case is certainly an example of a minimalist approach, incidentally? Diplomatically? We are unaware…. To further buttress this observation, it is pertinent to note another peculiar feature of minimalist decision-making. That is, observing deference to political branches while the judges act as advice-givers.[111] Akin to this was the approach of Justice Chandrachud when he deferred the "policy matter" to the wisdom of the Legislature. However, what he failed to consider was a scenario where a policy of the Legislature was in itself violative of Part III of the Constitution which was evident through the petitioners' arguments. In such a scenario, the SC being the *sentinel que vive* could have and probably should have stepped in to prevent the injustice caused by an unconstitutional policy. The only plausible counter-argument to this is that the jurisprudence in such matters was in its primitive stages. Even in such a case with our Constitution providing enough weaponry to tackle such matters, the unjust position based on "romantic paternalism" could have been eradicated earlier. On the contrary, when a similar challenge was made in *Joseph Shine,* the Court without hesitation struck

[109]Cass R. Sunstein, "Beyond Judicial Minimalism," 43 Tulsa Law Review 825 (2007).

[110] AIR 1978 SC 597.

[111]Neal K. Katyal, "Judges as Advicegivers", 50 STAN. L. REV. 1709 (1998).

down the provision, notwithstanding the fact that penalization or non-penalization of acts are a matter of legislative policy. Again, the only evident change was the roster of judges, the attitudinal and societal perceptions and not the contours of the constitution.

REINFORCING SUBSTANTIVE EQUALITY

As the Court rightly observed in *Joseph Shine,* the judgement in *Sowmithri Vishnu* deserved to be swept away in light of the expanded scope of Arts. 14, 15 and 21. This section seeks to delve into each contention individually, notwithstanding the judgement in *Joseph Shine*.

Often while applying the two-fold test under Art. 14 as evolved in *State of West Bengal v. Anwar Ali Sarkar*.[112], courts resorted to a mechanical application of the test. This resulted in courts missing the purpose behind the provision: to ensure substantive equality. The SC even refused to apply this basic pre-existing two-fold test of Art. 14. Had the SC appreciated the objective of Art. 14, the contentions of the petitioners in *Sowmithri Vishnu* would have been looked at differently.

Proceeding with the first contention, the Court reasoned that the petitioners' contention went against the policy of the law rather and not the constitution. As mentioned above, it observed, "*It is the man who is the seducer and not the woman*.". Not only did the court defer the question to the Legislature, but in doing so, accepted the stereotypes associated with sex, by observing that it was the man who was the seducer in most cases and he alone deserves to be punished for the same. The woman, despite being equally involved in the act, walks free. Such stereotypes associated with sex have been criticised in *Navtej Singh Johar v. Union of India ("**Navtej Singh Johar**").*[113] Even if one ignores the newly evolved jurisprudence on the topic, the fact that men and women

[112] AIR 1952 SC 75.

[113] (2018) 1 SCC 791.

were not treated "equal before the law" while being equally involved in committing the offence, would have been sufficient enough ground to strike the provision down in its entirety.

Coming to the second contention, the court stated that the woman was considered as a victim as far as the offence was concerned. It completely missed the point of the petitioners' argument, which was to confer a right upon the wife to prosecute her husband. The Court observed that adultery as an offence attacked the sanctity of a matrimonial home. Despite making this observation, the court failed to see that the wife, whose matrimonial home was also destroyed due to her husband committing an adulterous act, should be conferred a right to prosecute as well. Moreover, Art. 14 is a parasitic right.[114] The breach of Art. 14 necessarily mean that another right of the aggrieved person is engaged. With the recognition of the right to privacy[115], the right of the wife to preserve the privacy of the matrimonial home is something that is breached, and she is not conferred the right to prosecute the wrongdoer. On the other hand, the husband of the woman who committed the adulterous act is given a right to prosecute the wrongdoer for violating the privacy of his matrimonial home. This inherent inequality in denying the right to preserve the privacy of the matrimonial home is something that the Court could have likely looked at.

Even the third contention was deferred to the wisdom of the legislature. However, this contention holds a lot of merits. In not criminalising a relationship between a married man and an unmarried woman, and criminalising one between an unmarried man and a married woman, the provision suffered from two inequalities. Firstly, that a married woman, if consented by her husband could engage in an adulterous relationship

[114]Khaitan, Tarunabh, Equality: Legislative Review under Article 14 (May 12, 2015). Sujit Choudhry, Pratap Mehta & Madhav Khosla eds, The Oxford Handbook of Indian Constitutional Law (OUP 2016) 699-719, Available at SSRN: https://ssrn.com/abstract=2605395.

[115] (2017) 10 SCC 1.

perpetuated the stereotype that the woman was a chattel of her husband and her consent was immaterial in such cases. Such a stereotype would have attracted sharp criticism in light of the observations in *Navtej Singh Johar*. Secondly, it would also allow unmarried women (with their free consent) to engage in illicit relationships with married men, thereby destroying the latter's matrimonial home. But an unmarried man (when freely consenting) would be criminally prosecuted if he engaged in an illicit relationship with married women. The court would rely on *Navtej Singh Johar's* observations on substantive equality under Art. 14 and thereby striking the provision down. Therefore, this contention of the petitioner would also receive the consideration that it merited.

CONCLUSION

In the humble opinion of the authors, Justice Y.V.Chandrachud opted for a minimalistic approach, probably adhering to the then existing perceptions. The position has now rightly been settled in view of the push for substantive equality. Our judiciary has once again acted as a champion of the rule of law, albeit with a hint of delay.

L. ADM JABALPUR JUDGEMENT: BLOT ON THE LEGAL LANDSCAPE?

- AUTHORED BY: ADITI MISHRA & PRACHI KAUSHIK (BOTH II BA LL.B)

INTRODUCTION

The oath administered to the judges of the Supreme Court includes the profound idea of carrying out justice "without fear or favour". Justice Y.V Chandrachud is known to be one such man who came fairly close to fully realising it. The longest-serving CJI of India, he has been a beacon of light and inspiration in our recent judicial history.

Justice Chandrachud is credited with quite a few progressive judgments of the day. Notable in India's constitutional jurisprudence - the ADM Jabalpur case (habeas corpus case) most certainly, is not one of those. It became an example of how four most able and experienced judges of the apex court of a country could also blunder under unprecedented and grave circumstances.

THE HABEAS CORPUS CASE

In the tumultuous times of the Emergency period of 1975-1977, many people who had been detained under section 3(1) of the Maintenance of Internal Security Act. 26 of 1971 (MISA)[116] had filed petitions in various High Courts to issue a writ of habeas corpus.

[116] Section 3 (1) of the act read,

" The Central Government or the State Government may.--

(a) if satisfied with respect to any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to--

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

Upon the arrival of hearing of those petitions, the then government raised an objection to its maintainability, since in asking for issuance of habeas corpus, the detenus were claiming that their right to personal liberty had been violated, a plea available only under article 21 of the Constitution of India. By proclamation of the Presidential Order dated June 27, 1975, this right to move for enforcement of the right conferred by that Article was suspended.

The High Courts of Allahabad, Bombay, Delhi, Karnataka, Madhya Pradesh, Punjab and Rajasthan rejected this objection of the government stating that notwithstanding the Presidential Order, detenus were entitled to challenge their detention on the ground that it was ultra vires.

In a majority decision of 4:1 (Justice Khanna being the lone dissenter), the Hon'ble Supreme Court allowed the appeal, upholding the constitutional validity of section 16A(9) of the MISA which forbade any detenu from disclosing the grounds of their detention which means that court cannot question the state or the executive body to validate the detention. Consequently, the party does not have locus standi to move the court for the enforcement of fundamental rights.

The Hon'ble Court observed (while largely reiterating the Attorney-General's contentions) that when the emergency is declared and the right to enforce fundamental

---

(ii) the security of the State or the maintenance of public order, or

(iii) she maintenance of supplies and services essential to the community, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to linking arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

rights under Articles 14, 19, 21 and 22 is also suspended, the petitioner's detention under Defence of India Rules cannot be challenged since he has no locus standi. It was held that in view of the President's order passed under the provisions of Article 359(1) of the Constitution, the petitioner has lost his locus standi to move the court during the period of emergency. [117]

Justice Chandrachud was in the majority, observing that"*though the liberty of the individual is a highly prized freedom and though the writ of habeas corpus is a powerful weapon by which a common man can secure his liberty, there are times in the history of a Nation when the liberty of the individual is required to be subordinated to the larger interests of the State. In times of grave disorders, brought about by external aggression or internal disturbance, the stability of political institutions becomes a sine qua non of the guarantee of all other rights and interests.*" [118]

While conceding to the fact that the writ of Habeas Corpus is one of highest constitutional importance and a remedy available to the most disadvantaged against the most powerful, Justice Chandrachud (along with Justices A.N. Ray, M. Hameedullah Beg, P.N. Bhagwati) discerned the times as grave and unparalleled which did not warrant exemption from imprisonment in all cases.

The case is now regarded as a dark spot in the legal system and the judiciary. The motives of those who gave that majority judgment came under scrutiny and questions were raised as to whether it was an honest but narrow reading of the law, or a case of self-preservation.

[117] Additional District Magistrate, Jabalpur vs. Shivakant Shukla (28.04.1976 - SC) : MANU/SC/0062/1976

[118]Additional District Magistrate, Jabalpur vs. Shivakant Shukla (28.04.1976 - SC) : MANU/SC/0062/1976

However, Justice Chandrachud managed to somewhat clear the speculative air by delivering the judgment of State (Delhi Administration) Vs. Sanjay Gandhi[119]by cancelling Sanjay Gandhi's bail and stating that he had attempted to suborn the prosecution witnesses resulting in forfeiture of his right to be free. The famous 'Kissa Kursi Ka' case which sent Sanjay Gandhi to jail reflected that judiciary is independent machinery, free of outside influences and the status of the wrongdoer cannot come in the way of delivering justice.

DEVELOPMENTS POST THE ADM JABALPUR CASE

This case has paved the way for further developments in the legal system by exposing the existing loopholes. Ironically, the case is quite often cited in Supreme Court and High Courts for a different point of law. Upon the heavy dependence of the respondents on Makhan Singh v State of Punjab [120] to claim what pleas were available to the detenu in challenging the propriety of his detention, the Hon'ble Court held that the issues and observations in Makhan Singh that were relied upon were just obiter. The principle that ADM Jabalpur has thus relayed to the posterity is that the obiter cannot take the place of the ratio.

Steps taken in respect of rights protected under Article 21 in the ADM Jabalpur judgment were negated by Parliament through 44th Constitutional amendment in 1978, by laying down that rights under articles 20 and 21 will not be suspended even during the Emergency.

[119]AIR 1978 SC 961

[120] 1964 AIR 381

It is well known that The ADM Jabalpur case was formally overruled in Justice K.S.Puttaswamy (Retd.) vs. Union of India and Ors. (2017) [121]which was headed by a nine-judge bench and Justice DY Chandrachud, son of Y V Chandrachud was one of the members in the bench. It declared privacy to be an integral component of Part III of the Constitution of India. With respect to ADM Jabalpur, The court stated that -

"The judgments rendered by all the four judges constituting the majority in ADM Jabalpur are seriously flawed. Life and personal liberty are inalienable to human existence…They constitute rights under natural law."

Six of the nine judges on the Constitution bench went into great detail of the 1975 ADM Jabalpur case to drive home the point that the right to life existed even before the advent of the Constitution. In recognizing the right, the top court said, the Constitution does not become the sole repository of the right. Right to life was regarded as inalienable to each individual.

The court observed that judicial decisions play an important role when history is written however; there are some judicial decisions which should be consigned to archives and seen as a retrospective lesson of what should not be repeated.

D.Y Chandrachud was quoted saying that his father would have concurred with his ADM Jabalpur verdict and even went on to say that he felt that his father, throughout his life, had a feeling that he was wrong in the ADM Jabalpur case.[122]

[121]AIR2017SC4161

[122]https://economictimes.indiatimes.com/magazines/panache/chandrachud-vs-chandrachud-sc- judge-confident-his-father-would-have-concurred-on-adm-jabalpur-verdict/articleshow/71736077.cms

In recent times of COVID-19, the Supreme Court in the case of S. Kasi Vs. State[123] (19 June, 2020) held that right to life and personal liberty could not be affected adversely on the ground of the lockdown and hence, delay by police to file a chargesheet will entitle an accused to bail. The bench shot down the judgment by Madras High Court which had maintained that the lockdown announced by the government is akin to the proclamation of Emergency.

The apex court mentioned the ADM Jabalpur while giving judgement and regarded it as 'retrograde'[124]

CONCLUSION

Justice Y.V. Chandrachud went on to become the 16th Chief Justice of India. He occupied the post for the longest period from 1978 to 1985. His seminal contribution to modern Indian jurisprudence is resounding. He was on a crest of a wave during his time however; he was no exception to controversies and errors. To be vested with the power to decide the fate of millions is a colossal task. The truth that remains, however, is - to err is in our fibre and judges, too, are not immune from it. The ratio of ADM Jabalpur is a testament to this erroneous nature.

The estrangement between Justice Chandrachud and the ruling party was conspicuous at a time when the entire judicial system often succumbed to the pressure to conform. He was hailed as a dauntless and fierce guardian of the judiciary against executive intervention.

[123] 2020(2)RLW1498(SC)

[124] https://www.news18.com/news/india/our-judgment-during-emergency-retrograde-says-supreme-court-on-adm-jabalpur-2677645.html

His legacy is earnest; it lies not in compliance with old dictums but in revisiting them to evolve and suit our ever-dynamic social set-up. What could better exemplify this other than his judgments being overruled by his own blood! His intrepid judicial pronouncements in cases of the likes of "Kissa Kursi Ka", "Shah Bano" or "Olga Tellis" echo through time to be discussed to this date owing to their contiguous and pervasive relevance.

M. LANDMARK RULINGS BY LATE CJ Y.V.CHANDRACHUD

- COMPILED BY: DEWANGI SHARMA AND SAMRAGGI DEBROY (BOTH II BA LL.B)

Name and Citation	Ratio Decidendi	Justice Y.V. Chandrachud's remarks	Is it Valid Law?
Kesavananda Bharati v. The State of Kerala **(1973) 4 SCC 225**	Held that under Article 368, which provides Parliament amending powers, something must remain of the original Constitution that the new amendment would change. Thus, propounded the "Basic Structure Doctrine". Overruled Golak Nath v. State of Punjab (Golak Nath case) which held that constitutional amendments cannot impinge on fundamental rights.	"Will India, the largest democracy in the world, do mere lip service to these precious freedoms and shall it not accord to them their rightful place in the lives of men and in the life of the nation? Such is the dialectical query." "Apart from whether the so-	Yes.

	Upheld the Land Reform Acts and the Amendment Acts that had been challenged. Struck down that portion of the Constitution (25th Amendment) Act, which denied the possibility of judicial review.l	called intellectuals-the 'classe non classe'- believe in the communistic millennium of Marx or the individualistic Utopia of Bastiat, the answer to this question must depend upon the stark urgency for striking a balance between the rights of individuals and the general good of the society." "Our task is not to pass on the 'moral authority' of the Parliament to amend the Constitution but to determine	

		whether it has 'legal or constitutional authority' to do so." "In those moments of peril and disaster, rights and wrongs are decided not before the blind eyes of justice, not under the watchful eyes of the Speaker with a Marshal standing by but, alas, on streets and in by-lanes, Let us, therefore, give to the Parliament the freedom, within the framework of the Constitution, to ensure that the	

		blessings of liberty will be shared by all."	
Balak Ram etc. v. The State of Uttar Pradesh **(1974) AIR 2165**	Held that if the High Court has set aside an order of acquittal, the Supreme Court in an appeal under Article 136 of the Constitution "will examine the evidence only if the High Court has failed to apply correctly the principles governing the appeals against acquittal." Held that any bold assertion unsupported by data (in this case - the winning over of prosecution witnesses by the Defence) is "insufficient to absolve the prosecution of its duty to examine witnesses crucial for unfolding its case."	"The powers of the Supreme Court under Article 136 of the Constitution are wide but in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances." "It is not surprising though it is to be regretted, that in the din of these political and personal feuds the witnesses had a	Yes.

	Observed that a "prosecution for perjury could be the price of freedom," that it is upto the Court to accept the evidence of the witness whose statement was recorded u/s 164 but the "salient rule of caution must always be borne in mind." Held that the powers of Supreme Court u/a 136 of the Constitution are wide but in criminal appeals, the Supreme Court "does not interfere with the concurrent findings of fact save in exceptional circumstances.	heavy commitment to factitious loyalties. When key witnesses deny the obvious, pretend ignorance of facts within their special knowledge and give free play to their imagination on crucial matters, the pursuit of truth becomes a wild goose chase. And the befogged trial Judge has then to discharge the unenviable duty of seeing and hearing such witnesses."	
Dilip Kumar Sharma &Ors. v. The State of	Held 'Bharat singh' convicted u/s 302 of the IPC read with S. 34 and	"Prosecution is often unable to collect satisfactory	Yes.

Madhya Pradesh (1976) AIR 133	awarded minimum sentence for murder. Held that 'Dilip Kumar's' conduct cannot be taken leniently and thereby upheld the High Court decision of the death penalty for 'Dilip Kumar'. Held that the previous conviction of a person, who is sentenced to imprisonment for life and commits a crime, "assumes a graver proportion and becomes an aggravating circumstance. The aggravation is on the assumption that the previous conviction is lawful and valid. Held that when S. 303 of the IPC speaks of a person under sentence of	evidence on the motive behind the crime. That does not call for any leniency and indeed where this is so, criminals would prefer, in order to reduce the gravity of their acts, to suppress the motive leading to the crime." "When a person who is sentenced to imprisonment for life commits a murder, the previous conviction assumes a graver proportion and becomes an aggravating	

	imprisonment for life "it means a person under an operative executable sentence of imprisonment for life." Held that there was no justification for distinguishing the case of 'Rohit Singh' from that of 'Bharat Singh'. Therefore, his sentence ought to be reduced from death to life imprisonment.	circumstance." "'Whoever commits murder' must mean 'Whoever is proved to have committed murder' and not 'Whoever is alleged to have committed murder'."	
ADM, Jabalpur v. S. S. Shukla (1976) AIR 1207	Held that u/c (1) of Article 359, "no person has any locus standi to move any writ petition under Art 226 before a High Court for habeas corpus or any other writ or order or direction to challenge the legality of an order of detention on the ground that the order is not under or in compliance with the	"Whatever may be the source of the right and whatever may be its justification. The right in essence and substance is the right to personal liberty."	Overruled by K. S. Puttaswamy v. Union of India (AIR 2017 SC 4161), in which it was observed that "no civilized state can contemplate an

	Act or is illegal or is vitiated by mala fides factual or legal or is based on extraneous considerations." Held that S. 18 & 16A(9) of the Maintenance of the Internal Security Act, 1971 is constitutionally valid. Held that Article 21 of the Constitution is the "sole repository of rights to life and personal liberty against the State."	"The Rule of Law rejects the conception of the dual State in which governmental action is placed in a privileged position of immunity from control be Law." "A mala fide exercise of power does not necessarily imply any moral turpitude and may only mean that the statutory power is exercised for purposes other than those for which the power was intended by law to be	encroachment upon life and personal liberty without the authority of law. Neither life nor liberty are bounties conferred by the state nor does the Constitution create these rights. The right to life has existed even before the advent of the Constitution."

		exercised." "The principles of res judicata and estoppel, the conclusive presumptions of law and various provisions of substantive law deny a free play to courts in the exercise of their jurisdiction." "A jurisdiction of suspicion is not a forum for objectivity." "No judgment can be read as if it is a statute. The generality of the expressions which may be found in a	

		judgment are not intended to be expositions of the who's law, but are governed and qualified by the particular facts of the case in which such expressions are to be found."	
Union of India v. Sankal Chand Himmatlal Seth &Anr. **(1977) AIR 2328**	Held that the power to transfer a High Court Judge is "conferred by the Constitution in the public interest and can be exercised in public interest only." Held that Article 222(1) casts an absolute obligation on the President to consult the Chief Justice of India before transferring a Judge from one High Court to another. Consultation in Article 222(1)	"If the provision is clear and explicit it cannot be reduced to a nullity by reading into it, a meaning which it does not carry. That, in essence, is the rule of harmonious construction." "Deliberation is the quintessence of consultation.	Yes.

	means "full and effective, not formal or unproductive consultation."	That implies that each individual case must be considered separately on the basis of its own facts."	
Bata Shoe Company v. City of Jabalpur Corporation (1977) AIR 955	Held that since S. 84(3) expressly prohibits a challenge to valuation, assessment or levy "in any other manner other than is provided in the Act" and since the Act has devised its own "special machinery for inquiring into and adjudicating upon such challenges, the common remedy of a suit stands necessarily excluded and cannot be availed of by a person aggrieved by an order assessment to octroi duty."	"If the Court is satisfied that the Act provides no remedy for making a claim for the recovery of an illegally collected tax the Court might hesitate to construe a provision giving finality to the orders passed by the tribunals specially created by the Act as creating an absolute bar to the	Yes.

		suit and if such a construction was not reasonably possible, the Court would be called upon to examine the constitutionality of the provision excluding the civil Court's jurisdiction in the light of arts. 19 and 31 of the Constitution." "Except in matters of constitutionality and the like, a self-contained Code must have priority over the common means of vindicating rights."	

State through Delhi Administration v. Sanjay Gandhi (1978 AIR 961	Held that in appropriate cases, the Court has the power to take additional evidence, though "that power has to be exercised sparingly, particularly in appeals brought under Article 136 of the Constitution." Held that in special leave appeal against an order rejecting an application for cancellation of the bail, the High Court's findings are binding. However, "if the two views of the evidence are reasonably possible and the High Court has taken one view, the Supreme Court will be disinclined to interfere therewith in an appeal u/a 136 of the Constitution. Held that it is necessary for	"Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to	Yes.

	the prosecution to show some act or conduct on the part of the respondent from which a "reasonable inference may arise that the witnesses have gone back on their statements as a result of an intervention by or on behalf of the respondent." Held that it is not necessary for the prosecution to prove "beyond mathematical certainty or even beyond a reasonable doubt that the witnesses have turned hostile because they are won over by the accused."	allow the accused to retain his freedom during the trial." "Is it necessary for the prosecution to prove by a mathematical certainty or even beyond a reasonable doubt that the witnesses have turned hostile because they are won over by the accused? We think not." "Proving by the test of balance of probabilities that the accused has abused his liberty or that there is a reasonable	

		apprehension that he will interfere with the course of justice is all that is necessary for the prosecution to do in order to succeed in an application for cancellation of bail." "But avoidance of undue hardship or harassment is the quint- essence of the judicial process. Justice, at all times and in all situations, has to be tempered by mercy, even as against persons who attempt to tamper with its processes."	

Maneka Gandhi v. Union of India (1978) 1 SCC 248	Held that 'Right to travel abroad' is under the scope of 'personal liberty' under Article 21, thus expanding its scope. Held that the "fundamental rights conferred in Part III of the Constitution are not distinctive nor mutually exclusive." Any law affecting the right to personal liberty must satisfy the test of one or more rights conferred under Article 19. (Overruled 'A K Gopalan') Held that the "procedure established by law" (Article 21) cannot be arbitrary, unfair or unreasonable. Held that section 10(3)(c) of the Passports Act, 1967 which provides that when	"The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary." "A law which prescribes fair and reasonable procedure for curtailing personal liberty guaranteed under Article 21 has still to meet a possible challenge from other provisions of the Constitution,"	Yes

	the state finds it necessary to seize the passport or do any such action in the interests of sovereignty and integrity of the nation, its security, its friendly relations with foreign countries, or for the interests of the general public is not violative of any fundamental rights as the powers conferred to the government are not vague or undefined. However, administrative actions like impounding of the passport of the petitioner under the Act are subject to principles of natural justice and judicial review.		
Bangalore Water Supply and Sewage Board v. A Rajappa and ors.	The definition of 'industry' under §2(j) of the Industrial Disputes Act, 1947 was expanded to cover	"It is the nature of the activity which ought to determine	No, the judgement was overruled by an

1978 2 SCC 213	establishments like hospitals, educational institutions, government departments, charities, etc. (a) A triple test to define an industry was introduced: where there is (i) systemic activity, (ii) organised by cooperation between employee and employer and (iii) or the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, prasad or food), prima facie, there is an 'industry' in that enterprise. (b) Absence of profit motive or gainful objective is	whether the activity is an industry" "The principle that nature of activity determines the questions yields the result that the fact that the activity is charitable in nature or is undertaken for a charitable motive is equally irrelevant" "The true test is whether the activity is arranged or organised in a manner in which trade or business	amendment passed by the Legislature in 1982, restricting the wide definition of 'industry'

	irrelevant, be the venture in the public, joint private or other sectors. (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. (d) If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking.	is normally organised or arranged" "The problem [of the definition of industry] is far too policy-oriented to be satisfactorily settled by judicial decisions. Parliament must step in and legislate in a manner which will leave no doubt as to its intention"	
Charan Lal Sahu v. NeelamSanjeeva Reddy **(1978) 2 SCC 500**	Held that Article 71(3) of the Constitution of India does not violate the basic structure of India. Held that §5-B and 5-C of	-	Yes

	Presidential and Vice Presidential Election Act, 1952 are not violative of Article 14 of the Constitution of India.		
In Re Special Courts Bill (1979) 1 SCC 380	Held the Constitutionality of the Special Courts Bill, 1978, held that the Bill is within legislative competence as per Article 138 (1), Article 246 and is valid and fair except in regard to appointment as Judge of retired judges of High Courts, the appointment of judges without concurrence from CJI and the absence of provision for transfer of a case from one Special Court to another. The classification in Clause 4(1) of the bill is valid to the extent that the Central government can make a	"The President has made a reference to the court and the court is under an obligation to consider the reference. The question whether the provisions of the bill suffer from any constitutional invalidity falls within the legislative domain of the court to decide" "The question whether the Bill	Yes

	declaration regarding alleged offences committed during the period of emergency by persons who held high public or political office in India. Held that the satisfaction regarding the importance of the question referred to the Supreme Court under Article 143(1) is for the President to decide and not the Court, provided the question is capable of being pronounced upon and falls within the power of the Court to decide.	or any of its provisions are constitutionally invalid is not a political one and the court should refrain from answering it" "The object of Article 138(1) is to enlarge the Parliament's power to confer jurisdiction of the Supreme Court even in matters already dealt with in Chapter V part IV." "Discretionary power is not necessarily discriminatory power"	

Mithu v. State of Punjab **(1983) 2 SCC 277**	Held §303 of IPC unconstitutional on the grounds of being arbitrary, hard, unjust, oppressive and violative of Article 14 and 21. All cases of murder to fall under §302. Mandatory Imposition of the death sentence without any scope of judicial discretion is in deprivation of the protections under §235(2) and §354(3) of the CrPC.	"A savage sentence is an anathema to the civilized jurisprudence of Article 21" "The ultimate decision as to justice and fairness rests on the courts and not on the parliament" "There is no rational basis for classifying persons who commit murders whilst they are under the sentence of life imprisonment as distinguished from those who	Yes

		commit murder whilst they are not… §303 assumes that life convicts are a dangerous breed of humanity as a class. That assumption is not supported by any scientific data"	
Rudul Sah v. State of Bihar & Anr. (1983) 4 SCC 141	Held that compensation for illegal detention can be granted/ordered under Article 32 if such an order is in consequence of deprivation of a fundamental right.	"Article 21 which guarantees the right to life and liberty will be denuded of its significant power if the power of this court were limited to passing orders of release from illegal detention. One of the ways in which the violation of this right can be	Yes

		reasonably prevented, is to mulct its violators in the payment of monetary compensation. The right to compensation is a palliative for the unlawful acts and instrumentalities of the state." "If civilisation is not to perish in this country..., it is necessary to educate ourselves into accepting that respect for the rights of the individuals is the true bastion of democracy."	
Prag Ice & Oil Mills &Anr. v.	Held that Article 31-B saves only Acts and Regulations	"The Article [31-B] constitutes a	Yes.

Union of India (1978) 3 SCC 459	included in the Ninth Schedule and not the orders and notification issues under them. Upheld the Mustard Oil (Price Control) Order, 1977 passed under Section 3 of the Essential Commodities Act as not violative of Article 14, Article 19(1)(f) and (g), Article 301 and 302. Held that Considering the entire country as one unit is not a case of over-inclusive classification, thus not violative of Article 14.	grave encroachment on fundamental rights and must be construed strictly because the guarantee of fundamental rights cannot be permitted to be diluted by implications and interferences" "The immunity enjoyed by the parent Act cannot *Proprio vigore be* extended to the offspring of the Act"	
Waman Rao &Ors. Etc. Etc vs Union Of India And Ors	Upheld the Constitutionality of Article 31-A and the clauses	"If Article 31A were not enacted, some of the main	Yes, but the Supreme Court in IR

1980 SCC (3) 587	therein. Held that The Agricultural Ceiling Acts, fall squarely within the terms of clause (a) of Article 31A(1). Held that all amendments to the Constitution which were made before April 24, 1973, and by which the 9th Schedule to the Constitution was amended from time to time by the inclusion of various Acts and Regulations therein, are valid and constitutional. Amendments to the Constitution made on or after April 24, 1973, by which the 9th Schedule to the Constitution was amended by the inclusion of various Acts and Regulations, are open to challenge on the ground	purposes of the Constitution would have been delayed and eventually defeated and that by the First Amendment, the constitutional edifice was not impaired but strengthened." "The history of the World's constitutional law shows that the principle of stare decisis is treated as having a limited application only." "The First Amendment is aimed at	Coelho observed that Waman Rao needs to be reconsidered in view of certain inconsistencies caused after the expansion of judicial review.

	that they damage the basic or essential features of the Constitution or its basic structure.	removing social and economic disparities in the agricultural sector. It may happen that while existing inequalities are being removed, new inequalities may arise marginally and incidentally. Such marginal and incidental inequalities cannot damage or destroy the basic structure of the Constitution."	
Minerva Mills Ltd. &Ors vs Union Of India &Ors **1980 AIR 1789, 1981**	Upholding the Basic Structure doctrine, the court struck down Sections 55 & 4 of the 42nd Amendment as it was in violation of basic	"The significance of the perception that Parts III and IV together constitute the core	Yes

SCR (1) 206	structure. Struck down clauses (4) and (5) of the article 368 and held that limited amending power itself is a basic feature of the Constitution. Held that the amendment made to Article 31C is invalid on the ground that they violate two basic features of the Constitution that are the limited nature of the parliament of the power to amend and the power of judicial review. Held that a balance between Fundamental Rights and DPSPs is a basic feature of the Constitution	of commitment to social revolution and they, together, are the conscience of the Constitution is to be traced to a deep understanding of the scheme of the Indian Constitution." "Our Constitution is founded on a nice balance of power among the three wings of the state namely the Legislature, the Executive & the Judiciary. It is the function of the Judges, nay their duty to pronounce upon	

		the validity of laws." "The edifice of our Constitution is built upon the concepts crystallised in the Preamble."	
Arjun Chaubey v. Union of India &Ors. **(1984) 2 SCC 578**	Held that a person cannot be a witness and a judge in the same case. Principles of Natural justice need to be followed in a Departmental query.	"To hold the appellant guilty of habitual acts of indiscipline is to assume something which remains unproved"	Yes
Election Commission of India v. Union of India **1984 Supp SCC 104**	Held that the High Court was not justifying in issuing the ex parte stay order in regard to the imminence of the election and the very nature of controversy involved in the present case.	"The practice of obtaining ex parte orders when they can give proper intimation of the proceedings to the other side is not proper."	Yes

	It is not in the power of the High Court to decide whether the law and order situation in the State of Punjab and Haryana as not to warrant the holding of by-election once the order has been passed by the Election Commission.	"The ultimate decision as to whether it is possible to expedient or hold elections at any given point must rest with the Election Commission of India." "Arbitrariness and mala fide destroy the validity and efficacy of all orders passed by public authorities"	
Mohd Ahmad Khan v/s Shah Bano Begum	Held that A divorced Muslim wife is entitled to apply for maintenance under§125[3] of CrPC. The	"Wife, means a wife as defined, Irrespective of the religion professed	No, The judgement was diluted by the Muslim

1985 SCR (3) 844	divorced wife will be entitled to receive maintenance even after the "Iddat" period if the wife is unable to finance or maintain herself.	by her or by her husband. Therefore, a divorced Muslim woman so long as she has not married, is a wife for the purpose of § 125." "Neglect by a person of sufficient means to maintain these and the inability of these persons to maintain themselves are the objective criteria which determine the applicability of § 125"	Women (Protection Of Rights Of Divorce) Act, 1986

Gurbaksh Singh Sibbia Etc vs State Of Punjab **1980 AIR 1632, 1980 SCR (3) 383**	Upheld that The High Court and the Court of Session should be left to exercise their jurisdiction under § 438 of the Code of Criminal Procedure, 1973. Under the section, The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds and not based on *fear*.	"The society has a vital interest in the right to personal liberty and the investigational power of the police even though relatively their importance depends upon the political conditions of the state at any given point of time. It is the court's task to figure out how to strike a balance between the two and determine the scope of §438 under the CrPC" "High Court or the Court of Session must	Yes.

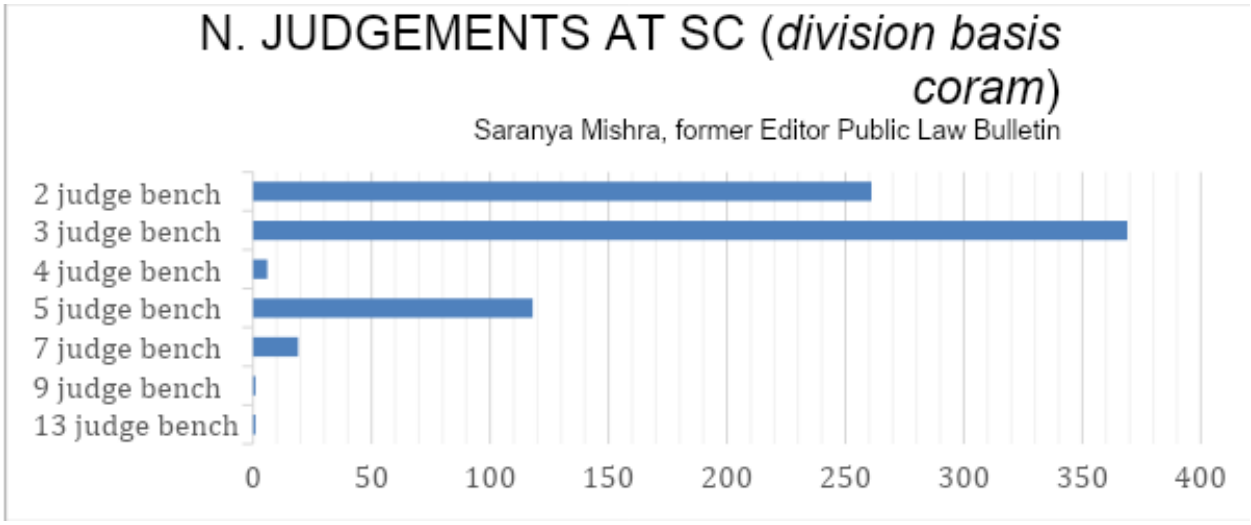
		apply its own mind to the question and decide whether a case has been made out for granting such relief." "The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F.I.R. is not yet filed. Anticipatory bail can be granted even after an F.I.R. is filed, so long as the applicant has not been arrested."	
Bhagirath v. Delhi	Held that persons	"Equity sustains	Yes

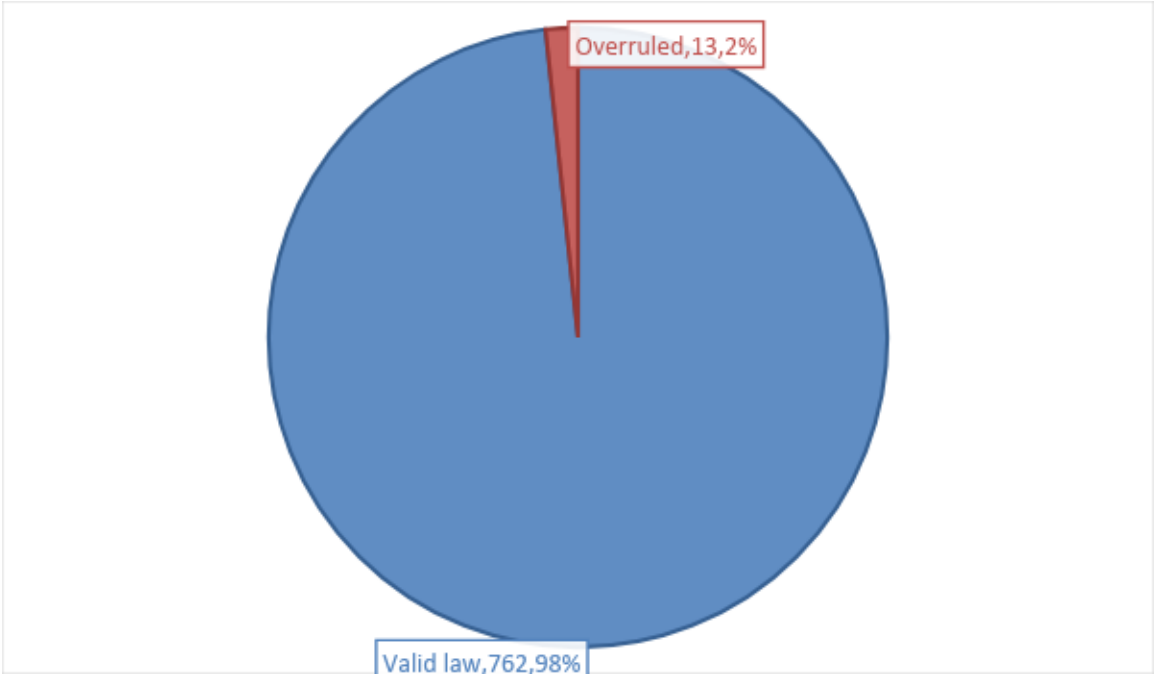
Administration **(1985) 2 SCC 580**	undergoing life imprisonment are entitled to be set off under § 428 of CrPC if order under §432 or 433 of CrPC is made. The court directed that the period of detention that the petitioner has gone through as an undertrial be set off against the sentence of life imprisonment, by interpreting "imprisonment for a term" under § 428 to be inclusive of "imprisonment for life".	law and twain must meet" "Two or more expressions are often used in the same section to exhaust the alternatives which are available to the Legislature. This does not mean that there is an antithesis between those expressions"	
Olga Tellis & Ors vs Bombay Municipal Corporation &Ors. 1986 AIR 180	Held that the provision of § 314 of the Bombay Municipality Act is not unreasonable in the circumstances of this case. Slums existing for 20 years or more should not be	"There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and	Yes

	removed unless the land is required for public purposes and, in this case, alternate sites must be provided. Held that § 314 confers on the Commissioner the discretion to cause an encroachment to be removed with or without notice. That discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the procedure accompanying the performance of a public act must be fair and reasonable.	sustenance of all laws.“ “No individual can barter away the freedoms conferred upon him by the Constitution.” “Any person who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as Offending the right to life conferred by Article 21.”	

		"Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike."	
P. NallaThampyTerah Dr. v. Union of India &Ors. **1985 Supp SCC 189**	Held Explanation 1 to § 77(1) Representation of the People Act, 1951 to be not violative of Article 14 on the grounds that there is no discrimination among individuals and the Classification made is broadly reasonable. The Court must examine the statutory provision instead of examining the legislative policy behind it.	"One cannot dissect the process and discover shades within shades to nullify it (impugned provision) on the ground of inequality" "We cannot negate a law on the grounds that we do not approve of the	Yes.

		policy underlying it.”	





O. MESMERISING QUOTES BY JUSTICE SHRI Y.V CHANDRACHUD

COMPILED BY: VISHAKHA PATIL, II BA LL.B

"In those moments of peril and disaster, rights and wrongs are decided not before the blind eyes of justice, not under the watchful eyes of the Speaker with a Marshal standing by but, alas, on streets and in by-lanes, Let us, therefore, give to the Parliament the freedom, within the framework of the Constitution, to ensure that the blessings of liberty will be shared by all."

Kesavananda Bharati v. The State of Kerala (1973) 4 SCC 225

"The Rule of Law rejects the conception of the dual State in which governmental action is placed in a privileged position of immunity from control be Law."

ADM, Jabalpur v. S. S. Shukla (1976) AIR 1207

"The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary."

Maneka Gandhi v. Union of India (1978) 1 SCC 248

"If civilisation is not to perish in this country..., it is necessary to educate ourselves into accepting that respect for the rights of the individuals is the true bastion of democracy."

Rudul Sah v. State of Bihar & Anr. (1983) 4 SCC 141

"The ultimate decision as to justice and fairness rests on the courts and not on the parliament"

Mithu v. State of Punjab (1983) 2 SCC 277

CONTACT US

PUBLIC LAW BULLETIN

CENTRE FOR PUBLIC LAW AT ILS LAW COLLEGE, PUNE

CONTACT US

For any queries, insights, feedback, contributions, suggestions and advice, kindly write to us at publiclawbulletin@gmail.com. We eagerly look forward to hear from you.

Feel free to reach out to our Student Editors at:

Nihar Chitre

niharchitre@gmail.com

Rashmi Raghavan

rashmiraghavan1202@gmail.com