manupatra®
Power Your Legal Research™

JUSTICE adda

ILLUSTRATED CASES OF THE SUPREME COURT OF INDIA

Landmark judgments which have influenced the public discourse, inspired generations and contributed to access to justice.

Powered by

lawskills.in and **justiceadda.com**

ABOUT THE PROJECT

The Supreme Court of India has pioneered some landmark judgments in the area of constitutional law, environmental law, labour reform, gender and sexuality, issues of public duty, child rights and many others.

These judgments have influenced the public discourse, have inspired generations of lawyers,reformers and activists and have contributed to access to justice for the last person.

The purpose of this project is to translate and produce cases summaries that support and explain issues that impact the everyday life of citizens when they resolve their common justice problems.

Through this collection, Justice Adda with the support of Manupatra have attempted to highlight the key issues at stake through a series of simplified texts and illustrations in the hope that the language of the Court could be transformed into one that can be understandable and useful for citizens interested in learning about their rights and entitlements

ABOUT JUSTICE ADDA

Justice Adda is a social venture that seeks to provide a space where design and technology enable the development of content that helps to improve access to justice in India. Justice Adda was incubated at the Cambridge Social Ventures Programme at Cambridge Judge Business School from 2016- 17.

ABOUT MANUPATRA

Manupatra is India's leading online legal research platform that has reinvented legal research by providing intuitive and smarter legal analysis tools along with access to a comprehensive legal information aggregator. It aims to make opportunities for research efficient and accessible for everyone.

TEAM

This series of cases have been edited and illustrated by Siddharth Peter de Souza, Shefali Cordeiro, Rhea Lopez , Aparna Mehrotra and Vatsala Pandey.

ACKNOWLEDGMENTS

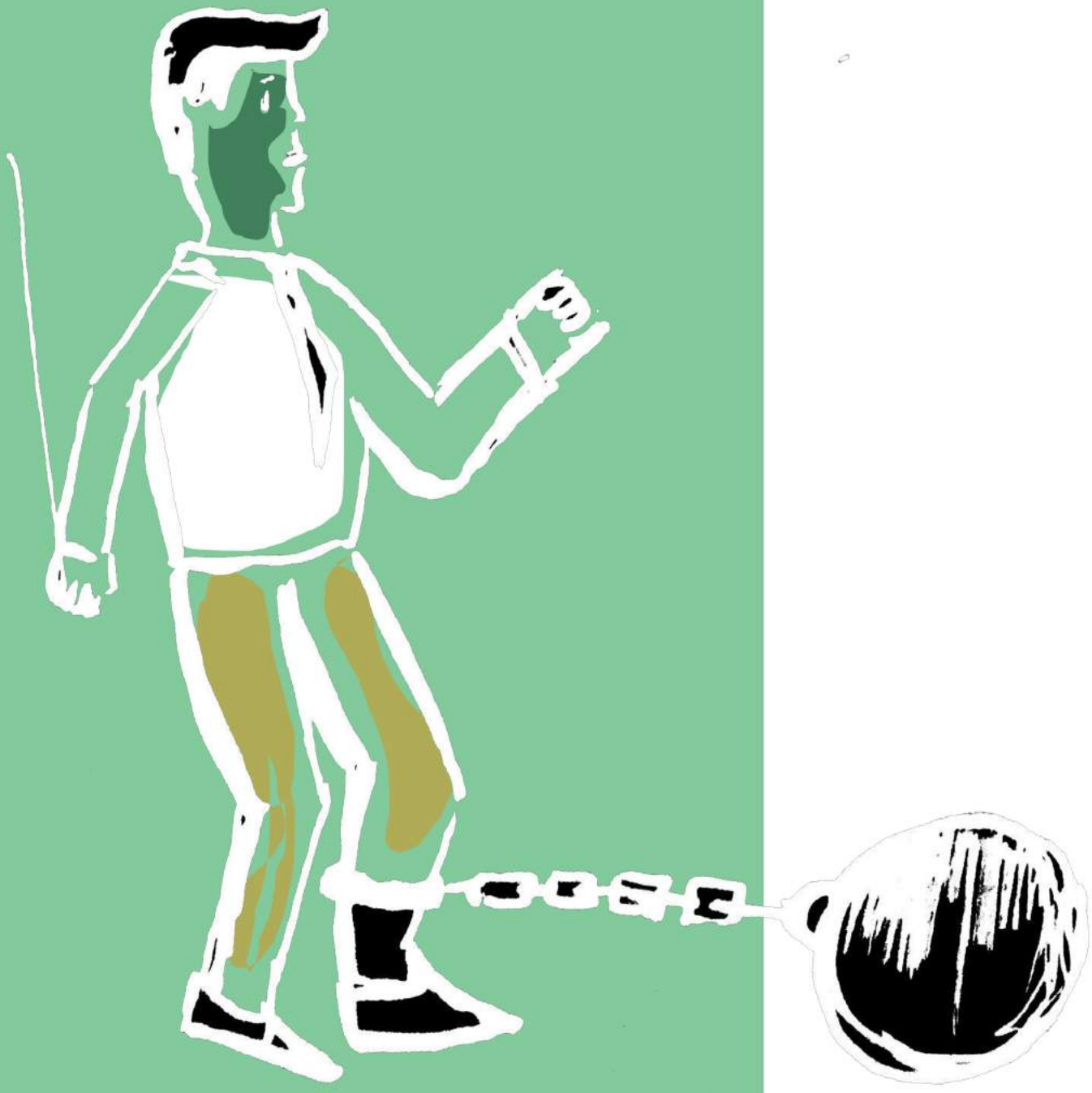
Special thanks to Priyanka, Chitesh Bhat and the Manupatra team for their unwavering support.

INDEX OF CASES

INDEX OF CASES

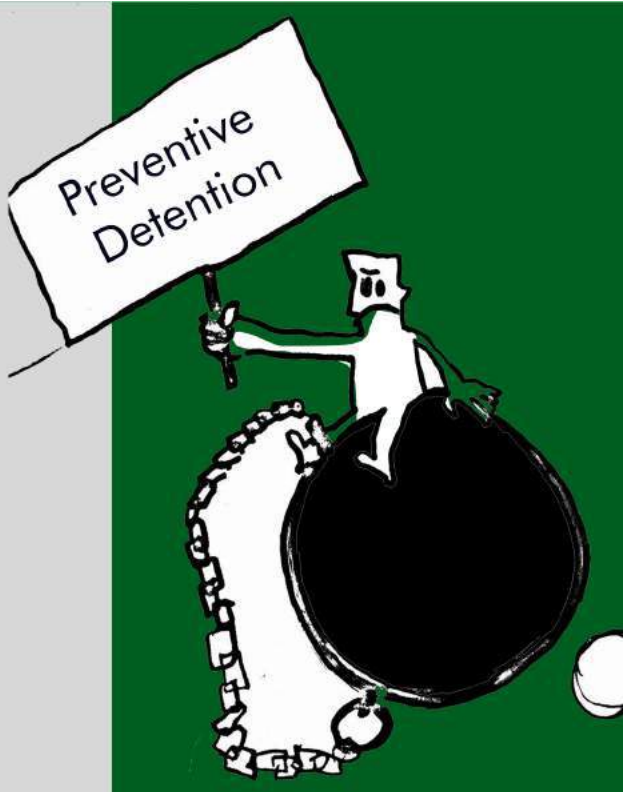
A.K Gopalan vs. State of Madras

MANU/SC/0012/1950

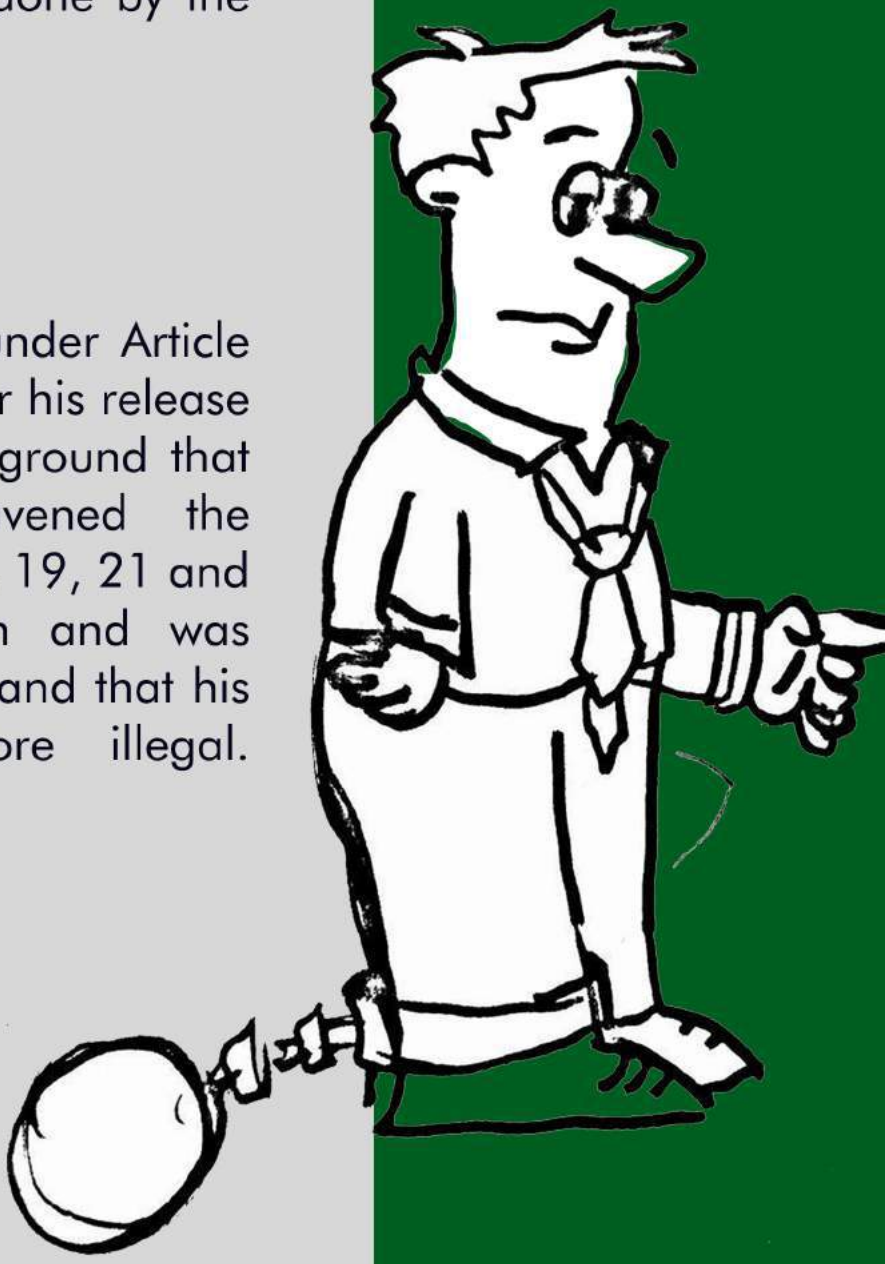


FACTS

- The petitioner was detained under the Preventive Detention Act (Act IV of 1950).



- In this act, an action is taken beforehand to prevent possible commitment of a crime. Preventive detention thus is action taken on grounds of suspicion that some wrong actions may be done by the person concerned.



- The petitioner applied under Article 32 of the Constitution for his release from detention, on the ground that the said Act contravened the provisions of Articles 13, 19, 21 and 22 of the Constitution and was consequently ultra vires and that his detention was therefore illegal.

QUESTIONS OF LAW

Whether the Preventive Detention Act, 1950 violates the fundamental rights guaranteed under the following Articles

- 13 (laws inconsistent with or in derogation of fundamental rights),
- 19 (right to freedom),
- 21 (right to life and liberty)
- 22 (protection against arrest and detention) of the Constitution and is therefore void?

HELD

- The Court held that the Preventive Detention Act does not abridge the detainee's right to freedom guaranteed under the provisions of Article 19 of the Constitution.
- Delinking Article 19 from Article 21, the court held that the protection given by Article 21 is more general in nature; while Article 19 gives rights specifically only to the citizens of India while Article 21 is applicable to all persons. Reinterpreting Article 21,the Court said that the words "procedure established by law" in Article 21 are different from "due process" as mentioned in the United States Constitution in a similar provision.

Thirdly, the Court said that Article 22 empowers the Parliament to legislate on the subject of preventive detention. Clauses 4 to 7 of the same Article put certain limitations on laws relating to preventive detention.

Any procedure prescribed under any validly enacted law cannot be held void till the time it does not come in conflict with Article 22 (4) to (7).

In conclusion, the Court held that Articles 19, 21 and 22 are mutually exclusive and Article 19 was not to be applied to a law affecting personal liberty to which Article 21 applies.

A law that affected life and personal liberty could not be declared unconstitutional only on account that it did not follow due process or lacked principles of natural justice. This meant that Article 21, provided no protection against competent legislative action

I.C. GOLAKNATH Vs STATE OF PUNJAB

MANU/SC/0029/1967

FACTS

The Golaknath family had 500 acres of farmland of which the Government held they could keep only a particular amount according to the Punjab Security and Land Tenure Act 1953. The family filed a petition under Article 32 of the Indian Constitution on the grounds that their fundamental rights to acquire property and practice any profession under Article 19 were denied and that the amendment placing the Punjab Act in the schedule was ultra vires.

QUESTIONS OF LAW

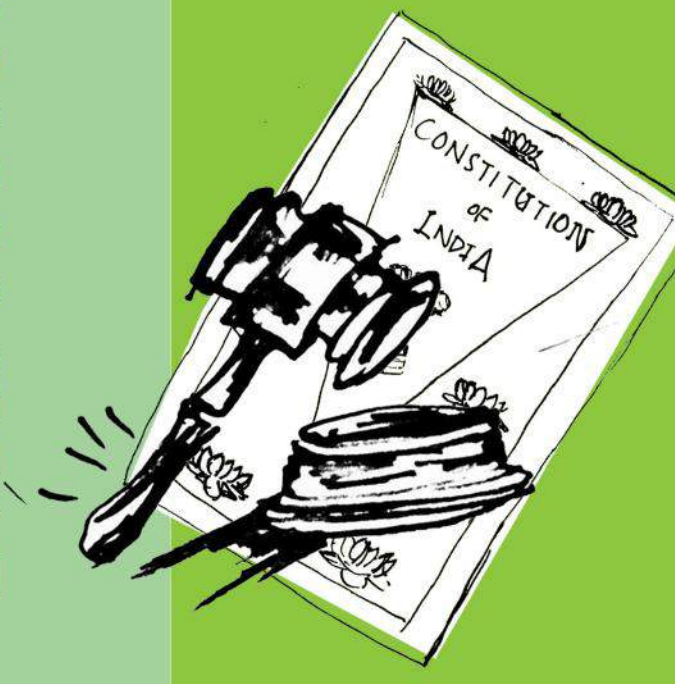
- Whether an Amendment is a "law" under the meaning of Article 13(2), which prohibits laws that infringe fundamental rights?
- Whether fundamental Rights can be amended or not?

HELD

Article 368 of the Constitution merely contains the amending procedure. The amending power of the Parliament emanates from the provisions of Articles 245, 246 and 248, which give it the power to make laws.

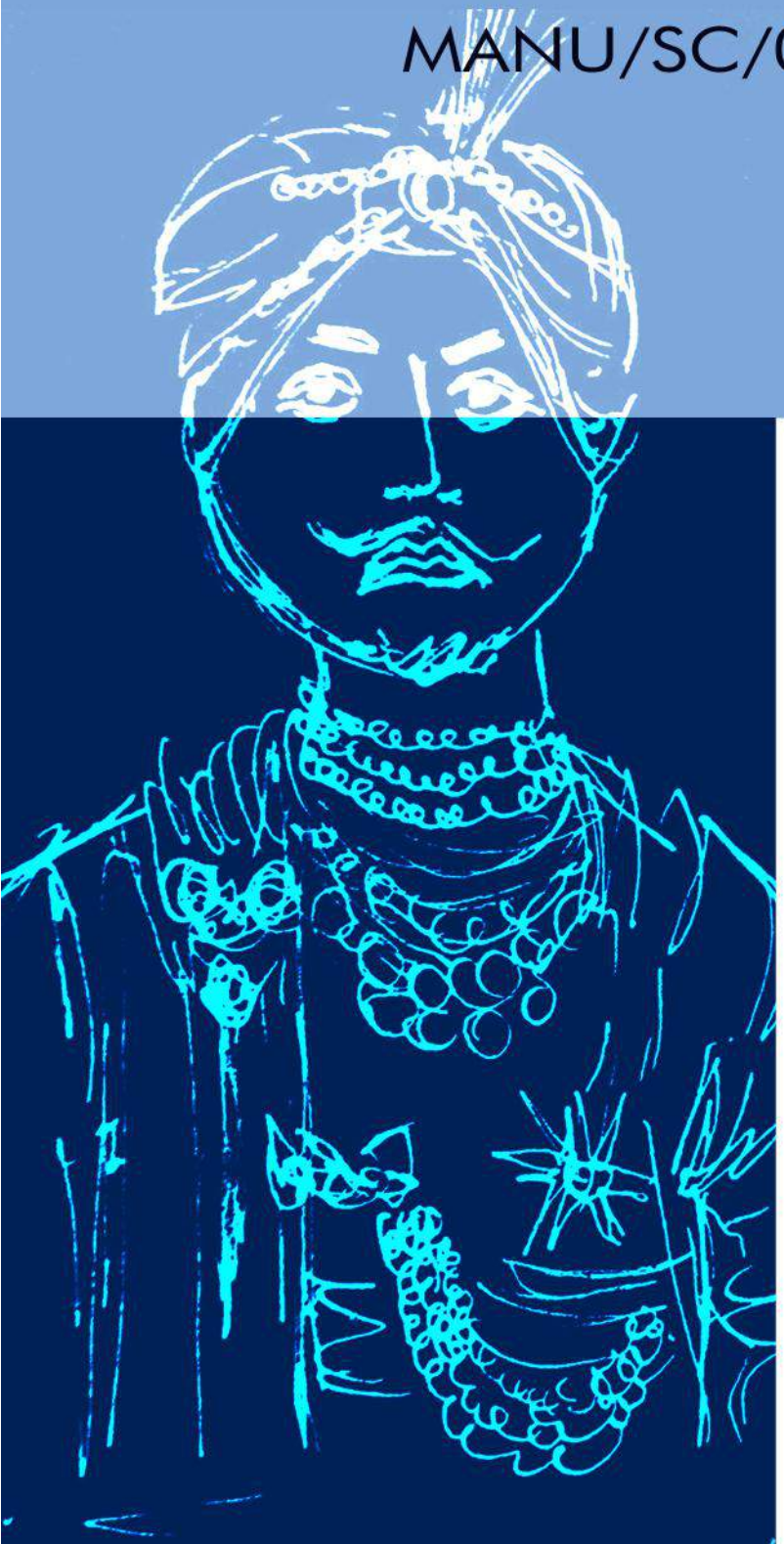
Every amendment is a law, and is supposed to pass the test of validity contained in Article 13(2) of the Constitution. An amendment that takes away or abridges fundamental rights is thus void.

The Court held that "fundamental rights are the primordial rights necessary for the development of human personality. They are the rights which enable a man to chalk out his own life in the manner he likes best. Our Constitution, in addition to the well-known fundamental rights, also included the rights of the minorities, untouchables and other backward communities, in such rights. After having declared the fundamental rights, our Constitution says that all laws in force in the territory of India immediately before the commencement of the Constitution, insofar as they are inconsistent with the said rights, are, to the extent of such inconsistency, void. The Constitution also enjoins the State not to make any law which takes away or abridges the said rights and declares such laws, to the extent of such inconsistency, to be void. As we have stated earlier, the only limitation on the freedom enshrined in Art. 19 of the Constitution is that imposed by a valid law operating as a reasonable restriction in the interests of the public.It will, therefore, be seen that fundamental rights are given a transcendental position under our Constitution and are kept beyond the reach of Parliament."



H.H Maharajadhiraja Madhav Rao vs Union of India

MANU/SC/0050/1970



BACKGROUND

Over 48 per cent of the area of pre-Independent India and around 28 per cent of the population were made up of princely states.

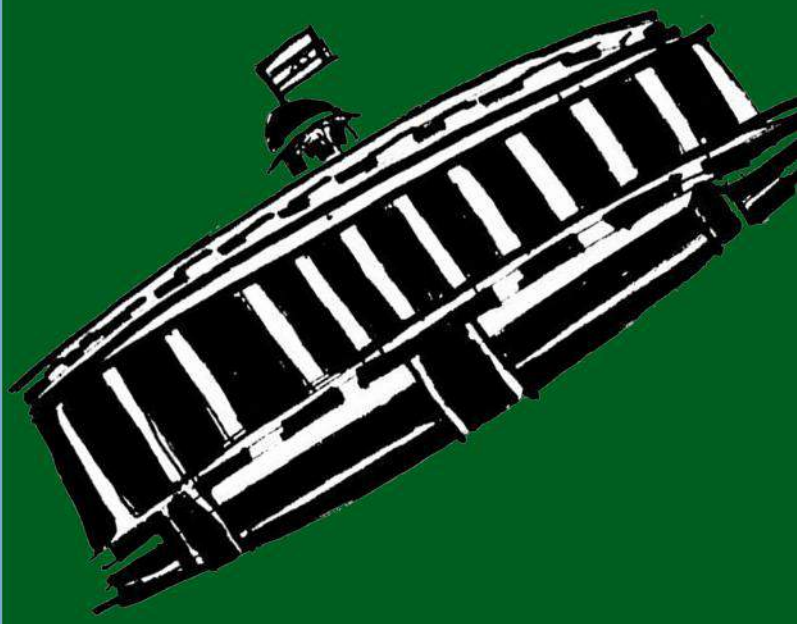
After Independence, these states were given the option to accede to India or Pakistan or remain independent. In return for integrating with India, the princes were to be paid a Privy Purse.

The motion to abolish Privy Purses, and the official recognition of the titles, was brought before the Parliament in 1970. It passed in Lok Sabha but was defeated by one vote in the Rajya Sabha.

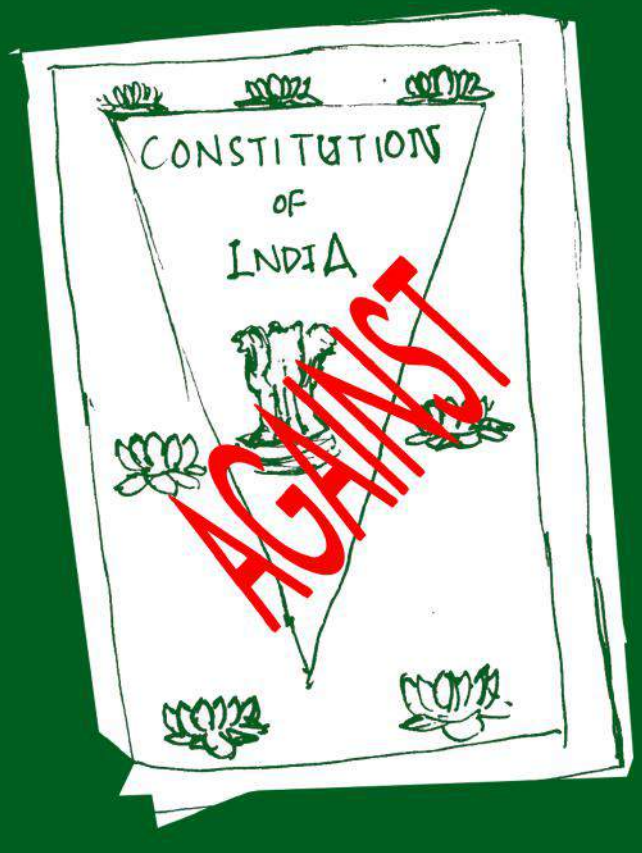
A few hours later the then President of India, V. V. Giri signed an instrument withdrawing recognition of all the Rulers. This order was challenged in the Supreme Court of India.

Writ petitions were filed under Article 32 questioning the orders of the President and asking the Court to declare the notification abolishing privy purses as being against the Constitution and void.

The petitioners' contention was that the abolishing of privy purses amounted to deprivation of property and personal liberty. They also contended that the Government had acted in breach of fiduciary duty.



Motion to Abolish Privy Purses



QUESTIONS OF LAW

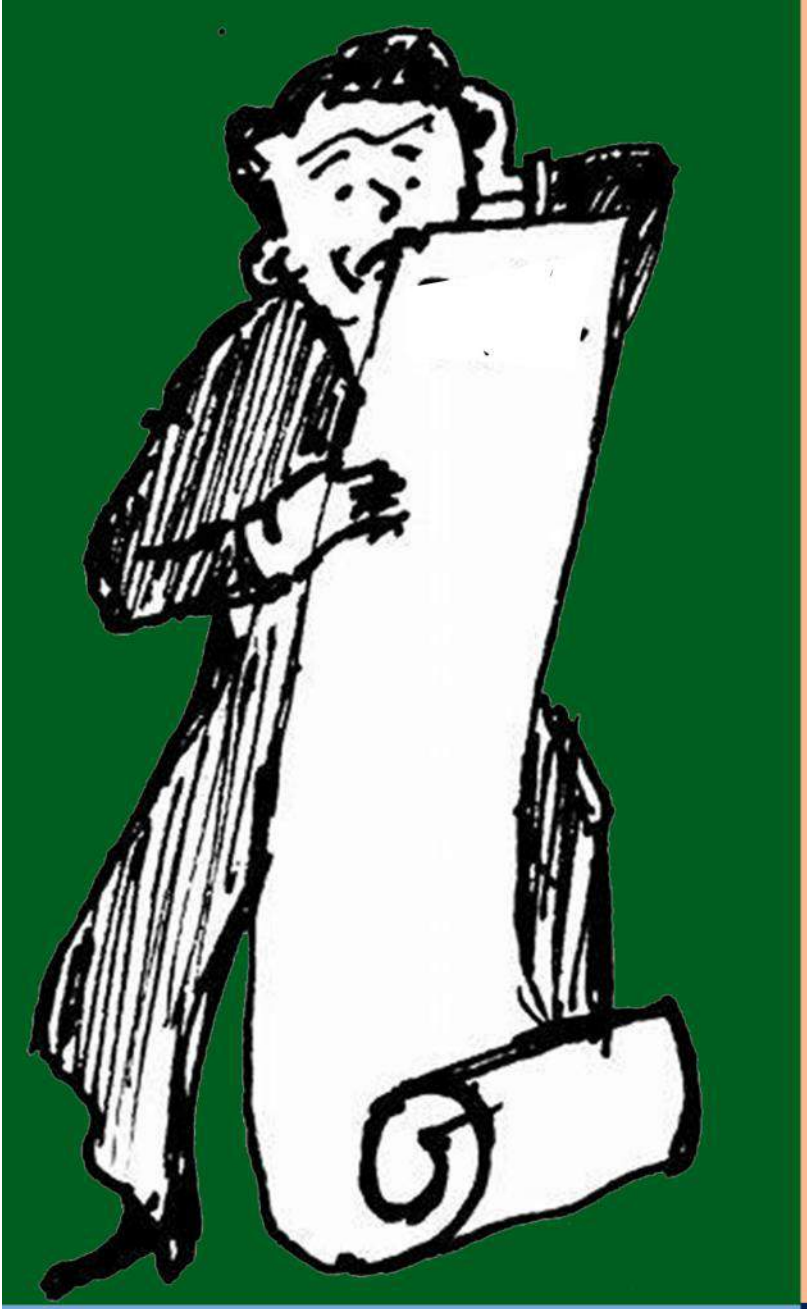
The first question of law lies upon the validity of the action of the President.

The second question of law was whether the Government acted in exercise of its sovereignty and whether this under Article 363, puts a bar on the Court from interfering to provide relief of any kind.

HELD

In first addressing the question of whether the Court had jurisdiction to try such a case and whether the Government could act in exercise of having a paramount power, the Court held,

"There can be no paramountcy against a citizen of India and the Rulers today are not potentiates they were. They are citizens of India like other citizens albeit with some privileges and privy purses which other citizens do not get. That is an accident of history and with the concurrence of the Indian People in their Constituent Assembly. The power that has been exercised against them must, therefore, be justified under the Constitution and the laws and not by invoking a nebulous doctrine of paramountcy."



Commenting on the act of the President the Court said that the President had acted ultra vires the Constitution. When, in the instant case, the Parliament refused to amend the Constitution, the President's power did not extend that far by executive action. The attempt to remove Articles 291, 362 and 366(22) from the Constitution, without a hearing to the Rulers was in breach of the accepted principles of natural justice.

Talking about the supremacy of the Constitution the Court finally said,

"We further hold that the President is not invested with any political power transcending the Constitution, which he may exercise to the prejudice of citizens. The powers of the President arise from and are defined by the Constitution."

Kesavananda Bharati vs. State of Kerala

MANU/SC/0445/1973

FACTS

Swami Sri HH Sri Kesavananda Bharati, head of the "Edneer Mutt" challenged the attempts of the Kerala government under two State Land Reform Acts to add restrictions to the management of its property. A petition was filed under Article 26, concerning the right to manage religiously owned property without Government interference.

The Constitution was amended in 1971-72 which resulted in the following Acts being inserted into the Ninth Schedule:-

- The Kerala Land Reforms (Amendment) Act, 1969 (Kerala Act 35 of 1969).

- The Kerala Land Reforms (Amendment) Act, 1971 (Kerala Act 25 of 1971).

The petitioner then urged additional grounds and the amendment of the writ petition in order to challenge the Constitutional amendments.

QUESTIONS OF LAW

What is the extent of the amending power conferred by Article 368 of the Constitution, apart from Article 13(2) (puts restrictions upon the State from making any laws that abridge fundamental rights), on Parliament?

HELD

The Supreme Court reviewed the decision in Golaknath v. State of Punjab, and considered the validity of the 24th, 25th, 26th and 29th amendments. The case was heard by a Constitutional bench of 13 judges. In a sharply divided verdict, by a margin of 7-6, the Court held that while the Parliament has "wide" powers, it did not have the power to destroy or emasculate the basic elements or fundamental features of the Constitution.

- Golaknath v. State of Punjab, AIR 1967 SC 1643 (which had held that fundamental rights were beyond the amending powers of Parliament) was overruled.

- The Constitution (Twenty-fourth Amendment) Act, 1971 (giving power to Parliament to amend any part of the Constitution) was held to be valid.

- Article 368, as amended, was valid but it did not confer power on the Parliament to alter the basic structure or framework of the Constitution. The Court, however, did not spell out in any exhaustive manner as to what the basic structure was except that some judges gave a few examples.The amendment of Article 31C was held invalid.

H.R KHANNA, J:

"Constitution is not a gate but a road. Beneath the drafting of a Constitution is the awareness that things do not stand still but move on, that life of a progressive nation, as of an individual, is not static and stagnant but dynamic and dashful. A Constitution must therefore contain ample provision for experiment and trial in the task of administration. A Constitution, it needs to be emphasised, is not a document for fastidious dialectics but the means of ordering the life of a people."

S.M. SIKRI C.J:

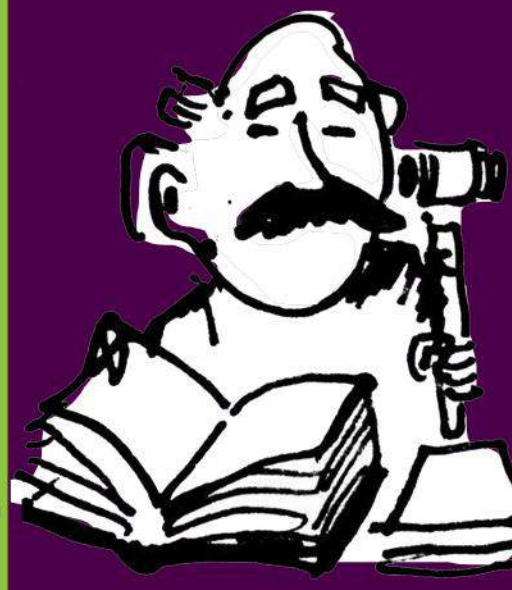
"Every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same. The Basic Structure may be said to consist of the following features:

- Supremacy of the Constitution;
- Republican and Democratic forms of Government;
- Secular character of the Constitution;

- Separation of powers between the legislature, the executive and the judiciary;

- Federal character of the Constitution.

The above structure is built on the basic foundation, i. e. the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed."



Ediga Anamma vs. State of Andhra Pradesh

MANU/SC/0128/1974

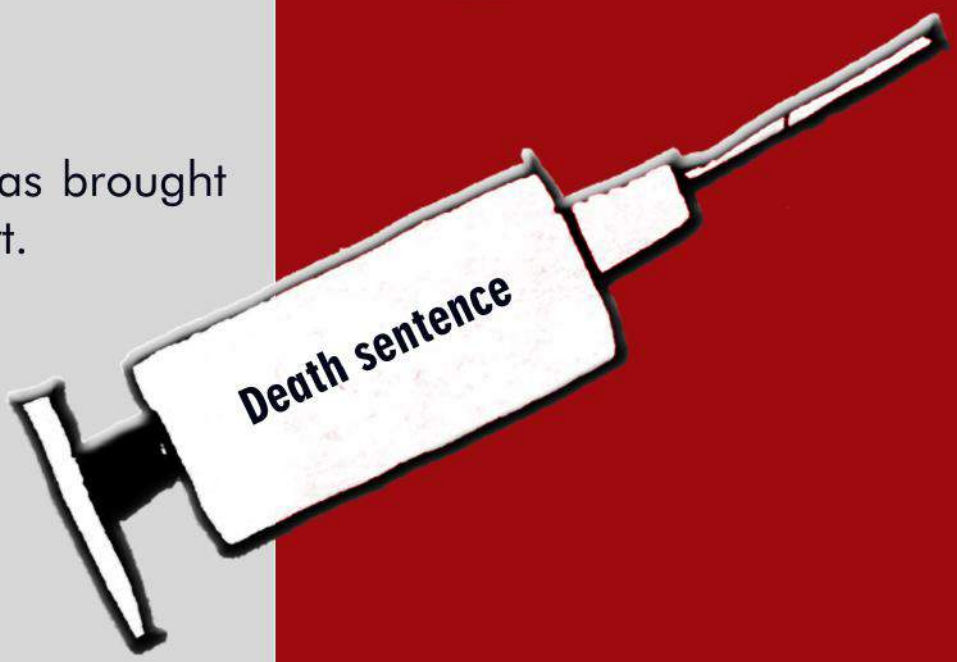
FACTS

The appellant in this case was convicted and sentenced to death for the murder of a woman and her child.

According to the admitted facts, the appellant had illicit relations with a man who was also involved in a relationship with the deceased.

On discovering this fact, the appellant murdered the woman and her daughter. The Trial Court found the appellant guilty and awarded the death sentence, which was subsequently confirmed by the Andhra Pradesh High Court.

A criminal appeal was brought to the Supreme Court.



QUESTION OF LAW

The question in the present case was regarding the conviction and death penalty awarded by the lower Court and whether any general social pressures concerning the case favored a lesser punishment.

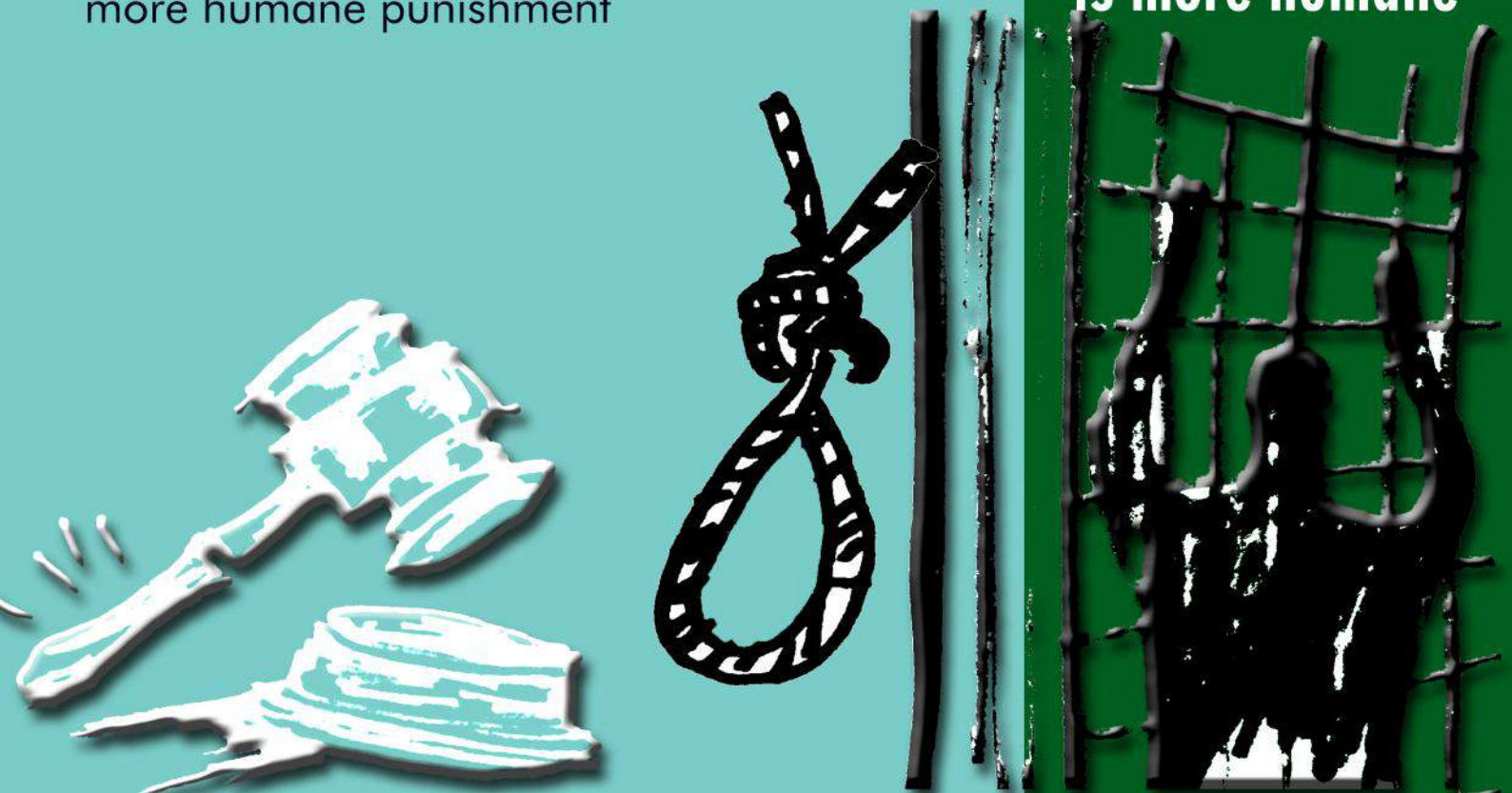
HELD

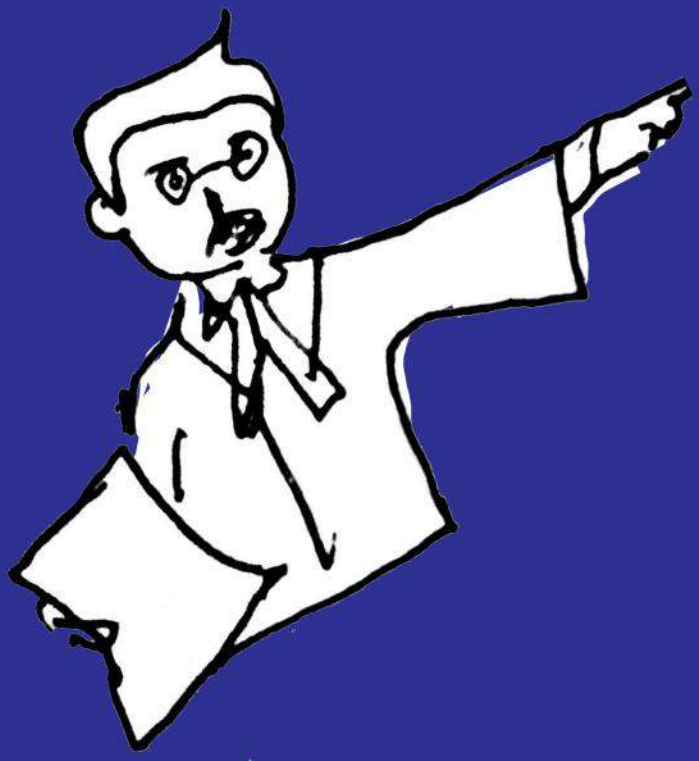
The Supreme Court upheld the conviction of the appellant.

The Court said that it was important to examine the social and personal factors concerning the convict while deciding the sentence in order to balance the reformatory and the deterrent roles of any punishment.

Without being completely in favour of the abolition of the death penalty, the Court acceded that a life sentence was a more humane punishment

Life Imprisonment is more humane





Mitigating factors, to be considered whilst sentencing:

- Whether the accused is too young or too old.

- Whether the accused labored under socio-economic, psychic compulsions, which do not attract a legal exception or convert the offence into a lesser one.

- Whether any general social pressures concerning the case favoured a lesser punishment.

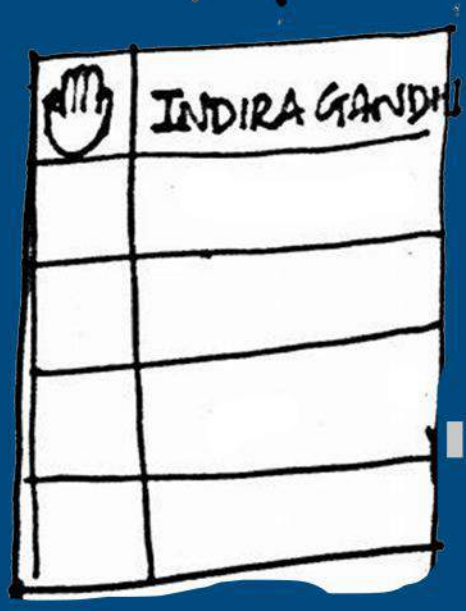
- Whether the co-accused was awarded a lesser sentence of life imprisonment

- Whether the accused had acted suddenly under instigation and without premeditation.

In the present case, the Court considered the appellant's gender and young age as mitigating circumstances along with the fact that she was the mother of a young boy and was expelled from her conjugal home. The Court held that, while these factors were individually inconclusive, when considered together, they warranted commutation of the death sentence. The Court commuted the appellant's death sentence to life imprisonment.

Smt. Indira Nehru Gandhi
vs
Shri Raj Narain & Anr

MANU/SC/0304/1975



Winner

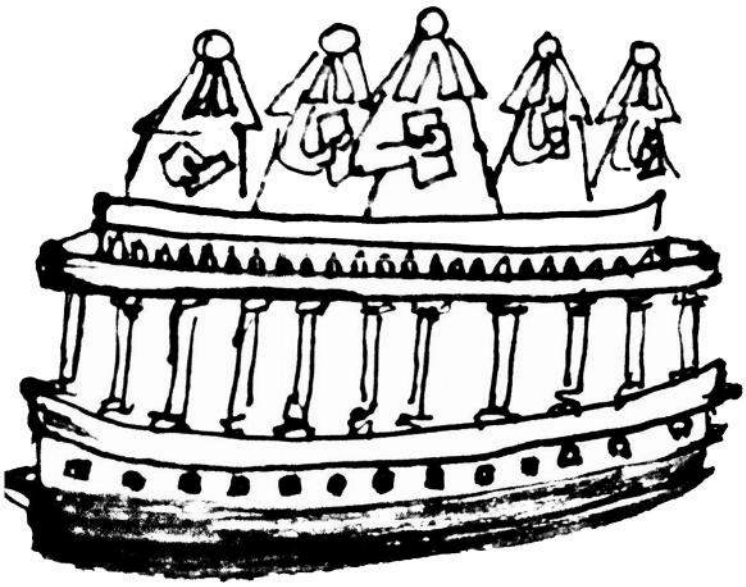
↓

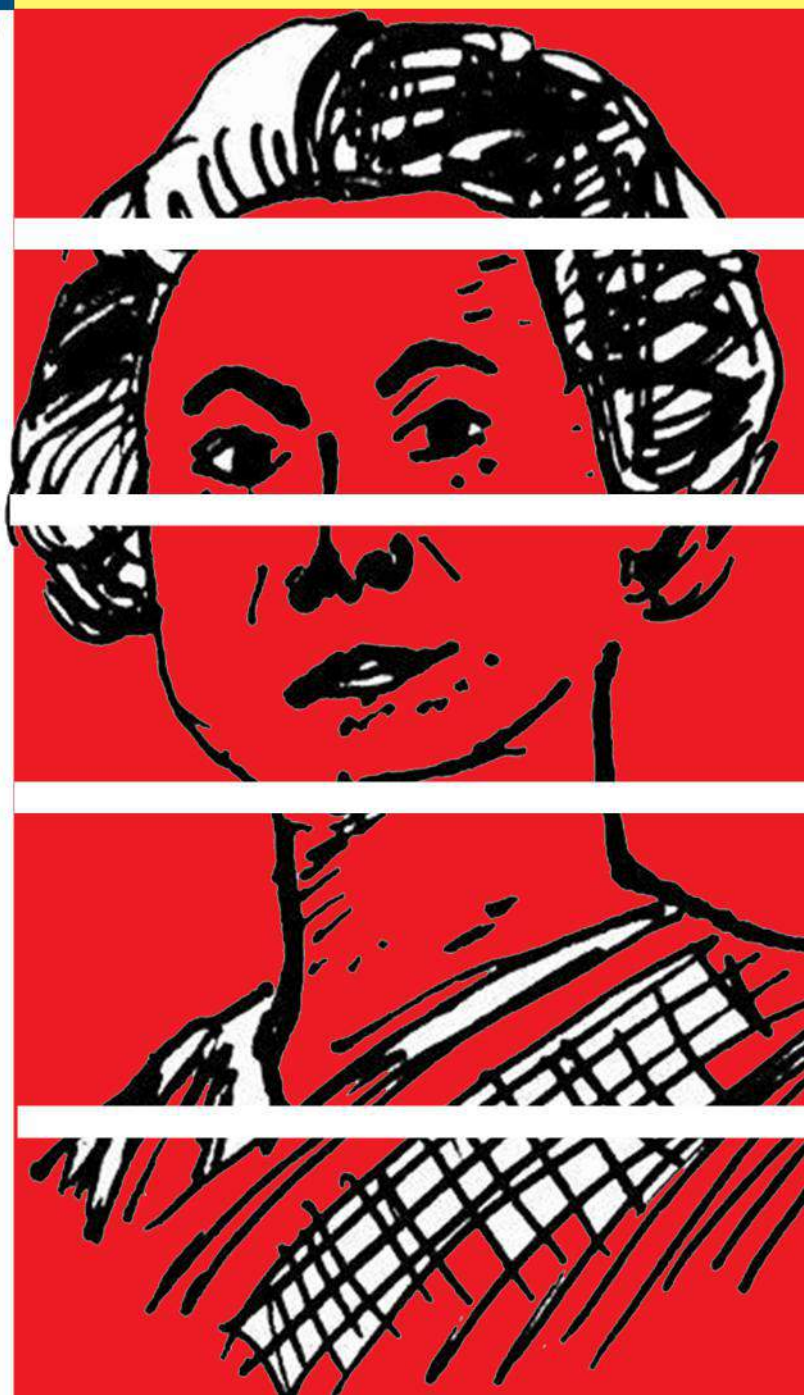
Invalidated Election

FACTS

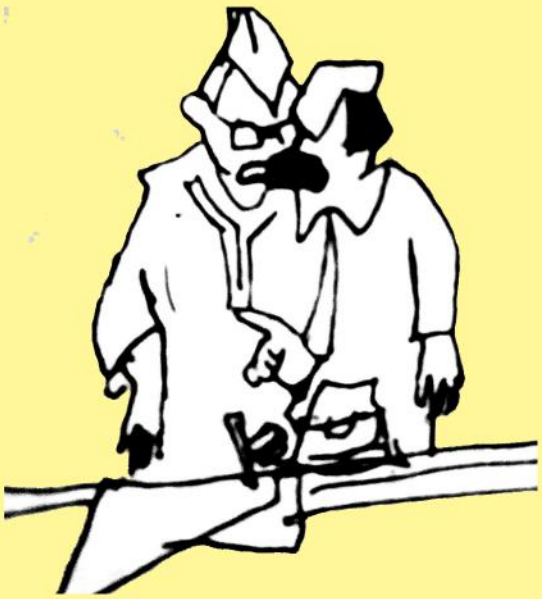
This case is regarding an appeal against the decision of the Allahabad High Court invalidating Smt. Indira Gandhi's election on the ground of there being corrupt practices. During this time, Parliament passed the 39th Constitutional Amendment, which added a new Article 329A to the Constitution of India.

Article 329A (clause 4) stated that the election of the Prime Minster and the Speaker cannot be challenged in any Court in the country. It can instead be challenged before a committee formed by the Parliament itself.





QUESTIONS OF LAW

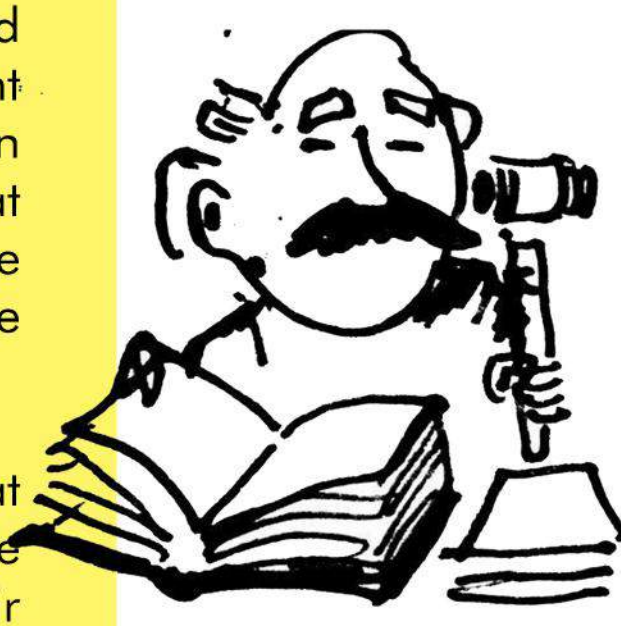


The main question involved in the case was of the validity of clause 4 of Article 329A. The question was whether clause (4) of the said Article was violative of the principle of equality as envisioned in the Constitution. And whether this clause destroyed judicial review.

HELD

The clause was struck down by the Court on the ground that it violated free and fair elections which was an essential feature that formed the Basic Stucture of the Indian Constitution. The exclusion of judicial review in election disputes in this manner resulted in damaging the Basic Structure.

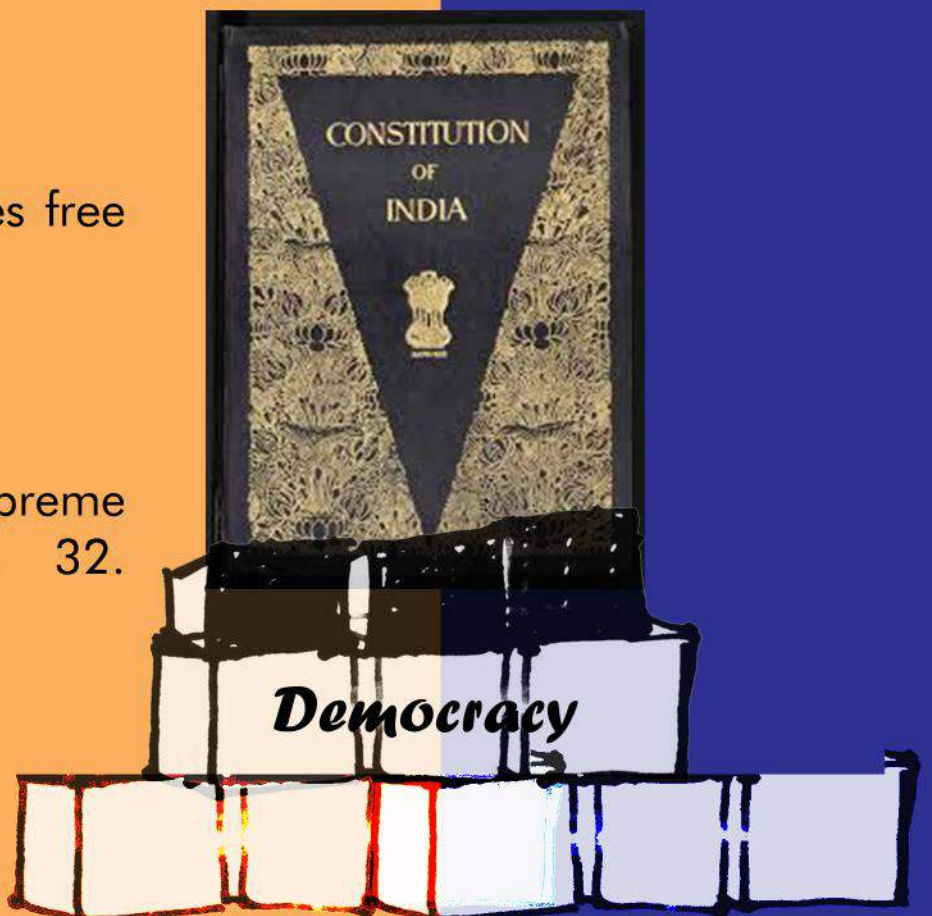
The Supreme Court held that clause 4 of Article 329A was unconstitutional and void on the ground that it was an outright denial of the Right to Equality enshrined in Article 14. It was held by the Court that these provisions were arbitrary and were calculated to damage and destroy the Rule of Law.



Justice H.R. Khanna held, that democracy is the Basic Structure of the Constitution and it includes free and fair elections which cannot be violated.

The Supreme Court in this case, added the following feature as 'Basic Features" to the list of basic features laid down in Keshavananda's Case. These are:

- Rule of Law
- Democracy, that implies free and fair elections
- Judicial Review
- Jurisdiction of the Supreme Court under Article 32.

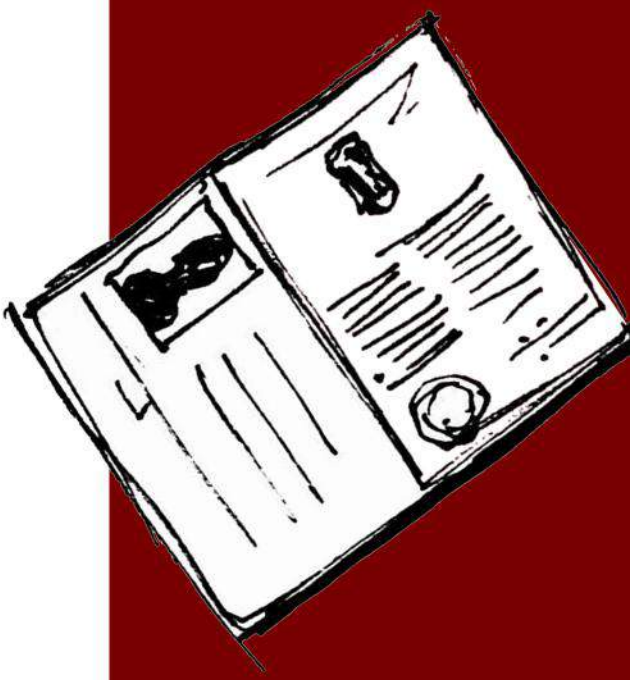


Maneka Gandhi vs Union of India

MANU/SC/0133/1978

The Regional Passport Office, Delhi sent Maneka Gandhi a letter asking her to submit her passport within seven days. The letter detailed that the Government of India had decided to impound her passport on the grounds of 'public interest'.

Thereafter, Maneka Gandhi requested details and the 'Statement of Reasons' on which the Regional Passport Officer had impounded her passport. To this she was told by the Ministry of External Affairs, that there were orders to not issue her a copy of the Statement of Reasons. She then filed a writ petition under Article 32 of the Constitution challenging the order on the grounds that it violated Article 21 of the Constitution.



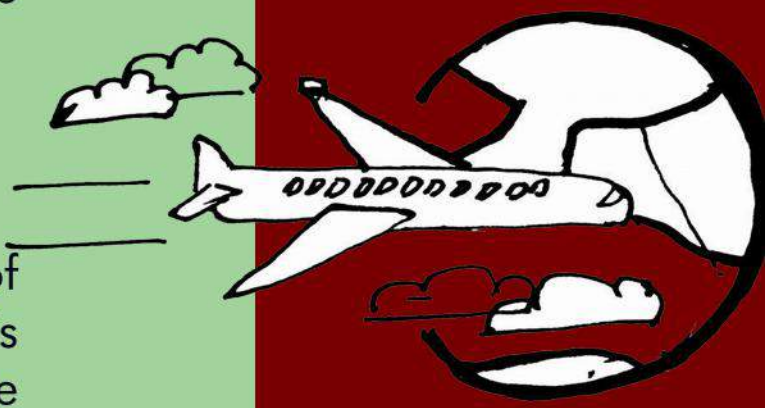
QUESTIONS OF LAW

- Whether right to go abroad is a part of the right to personal liberty guaranteed under Article 21?

- Whether the Passport Act prescribes a 'procedure' as required by Article 21 before depriving a person from the right guaranteed under the said Article?

- Whether Section 10(3) (c) of the Passport Act is violative of Article 14, 19(1) (a) and 21 of the Constitution?

- Whether the impugned order of the Regional Passport Officer is in contravention of the principle of natural justice?



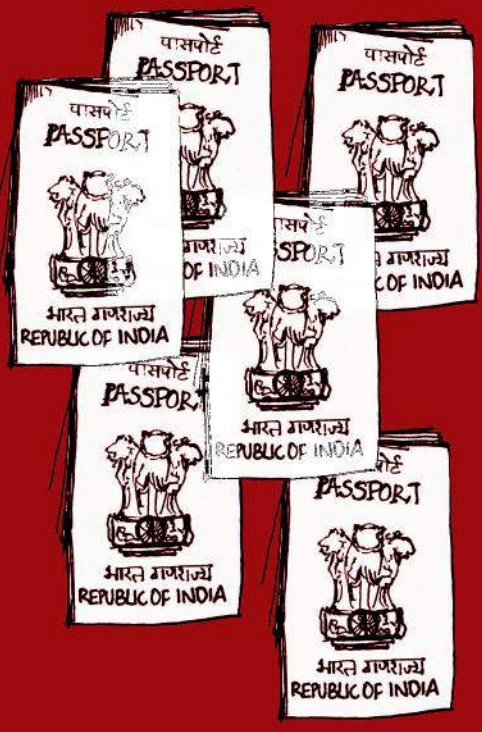
HELD

Procedures depriving individuals of their right to life and liberty ought to be fair and reasonable. The Court held: "The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. The question whether the procedure prescribed by a law which curtails or takes away the personal liberty guaranteed by Article 21 is reasonable or not has to be considered not in the abstract or on hypothetical considerations like the provision for a full-dressed hearing as in a Courtroom trial, but in the context, primarily, of the purpose which the Act is intended to achieve and of urgent situations which those who are charged with the duty of administering the Act may be called upon to deal with." The Court in this case held that, the right to travel abroad falls within the expression "personal liberty" and is thus a fundamental right under Article 21 of the Constitution.

As regards Section 10(3) (c) of the Passport Act, 1967 which reads: "If the passport authority deem it necessary so to do in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with the foreign country, or in the interests of the general public", the Court while acknowledging the validity of the section held that it should be used sparingly and with great care and circumspection.

With respect to the power of passport authorities to decline to furnish reasons for impounding the passport, the Court held that the law cannot permit the exercise of such a power to keep reasons undisclosed if the sole reason for doing so is to keep reasons away from Judicial scrutiny.

The Court held that Section 10(3)(c) of the Passport Act is valid, however, the question that has to be considered is that whether the order made under it is invalid in that whether it is contravening a fundamental right. Where an impounding order is made under the Section with the aim of abridging freedom of speech and expression or the right to carry on a profession, that order would stand invalid.



Recognizing the interplay of Articles 21, 19 and 14 the Court held that Article 21 does not exclude Article 19 and even the law prescribing the procedure for deprivation of personal liberty of a person, will have to stand the test of both Articles 19 and 14.

Nandini Sathpathy
vs.
PL Dani
MANU/SC/0139/1978

FACTS OF THE CASE

The former Chief Minister of Orissa Nandini Sathpathy, was instructed to appear before the police in Cuttack with regard to a vigilance case against her. She was provided with questions in relation to her alleged acquisition of disproportionate assets. She thereafter exercised her right under Article 20(3) of the Constitution and refused to answer the questions.

Article 20(3)

guarantees that no person accused of any offence shall be compelled to be a witness against oneself.

Upon her refusal to answer questions, the Deputy Superintendent of Police filed a complaint against her for refusal to answer a public servant authorized to question as provided under Section 179 of the Indian Penal Code. She challenged a magistrate's decision to issue her summons of appearance stating that Article 20(3) and the immunity under Section 161(2) of the Criminal Procedure Code (not bound to answer questions that expose her to a criminal charge) were wide enough to shield her. When the High

Court refused to entertain her petition, she appealed to the Supreme Court.

QUESTIONS OF LAW

- What is the scope and meaning of Article 20(3) in the Constitution of India as regards the term "accused" and "compelled to be a witness against oneself"?
- What is the meaning and scope of Section 161(2) of the Criminal Procedure Code?
- Does Mens rea form a necessary component of section 179 I.P.C., and, if so, what is its precise nature? Can a mere apprehension that any answer has a guilty potential salvage the accused or bring it into play?

HELD:

The Court took a considerably wide view of the scope of Article 20(3) holding that its prohibitive scope extends not only to the procedure in Court but also at the stage of investigation.

The ban on self-accusation is not confined to the offence regarding which interrogation is made, but extends to other offences about which the accused has reasonable apprehension of implication from his answer.

Guarding against involuntary self-crimination in the face of pressure from police officers, the Court found "compelled testimony" violative of Article 20(3). It read,

"compelled testimony" to mean evidence procured not only by physical threats and violence but also as psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods.

It also held that legal perils following upon refusal to answer, or answer truthfully, cannot be regarded as compulsion within the meaning of Article 20(3)

The Court suggested, the presence of a lawyer during the course of interrogation, as a solution to the problem of self-crimination secured through secrecy or coercion.

Mens rea is an essential ingredient of Section 179 of the IPC (refusing to answer public servant authorized to question) Although an offence cannot be made under it in case there is an apprehension of implication on answering the questions put forth by the public authorities, an accused cannot deny to do the same on unreasonable and vague apprehensions and possibilities. The Court held that an accused was bound to answer where there is no clear tendency to criminate.

JUSTICE adda

manupatra®
Power Your Legal Research™

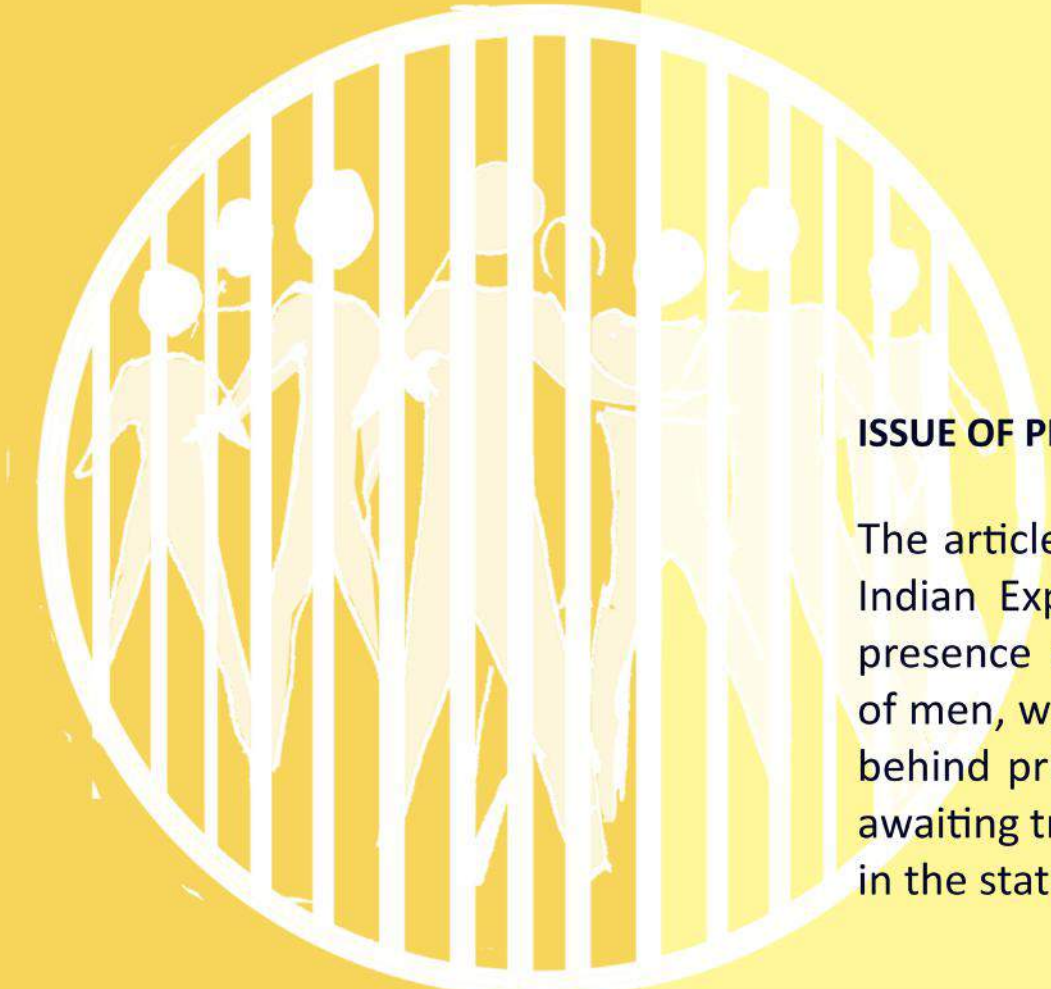
manupatra®
Power Your Legal Research™

JUSTICE adda

Hussainara Khatoon vs. Home Secretary, State of Bihar

MANU/SC/0119/1979

MANU/SC/0121/1979

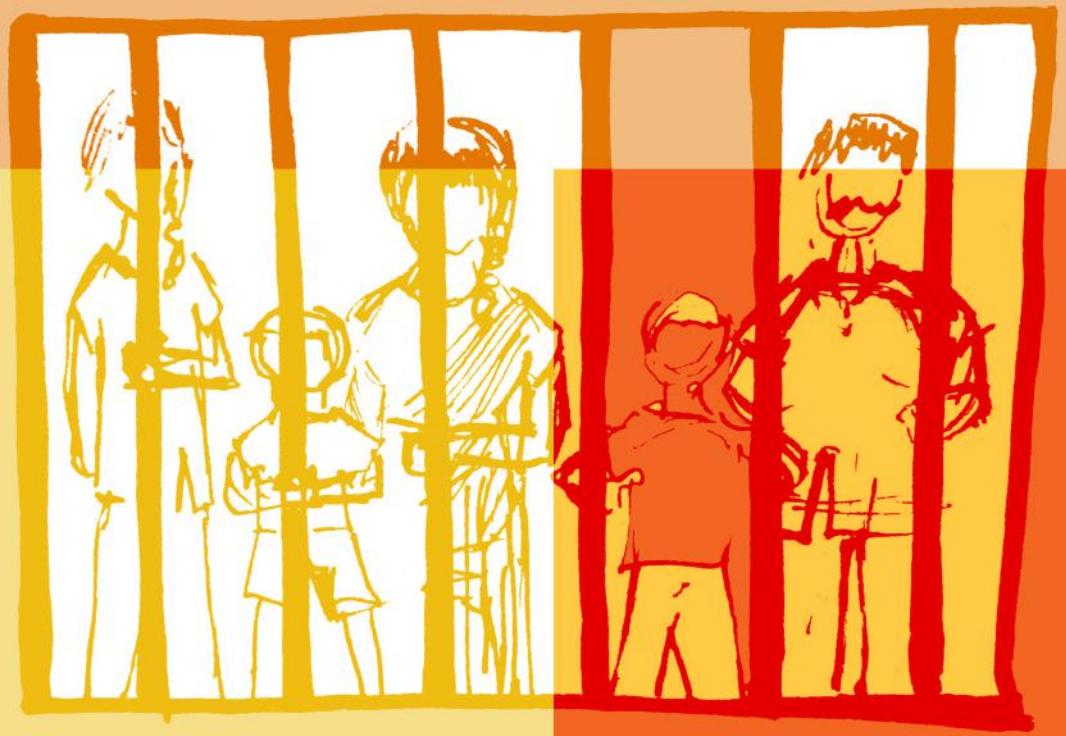


ISSUE OF PRETRIAL DETENTION

The articles published in the Indian Express unveiled the presence of a large number of men, women and children behind prison bars for years awaiting trial in Courts of law in the state of Bihar.

QUESTIONS OF LAW

The question of law was on the fundamental rights of the accused and the duty of the State as expressed in Article 39A of the Constitution concerning free legal services to the poor and the denial of which in a delayed trial system would mean the denial of an individual's life and personal liberty as enshrined in Article 21 of the Indian Constitution.

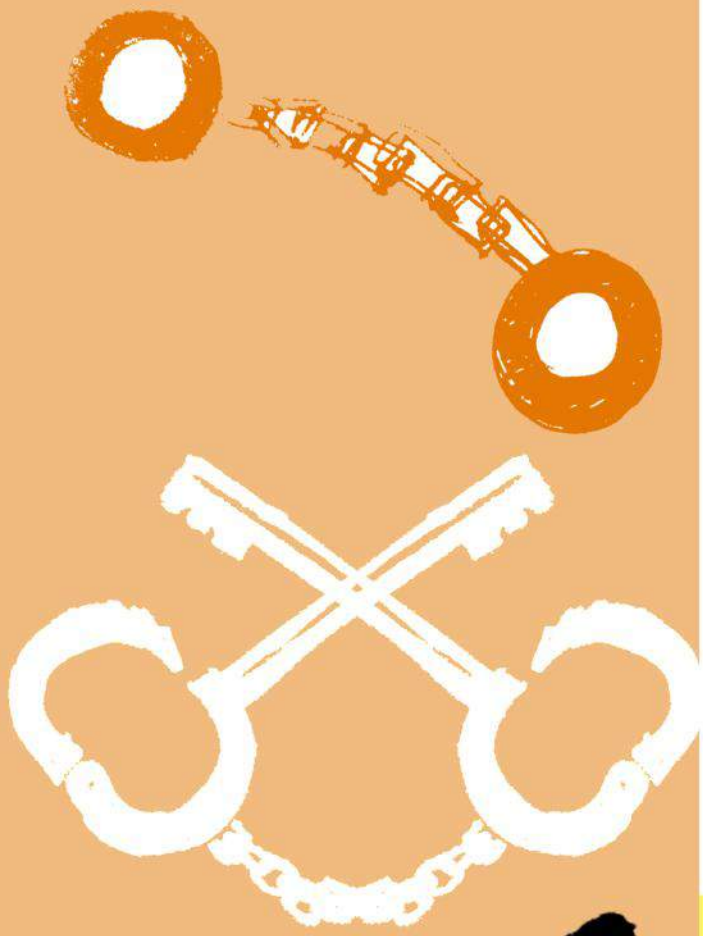


HELD

According to the Court the incarceration of these individuals for long periods of time prior to the commencement of their respective trials resulted in denial of basic freedoms and thus amounted to a gross violation of human rights.

The Court found the legal and judicial system working to the disadvantage of the poor and indigent. It gave a call for a restructuring of the Indian judicial system.

ON BAIL BONDS

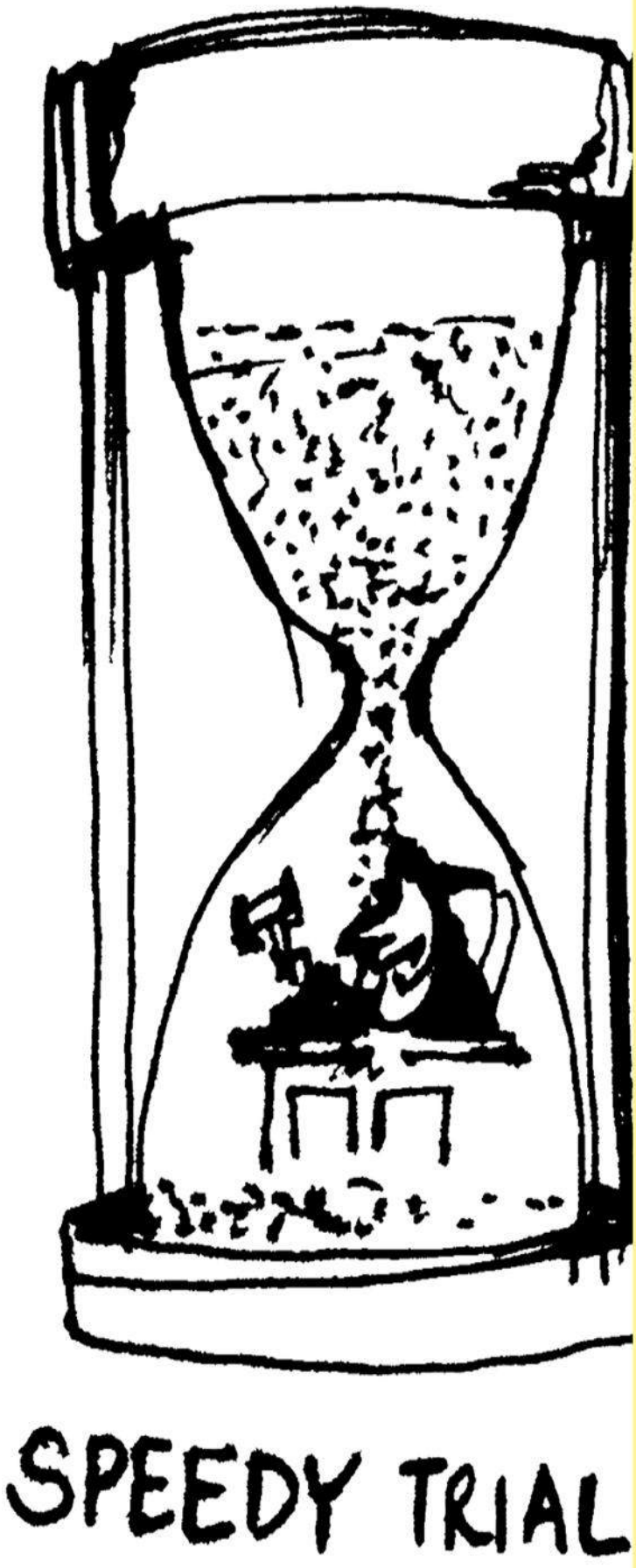


A highly unsatisfactory system of bail was found to be responsible for keeping justice beyond the reach and grasp of the poor. The system was excessively harsh on the poor and worked only to the advantage of the wealthy. The poor could not secure their release by furnishing bail due to the huge amounts fixed by the Courts.

The Court gave a call to abandon the antiquated practice of pretrial release only against bail with sureties. The Court also endorsed bail on personal bonds without monetary obligations.

"The bail system, as it operates today, is a source of great hardship to the poor and if we really want to eliminate the evil effects of poverty and assure a fair and just treatment to the poor in the administration of justice, it is imperative that the bail system should be thoroughly reformed so that it should be possible for the poor, as easily as the rich to obtain pretrial release without jeopardizing the interest of justice."

ON SPEEDY TRIALS



According to the Court, the state was duty bound to enforce the fundamental right of the accused to speedy trial by taking necessary steps such as setting up Courts, strengthening the investigative machinery, appointing more judges etc. The introduction of a comprehensive legal services program was found to be the need of the hour. Such a program was seen as a solution to the problem of the inability of the poor to obtain bail or engage a lawyer on account of their poverty.

.

The Court also invoked Article 39A of the Constitution.

"It is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer."

On the basis of the above reasoning, the Court pronounced the release of the under trial prisoners, mentioned in the two issues of the Indian Express on personal bonds without monetary obligation.

SUNIL BATRA VS. DELHI ADMINISTRATION

MANU/SC/0265/1979

FACTS

In the instant case, a petition was admitted by the Court arising out of a letter written by Sunil Batra, a convict in the Tihar Jail to one of the judges alleging that a warden had caused a brutal bleeding injury to another convict named Prem Chand.

QUESTION OF LAW

The question before the Court was related to the human rights of prisoners in jail and the continued extension of fundamental rights to prisoners despite conviction.

HELD

On the role of the Court:

The Court liberalised the procedural limitations of the writ of Habeas Corpus by recognising the right of the prisoner against excesses committed by jail authorities. Acknowledging the activist rule making role of the Courts, it said that *"The Court is not a distinct abstraction omnipotent in books but an activist institution which is the cynosure of the public hope"*

On the status of the prisoners:

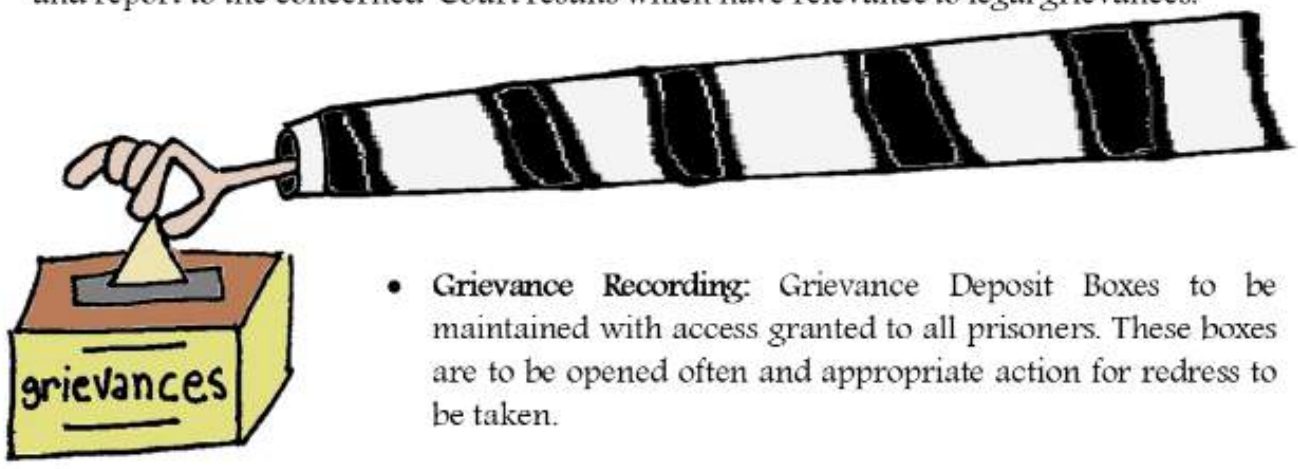
The Bench laid down important principles regarding the status of the prisoners. The Court, in its decision also relied on The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the U.N General Assembly (Resolution 3452 of 9 December 1975). The Constitution Bench upheld the fundamental rights of the prisoners and held that:

"Are prisoners persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanization and to repudiate the world legal order, which now recognises rights of prisoners in the International Covenant of Prisoners' Rights to which our country has signed assent. In Batra's case, this Court has rejected the hands-off doctrine and it has been ruled that fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration. Our Constitutional culture has now crystalized in favour of prison justice and judicial jurisdiction."

Directives:

Holding that the prisoner Prem Chand was illegally tortured, the Court gave the following clear and binding directives to the State and prison staff in order to ensure the humanisation of jail administration:

- **Supervisory Judicial Role**: Lawyers nominated by the District Magistrate, Sessions Judge, High Court and the Supreme Court to be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. The lawyers so designated are bound to make periodical visits and record and report to the concerned Court results which have relevance to legal grievances.



- **Grievance Recording:** Grievance Deposit Boxes to be maintained with access granted to all prisoners. These boxes are to be opened often and appropriate action for redress to be taken.

- **Judicial Intervention**: Magistrates and sessions judges to personally visit jails, make expeditious enquiries and take suitable remedial action. In appropriate cases, reports shall be made to the High Court and if required, Habeas action to be taken.

- **Judicial Appraisal:** No solitary or punitive cell, no hard labour or dietary change as painful additive, no other punishment or denial of privileges and amenities, no transfer to other prisons with penal consequences, shall be imposed without appraisal from the Sessions judge.

In addition to these, the Court also gave certain recommendations:

- The State to prepare and circulate in Hindi a Prisoner's Handbook to bring about legal awareness of the prisoner's rights. Periodic bulletin board updates regarding improvements programmes and a wall paper for grievance redressal. (Section 61 of Prisoner's Act)

- The State shall take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity community contact and correctional strategies.
- A correctional-cum orientation course for the prison staff inculcating the Constitutional values, therapeutic approaches and tension-free management.
- Free legal services to the prisoner programmes shall be promoted by professional organisations recognised by the Court such as for e.g. Free Legal Aid (Supreme Court) Society.

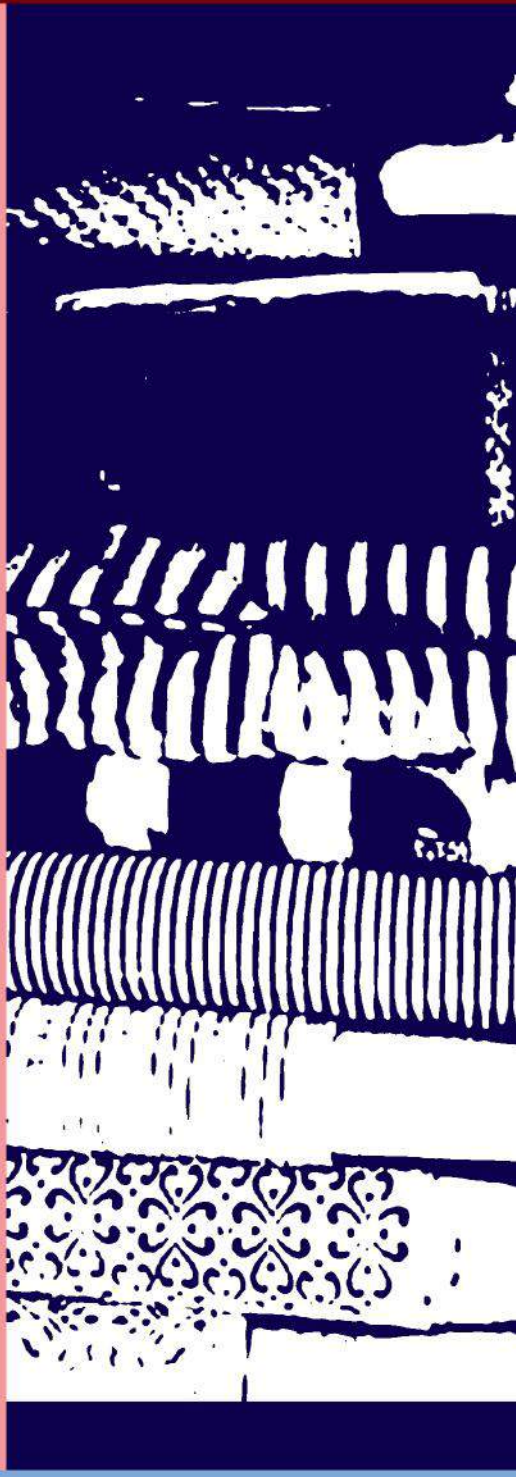
Minerva Mills vs. Union of India

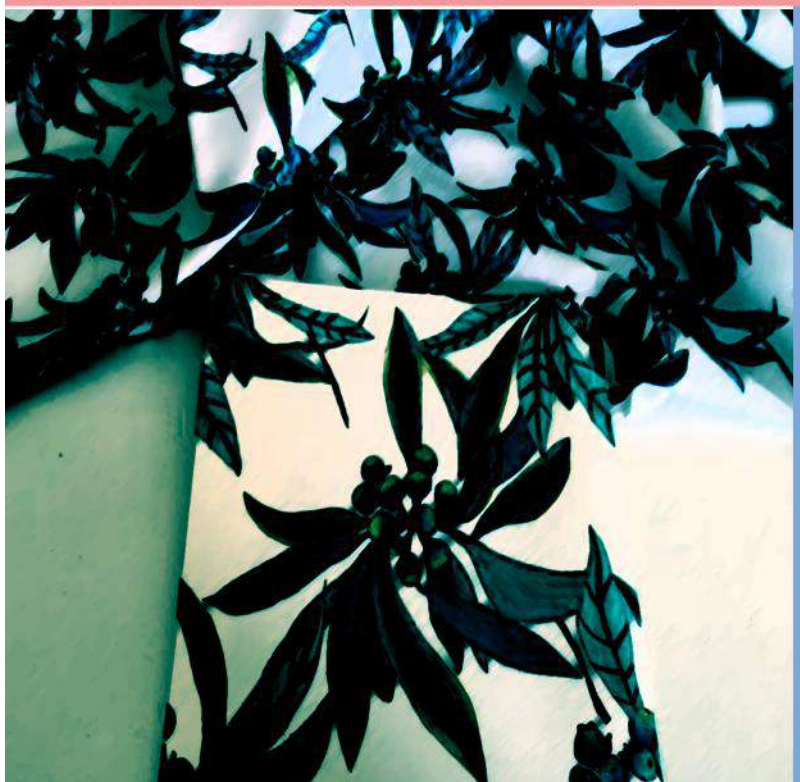
MANU/SC/0075/1980

FACTS

Minerva Mills Ltd. was a private textile company. In August 1970, the Government of India ordered an investigation of the company for low production under the Industries (Development Regulation) Act, 1951. On 19 October 1971, the Government authorized the NationalTextile Corporation Ltd., to take over the management of Minerva Mills on the ground that its affairs were being managed in a manner highly detrimental to public interest. The company was then nationalized under the Sick Textile Undertakings (Nationalization) Act, 1974.

The petitioner challenged the constitutional validity of Sick Textile Undertakings (Nationalization) Act. They also challenged the constitutionality of Sections 4 and 55 of the 42nd Amendment.

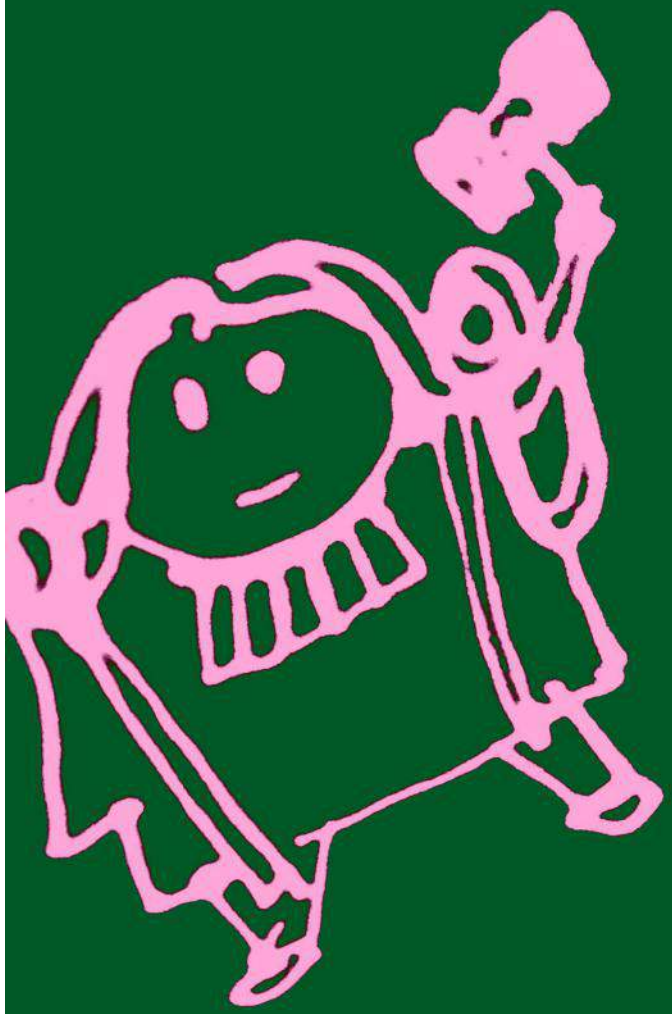




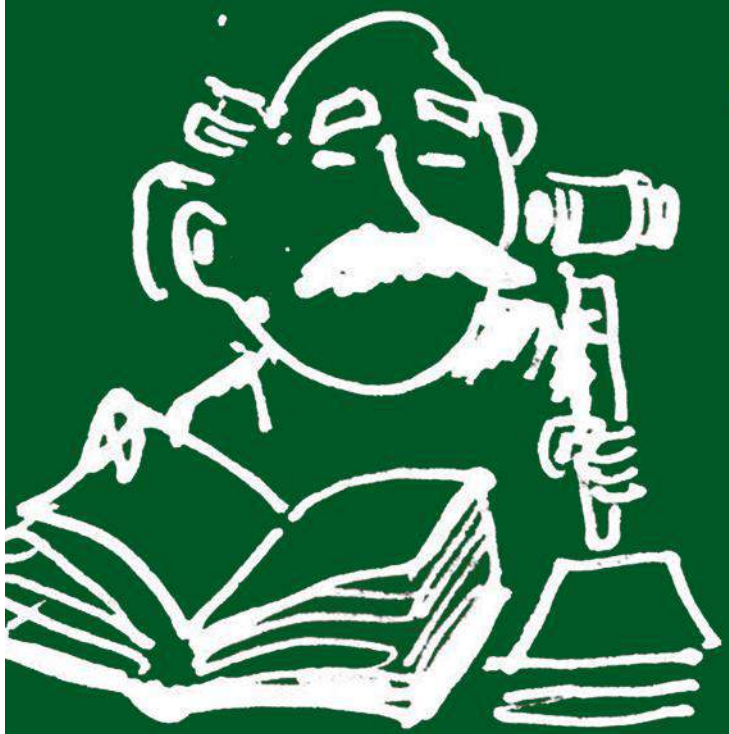
QUESTIONS OF LAW

Whether the amendments introduced by Sections 4 and 55 of the Constitution (42nd Amendment) Act, 1976 damage the basic structure of the Constitution?

HELD



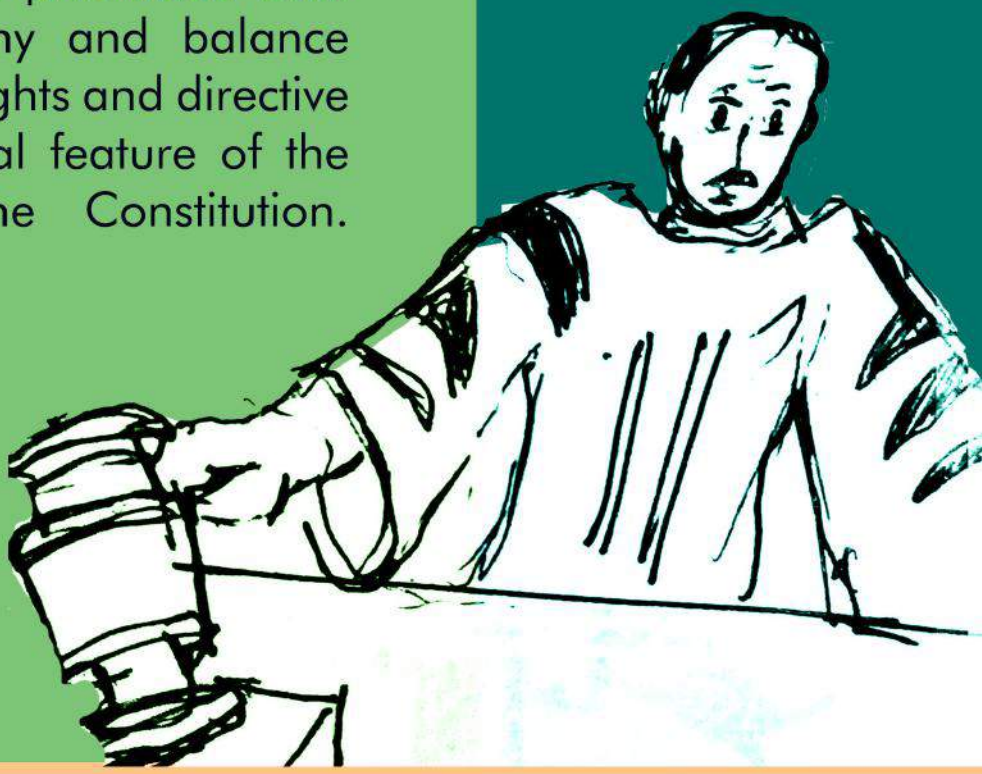
Section 4 and 55 of the Constitution Amendment Act, 1976 introduced a number of changes. Section 4 amended Article 31C while Section 55 inserted Clauses (4) and (5) in Article 368 of the Constitution. Clause 5 purports to remove all limitations on the amending power while clause (4) deprives the Courts of their power to call in question any amendment of the Constitution.



The Supreme Court held both the newly inserted clauses (4) and (5) of Article 368 (inserted vide Section 55 of the 42nd Constitutional Amendment) as unconstitutional and invalid. They were found to transgress the limitations imposed on the parliament's power to amend by the decision of this Court in Keshvanand Bharati case. It held that the Parliament could not extend its amending powers in order to destroy the basic and essential features of the Constitution.

The Court,held "Three Articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Articles 14, 19 and 21"

Part III and IV stand on the same pedestal. None can be prioritized over the other. The harmony and balance between fundamental rights and directive principles is an essential feature of the Basic Structure of the Constitution.



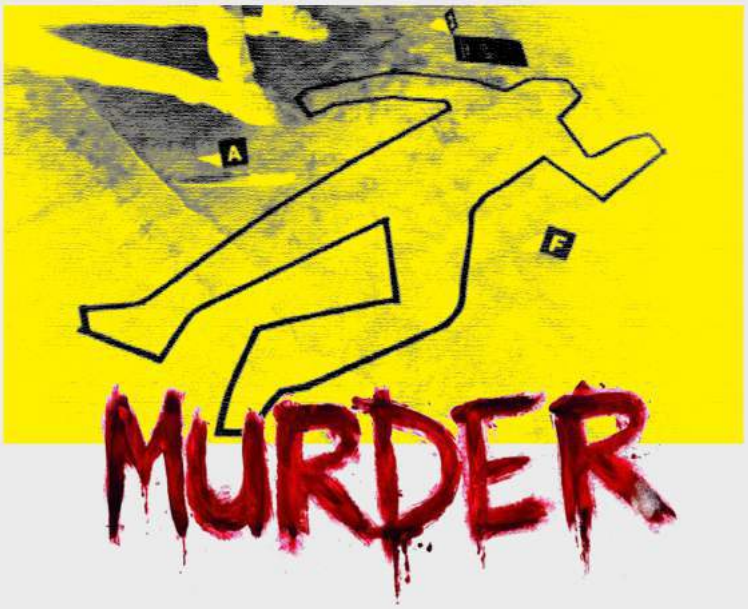
"The Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the Basic Structure of the Constitution."

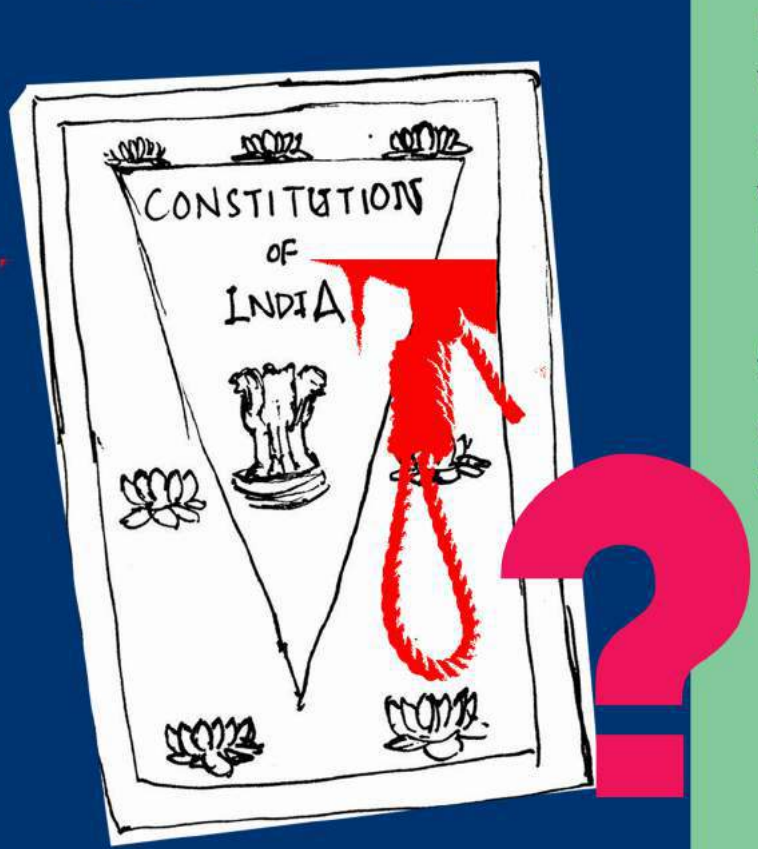
Bachan Singh vs. State of Punjab

MANU/SC/0111/1980

FACTS

Bachan Singh was convicted and sentenced to death for the murder of three persons. The death penalty was upheld by the High Court. Appealing by special leave, he challenged the Constitutional validity of the death penalty provided in Section 354(3) of the Code of Criminal Procedure, 1973. (CrPC)





QUESTIONS OF LAW

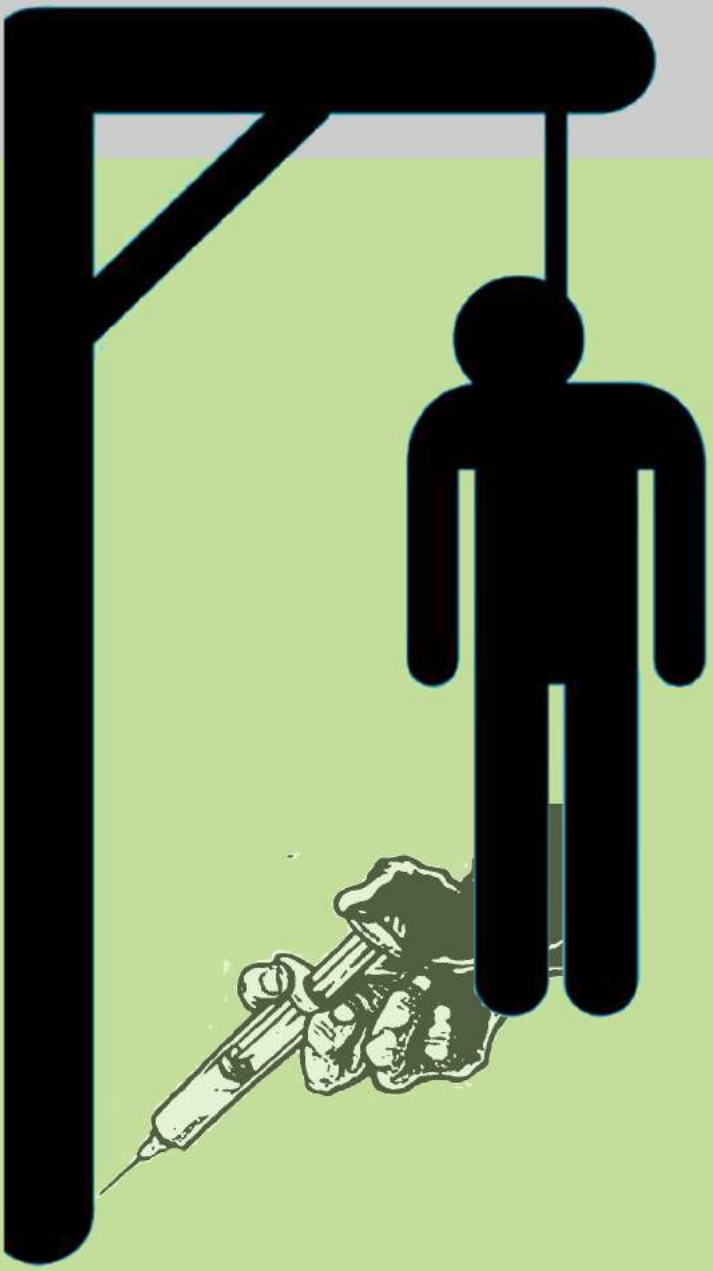
Whether the imposition of death penalty under Section 302 IPC read with Section 354(3) CrPC was arbitrary, unreasonable and unconstitutional and whether the facts found by the lower courts would be considered "special reasons" for awarding the death sentence as is required under Section 354(3) CrPC.

HELD

The Court in the said case dismissed the challenge to the constitutionality of Section 302 of the IPC.

The Court held that
"The six fundamental freedoms guaranteed under Article 19(1) are not absolute rights. Firstly, they are subject to inherent restraints stemming from the reciprocal obligation of one member of a civil society to so use his rights as not to infringe or injure similar rights of another. This is on the principle sic uteri tuo ut alienum non laedas. Secondly, under Cls. (2) to (6) these rights have been expressly made subject to the power of the State to impose reasonable restrictions, which may even extend to prohibition, on the exercise of those rights."

"The expression "special reasons" in the context of this provision, obviously means "exceptional reasons" founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal."



The Apex Court, however, laid down the principle of "rarest of rare cases" in awarding of the death penalty.

The Court said that it was to give sufficient weight to the mitigating circumstances pertaining to the criminal along with the aggravating circumstances relating to the crime.

"...It is imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception...."

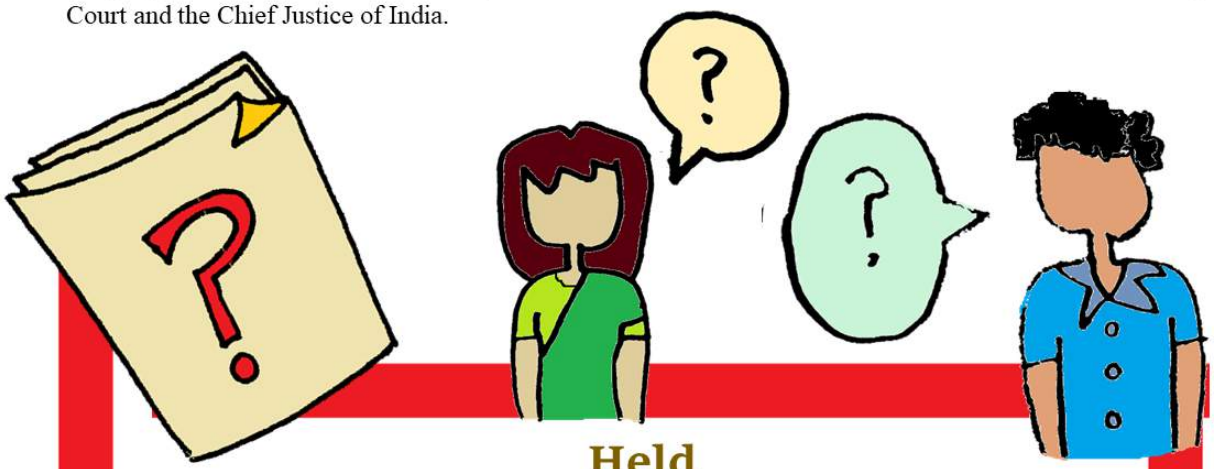
S.P. GUPTA
v
UNION OF INDIA
MANU/SC/0080/1981

Facts

In this case the Supreme Court took up questions affecting the principle of independence of judiciary, a basic feature of the Constitution of India.

Question Of Law

One of the issues raised was regarding the validity of Central Government orders on the non-appointment of two judges and the disclosure of correspondence between the Law Minister, the Chief Justice of Delhi High Court and the Chief Justice of India.

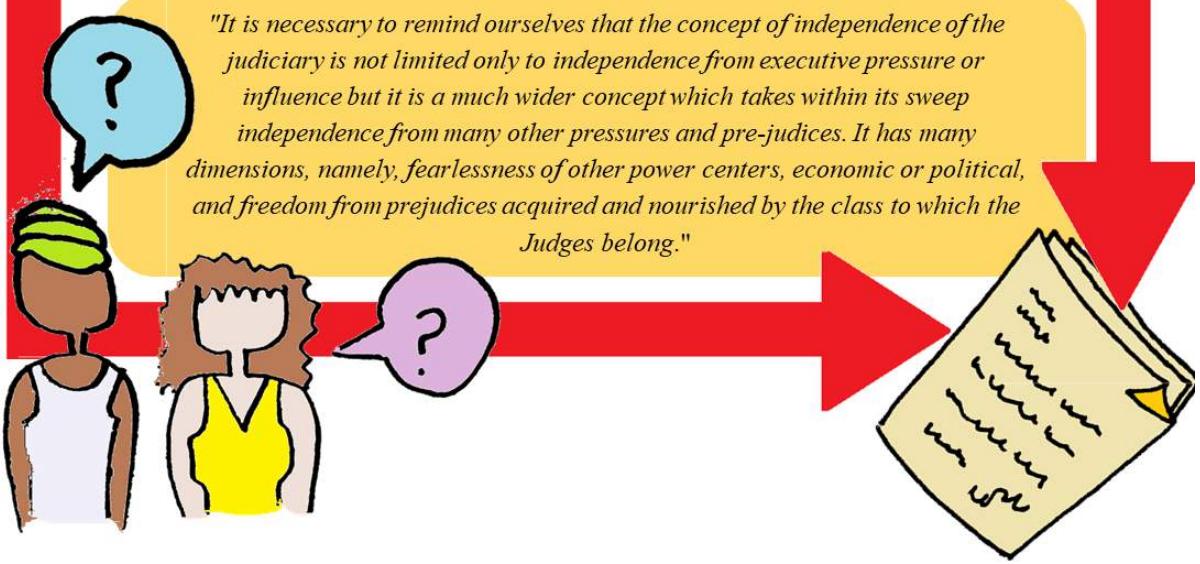


Held

The Court held that there were two main grounds upon which the Central Government's decision regarding appointment and transfer could be challenged. The Court reasoned that an open and effective participatory democracy requires accountability and access to information by the public about the functioning of the government.

At the very outset, the Court elaborated on the concept of independence of judiciary saying:

"It is necessary to remind ourselves that the concept of independence of the judiciary is not limited only to independence from executive pressure or influence but it is a much wider concept which takes within its sweep independence from many other pressures and pre-judices. It has many dimensions, namely, fearlessness of other power centers, economic or political, and freedom from prejudices acquired and nourished by the class to which the Judges belong."



Article 124 and 217 of the Constitution of India deal with the appointment of judges to the Supreme Court and the various High Courts. They were discussed at length by the Court while deciding who has the final voice in the appointment of judges to the higher judiciary.

The Court held that there were only two grounds on the basis of which the Central Government's decision regarding appointment and transfer can be challenged: (1) when there was no full and effective consultation between the Central Government and the appropriate authorities and, (2) the decision was based on irrelevant grounds. Under these considerations, the Court has to decide whether disclosure of a particular document would be contrary to public interest.

In the present case, it was held that the correspondence in question was not protected. Since it dealt with the appointment and transfer of judges it was held to be one of great importance to public interest. The Court recognized that a democratic society cannot keep the activities of the government hidden from the public in order to avoid accountability and criticism. Recognizing a "*right to know which seems implicit in the right of free speech and expression,*" the Court reasoned that: *"Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing."*

The Court also defined open government from the right to know which is implicit in the right to free speech and expression under Article 19 (1) (a) of the Constitution.

The Court identified a presumption of disclosure: "*disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistent with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest*"

BANDHUAMUKTI MORCHA VS UNION OF INDIA

MANU/SC/0051/1983

FACTS

The Honorable Supreme Court treated a letter addressed by the petitioner to Hon'ble Justice Bhagwati as a writ petition under Article 32 of the Constitution. In the letter the petitioner alleged that a large number of bonded labourers worked in inhuman and intolerable conditions in stone quarries and mines situated in Faridabad, Haryana. It prayed for the proper implementation of the Mines act 1952, Bonded Labour System Abolition Act 1976, Minimum Wages Act, among others.

QUESTIONS OF LAW

- Whether any fundamental right of the workmen referred to in the petition is infringed so as to attract Article 32 of the Constitution?
- Can a letter addressed by a party to this Court be treated as a writ petition?
- Whether the Bonded Labour System Abolition Act, 1976, covers forced labour?

HELD

Article 21 of the Constitution confers upon every individual the right to live with human dignity. It derives its life and breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42. These rights are fundamental to human existence and make a man's life meaningful and worth living.

On account of social and economic disability of an individual or group any member of the public can move the Court under Clause (1) Article 32 of the Constitution .

Public Interest litigation is an opportunity for the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice.

The Court further held that the Bonded Labour System (Abolition) Act 1976 recognizes forced labour as a form of bonded labour. The thrust of the Act is against the continuance of any form of forced labour. Whenever a labourer is made to provide forced labour, the Court would 'raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore a bonded labourer.'

Moreover the Court held that the Central and State Governments were constitutionally obligated to ensure the implementation of provisions of acts such as Minimum Wages Act 1948, Payment of Wages Act 1948, Maternity Benefits Act 1961, Bonded Labour Abolition Act etc.

Most importantly the Court held that it was very important to educate the workmen of their rights and entitlements under various social welfare laws. Such knowledge would prevent them being passive recipients of exploitation and empower them to fight for securing their legitimate dues.

The law prescribing procedure for deprivation of personal liberty of a person will have to stand the test of both Article 19 and 21.

SHEELA BARSE VS. STATE OF MAHARASHTRA

MANU/SC/0382/1983

FACTS

The petition relates specifically to the safety and security of women prisoners in police lock ups and their protection against torture and ill treatment and generally to the legal entitlements and rights of prisoners.

Sheela Barse, a journalist, interviewed women prisoners in a Mumbai police lock up and learned of cases of assault and torture within the lock ups from 5 of the 11 women she spoke to. Consequently, she wrote a letter narrating incidents of custodial violence against women prisoners in a Mumbai police lock up which was admitted by the Supreme Court as a Writ Petition. The Court, in order to verify the allegations of the letter petition directed Dr A.R Desai of the College of Social Work in Bombay to visit the Bombay Central Jail and interview women prisoners there

The report, affirming the facts of the letter provided a detailed account of the problems and difficulties facing women prisoners. It also narrated a specific incident of two foreign national women prisoners being duped and defrauded by a lawyer.

QUESTIONS OF LAW

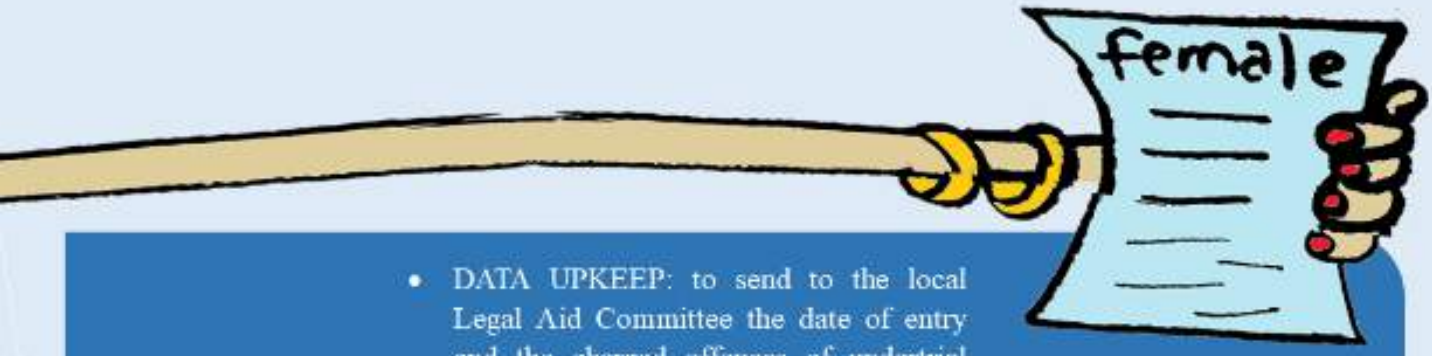
The question of law central to this case that the Court addressed, owing to the revelations made in both the letter and the report was concerning the **life and personal liberty** guaranteed in the Indian Constitution and including those (and specially) those who have been priced out of the legal system as convicts or under trial prisoners.

HELD

The Court, holding **that deprivation of access to law to prisoners would jeopardize the Right to Equality as enshrined in Article 14 and the Right to Life and Personal Liberty as protected or mentioned in Article 21. It held that**:

"Imagine the helpless condition of a prisoner who is lodged in a jail who does not know to whom he can turn for help in order to vindicate his innocence or defend his Constitutional or legal rights or to protect himself against torture and ill-treatment or oppression and harassment at the hands of his custodians... it is therefore absolutely essential that legal assistance must be made available to prisoners in jails whether they be under-trial or convicted prisoners."

The Court, therefore, in the instant case, not only addressed the facts of the petition but also took up the larger cause of extending legal aid to prisoners, both men and women, and issued guidelines applicable to the entire State of Maharashtra. The Court recognised that this **petition threw light on the urgent need of setting up a machinery for providing legal assistance to prisoners in jail** and gave the following guidelines to the Maharashtra State Board of Legal Aid and the Inspector General of Prisons:



- DATA UPKEEP: to send to the local Legal Aid Committee the date of entry and the charged offences of undertrial prisoners in two separate lists of male and female prisoners. To also furnish a list of prisoners in jail for over 15 days for crimes that do not require an arrest warrant (Section 41, CrPC)

- FACILITATION TO LAWYERS: to provide lawyers nominated by the concerned district Legal Aid with smooth passage for entry and interaction with prisoners who have expressed the need for assistance. To also provide all information as regards the prisoners required by the lawyer.
- LEGAL AWARENESS FOR PRISONERS: to put out notices around the prison detailing the visiting days and facilities of the lawyers available to the inmates. To also allow any prisoner who wishes to meet the nominated lawyers and that this interaction is to be only supervised by a jail official by sight and not by hearing.
- UPKEEP OF GUIDELINES: to nominate lawyers to plan fortnightly visits to jails to make sure that the law as laid down by the Apex Court and the High Court is being followed including the right to apply for bail and the right to legal aid.

The above guidelines were issued in light of the following rationale as articulated by the Court as regards the profession of law and its real purpose:

"Lawyers must realise that law is not a pleasant retreat where we are concerned merely with mechanical interpretation of rules made by the legislature but it is a teeming open ended avenue through which most of the traffic of human existence passes."

The Court issued various directions conferring protection to women prisoners in police lock ups:

- A separate set of lock ups for women inmates to be guarded by women constables. The number of these cells to be increased from the existing three to five.
- Interrogation of female inmates to be carried out only in the presence of a female constable/police officer.
- A city sessions judge, preferably female, to be nominated to make surprise visits to police lock ups to hear and address the grievances of inmates and any lapse found on the part of the police authorities it is to be brought to the notice of the Commissioner of Police, failing which the sessions judge may approach the Home Department and if such action also fails, the Chief Justice of the High Court may be approached.

The following guidelines were also issued as regards the code of conduct for an arrested person:

- Upon arrest, the nearest legal aid committee is to be informed of the arrest and immediate steps need to be taken for providing necessary legal assistance to arrested person with the State bearing all costs.
- Upon arrest the name of a family member or friend must be immediately obtained from the arrested person to whom he would like to inform of the arrest.
- Upon arrest, the magistrate before whom the arrested person is presented is to inquire of any maltreatment in custody and inform him or her of their right under Section 54 of the Code of Criminal Procedure 1973 which provides for the examination of an arrested person at their request.

Olga Tellis & Ors vs. Bombay Municipal Corporation

MANU/SC/0039/1985

This case concerns itself with the plight of pavement and slum dwellers of a large metropolitan city.

FACTS

A writ petition was filed by a journalist Olga Tellis and two pavement dwellers whose establishments were demolished following an order of eviction and deportation of slum and pavement dwellers passed by the Government of Maharashtra sighting the Bombay Municipal Act 1888. A second group of petitioners whose plea was heard along with this petition belonged to two different slums and alleged that attempts were made to deport them from their place of settlement even though they had obtained an order of injunction restraining the officer of the State Government from carrying out the directives of the abovementioned order of eviction.

QUESTION OF LAW

Whether, within the ambit of Article 32, an estoppel can be obtained against the enforcement of Fundamental Rights?

Whether forcible eviction and uprooting of their settlements deprives slum dwellers of their livelihood and consequently of their right to life as guaranteed by Article 21 of the Constitution and is further in violation of their right to occupation and right to settle as given in Articles 19(1)(e) and Article 19(1)(g) of the Constitution of India?

Whether the law as laid down in Section 314 read with Sections 312 and 313 of the Bombay Municipal Corporation Act which empowers the Municipal Commissioner to remove any object or structure set up on any street without notice is reasonable, fair and just?

HELD

The Court held that the petitions were maintainable under Article 32, which gives one the right to approach the Supreme Court directly in the case of violation of a fundamental right, and **that there can be no estoppel issued against the Constitution.** The Court held that:

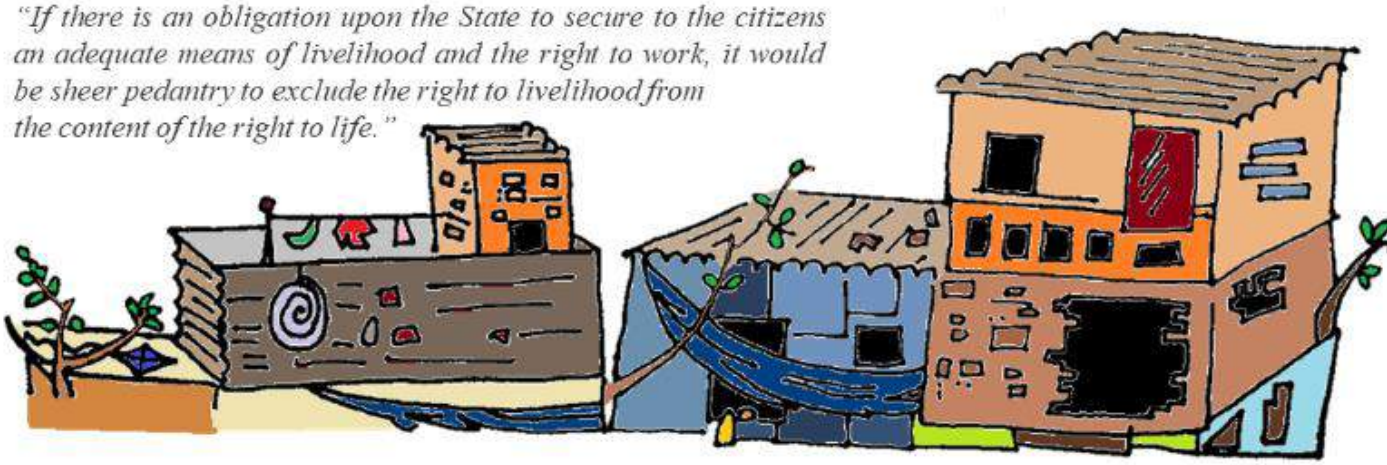
"No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceedings. Such a concession, if enforced, would defeat the purpose of the Constitution."

The next question that the Court addressed related to **Article 21** of the Constitution of India which reads: "No person shall be deprived of his life or personal liberty except according to procedure established by law." The contention whether a right to life meant a right to livelihood was cleared when the Supreme Court unequivocally stated that **a right to life would be meaningless without ensuring means of livelihood.** The Court held that:

"No person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life."

Giving consideration to the plight of pavement and slum dwellers and the economic compulsions that force them to lead an abysmal life the Supreme Court further held that the right to occupation as well as the right to settle as in Articles 19(1)(e) and 19(1)(g) have been violated by the Bombay Municipal Corporation Act 1888 as an eviction from their dwelling, however its nature might be, will lead to a disruption of their occupation and settlement. The Court held that:

"If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life."



Coming to the second part of Article 21 regarding the **"procedure established by law"**, the Court held that Section 314 was in fact valid law and not unreasonable in any way as the provision given was of an enabling nature and not a compulsion wherein it conferred upon the officer the right to demolish, without notice, any object set up on the street **if the need arise**.

The Court, however, also specified that such a "need" had to be judged carefully and exercised only when no other option was available. In the current case, the Court said that a 'right to be heard' ought to have been extended to the pavement dwellers, that is, a notice ought to have been served before eviction. In light of this reasoning the Court passed an order of eviction along with offers of alternative pitches with a month's notice to be extended to the pavement dwellers.

MOHD. AHMED KHAN V. SHAH BANO BEGUM AND ORS

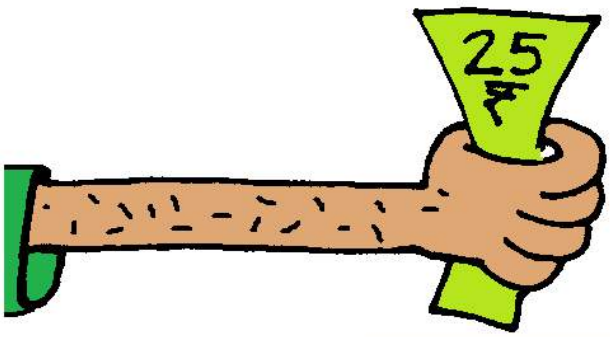
तलाक
तलाक
तलाक

तलाक
तलाक
तलाक

MANU/SC/0194/1985

FACTS

The appellant in this case was married to the respondent in 1932. In 1975, the appellant husband drove the respondent wife out of the matrimonial home and in 1978 the respondent filed a petition under Section 125 of the Criminal Procedure Code for maintenance. In the same year, the appellant divorced the respondent by an irrevocable *Talak* and took the defence that since she is no longer his wife and since he had already paid the *Dower* during the period of *Iddat,* as is required under Muslim personal law, he had no obligation to maintain her.



In 1979, a Magistrate order directed the appellant to pay a nominal sum of Rs. 25 every month by way of maintenance. The High Court at Madhya Pradesh increased this amount to Rs. 179.20 per month. The appellant husband appealed to the Supreme Court by way of a special writ petition.

QUESTIONS OF LAW

The question that came before the Court was whether the provisions of Section 125 of the CrPC can be operational above the provisions of the personal law that governs the parties? And what role the Courts play in taking a step towards the Uniform Civil Code which envisions replacing personal laws with a common set of laws governing every citizen in Article 44 of the Constitution.

HELD

The Court held that Section 125 of the CrPc is "truly secular in nature" and the purpose of this provision was ensure that there was a speedy and summary remedy to those persons who did not have the means to maintain themselves. The Court further added that if a person with sufficient means were found to neglect giving maintenance to any dependents, Section 125 of the CrPc would be attracted. The rights under this provision would stand regardless of the personal laws of the parties. The Court also held

that the husband's liability to provided maintenance was not limited to the time period of *Iddat* but for as long as the wife is unable to maintain herself or has remarried, even when the *Iddat* period is over.

On the importance of a Uniform Civil Code, the Court said,

> *"A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a Uniform Civil Code for the citizens of the country and, unquestionably, it has the legislative competence to do so. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform But, a beginning has to be made if the Constitution is to have any meaning. 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 of 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."*

RURAL LITIGATION AND ENTITLEMENT KENDRA VS. STATE OF UP

MANU/SC/0043/1985 AND MANU/SC/0111/1986

Facts

The Court, in the present case treated a letter received from the petitioner as a writ petition. In the letter the petitioner alleged that the mining of Limestone Quarries that were being carried out in and around Mussoorie hills were adversely affecting the ecology of the area and causing environmental disturbances and affecting perennial water springs.

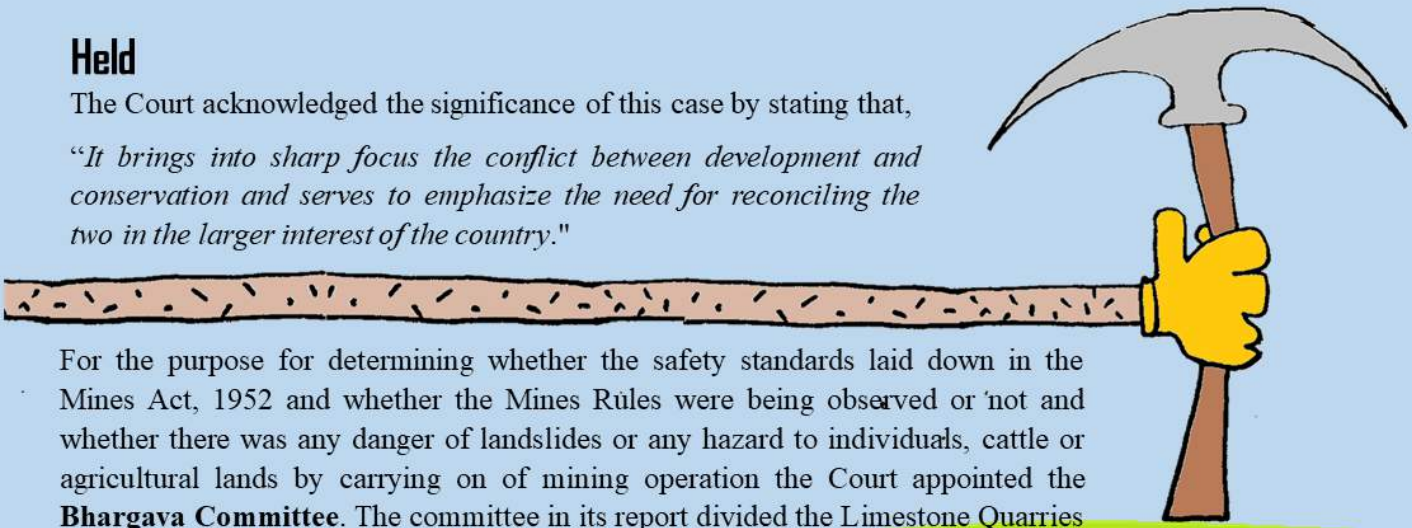
Questions Of Law

The Court in its judgment sought to **strike a balance between the twin goals of conservation and development.**

Held

The Court acknowledged the significance of this case by stating that,

"*It brings into sharp focus the conflict between development and conservation and serves to emphasize the need for reconciling the two in the larger interest of the country.*"



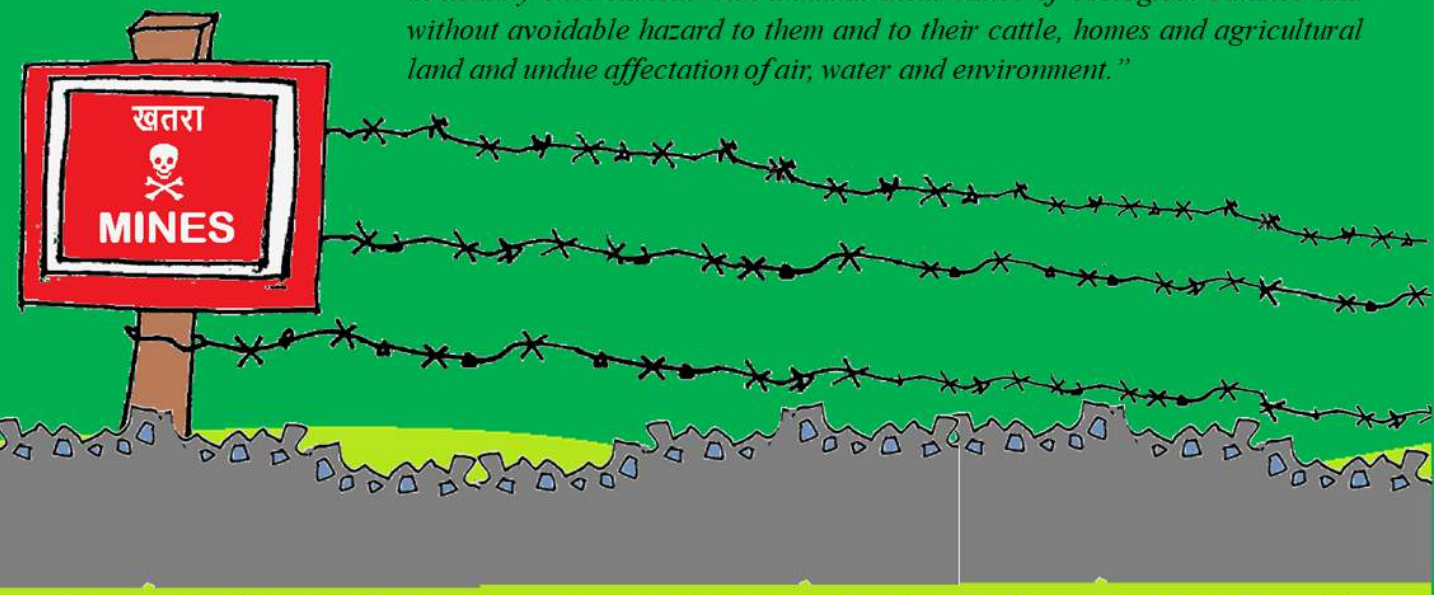
For the purpose for determining whether the safety standards laid down in the Mines Act, 1952 and whether the Mines Rules were being observed or not and whether there was any danger of landslides or any hazard to individuals, cattle or agricultural lands by carrying on of mining operation the Court appointed the **Bhargava Committee**. The committee in its report divided the Limestone Quarries into three categories namely; category A, B and C with quarries in category A having the least and quarries in category C having the most adverse effects.

After a comparative analysis of the reports the Court gave the following directions:

- Limestone Quarries classified in Category (c) in the Bhargava Committee Report, should be closed down. Any stay order obtained from any Court permitting the continuance of mining operations would stand dissolved. Moreover the subsisting leases in respect of the these Limestone Quarries would also stand terminated without any liability against the State of Uttar Pradesh
- The Limestone uarries classified category A of the Bhargava Committee Report and/or category I of the Working Group Report are concerned, must be divided into two classes ; one class consisting of those which are within the city limits of Mussoorie and the other consisting of those which are outside the city limits. The Limestone Quarries falling outside the city limits of Mussoorie, should be allowed to be operated subject of course to the observance of the requirements of the Mines Act, 1952, the Metalliferous Mines Regulations, 1961 and other relevant statutes, rules and regulations.

Prioritizing the welfare of the people over the economic benefits accruing to the lessees of the Limestone Quarries the, Court held:

"This would undoubtedly cause hardship to the miners but It is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment."



However the Court did show some degree of sensitivity towards the lessees of Limestone Quarries and being conscious that as a result of its order, the workmen employed in the closed quarries will be rendered jobless. In this regard, it directed the Government of India and the State of UP that whenever any other area in the State is thrown open to the grant of limestone, the lessees that are displaced as a result of this order shall be afforded priority in grant of lease.

In addition to proposing afforestation and soil conservation programs in the areas no longer under mining operations, the Court invoked **Article 51A of the constitution to remind the citizens of their fundamental duty towards the preservation of the environment.** It held:

"Preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake. It is a social obligation and every Indian citizen is reminded that it is his fundamental duty as enshrined in Article 51 A(g) of the Constitution.

manupatra®
Power Your Legal Research™

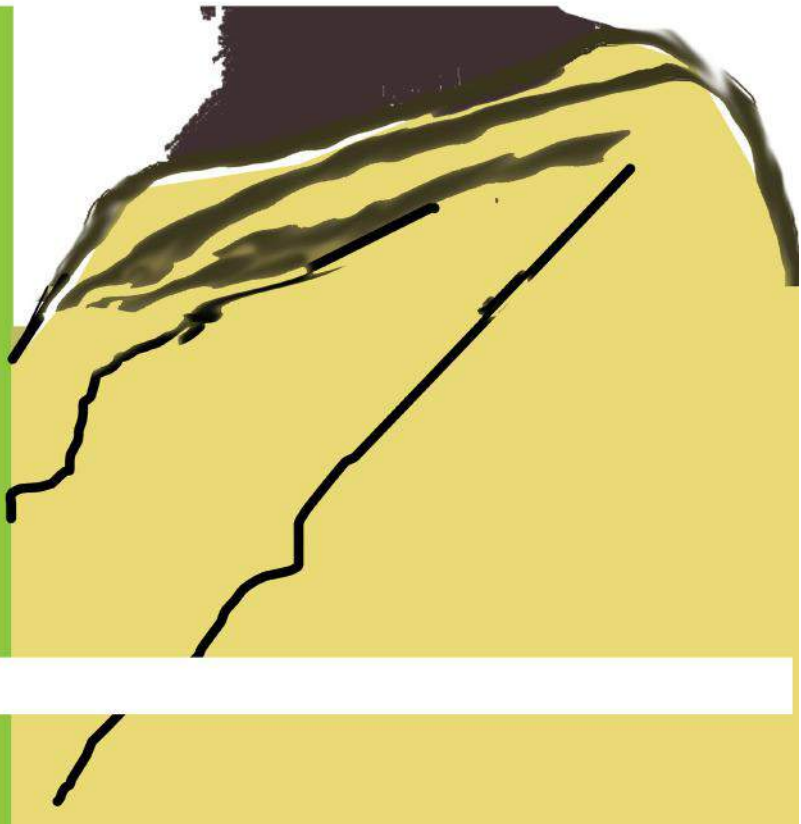
JUSTICE adda

MARY ROY VS STATE OF KERALA

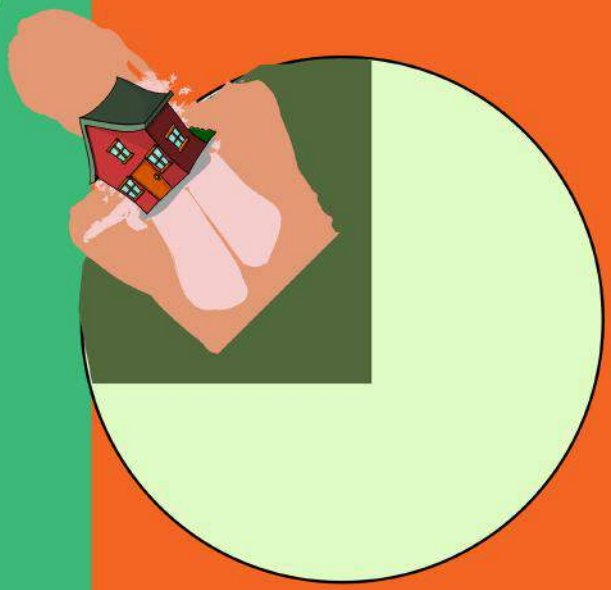
MANU/SC/0716/1986

FACTS

The petitioner provoked by her own experience sought to secure equal inheritance rights for Indian women belonging to the Syrian Christian community of Travancore by bringing them within the ambit of the Indian Succession Act, 1925



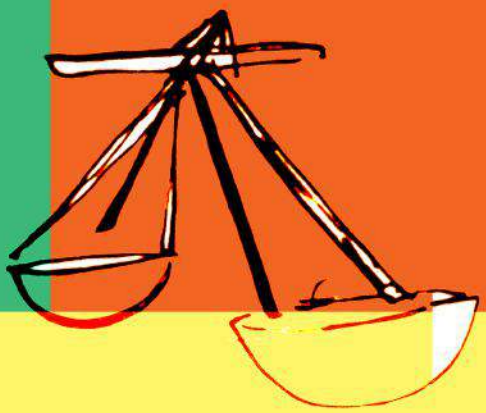
The petition filed under Article 32 of the Constitution,enumerated that the following provisions of the Travancore Christian Succession Act, 1092, in Sections 24,28 and 29 discriminated against women and violated their constitutional right to equality guaranteed by Article 14.



- A daughter was not entitled to succeed to the property of the intestate(not having a will at the moment of death) in the same share as the son.

- She was entitled to one-fourth of the share of the son or rupees 5000, whichever being less.

- The daughter was not be entitled to anything if *"Streedhan"* was promised or provided to her by the intestate, or by his wife, husband or their heirs.



QUESTIONS OF LAW

- Whether the provisions of the Travancore Christian Succession Act, 1092, were ultra vires the Constitution ?

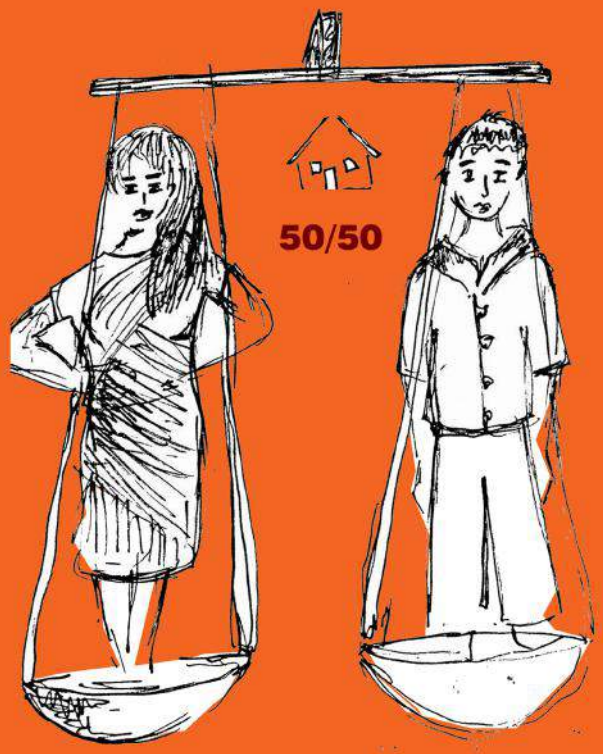
- Whether, with the enactment of the Part-B States (Laws) Act,1951 , intestate succession was to be governed by the Indian Succession Act 1925 or the Travancore Christian Succession Act, 1092 ?

HELD

Tracing the history of the legislation in question, that is the Travancore Christian Succession Act, 1092, the Court observed that prior to 1949, the Travancore Christian Succession Act, 1092, governed intestate succession to property of the members of the Indian Christian community in the princely state of Travancore. However, post 1949, with merger of the State of Travancore with the State of Cochin and the formation of part State of Travancore-Cochin, the Parliament enacted the Part-B States (Laws) Act. The Part-B States (Laws) Act called for the application of the Indian Succession Act,1925 to all the Part B States.

The Court decided the case holding that the Part-B States (Laws) Act excluded the operation of the Travancore Act and thereby did away with the need for examining the first question of the constitutionality of the Act.

The Court established that the law applicable from April 1, 1951 to intestate succession among Christians of the Travancore area of the State of Kerala is the Indian Succession Act, 1925. Thereafter, the High Court of Kerala ruled that the Cochin Christian Succession Act, 1921 also stood repealed by Part B States (Laws) Act, 1951.



The Supreme Court entitled Syrian Christian women to an equal share in their father's property. This brought them similar rights as members of the Christian community in the rest of India who were governed by the Indian Succession Act, 1925.

Through this judgment Christians all over India were governed by the Indian Succession Act, 1925 which provided that property of an intestate be distributed equally among the male and female children.

Indra Sawhney and Ors vs. Union of India

MANU/SC/0104/1993

Since Independence, the Indian Government took several steps in order to institutionalise affirmative action and realise the provisions for the same enshrined in the Constitution of India in form of the First and Second Backward Classes Commission and the coming into force of the recommendations of the Mandal Commission regarding the 27% reservation for jobs in Central Governments and offices.

The reactions to the application of the Mandal Commission recommendations unfolded rapidly, with widespread student uprising and riots.

It was in the backdrop of these events that the Supreme Court transferred to itself all the petitions made challenging the implementations.

QUESTIONS OF LAW

- The scope, extent and inter-relation between Articles 16(1) and 16(4) of the Constitution.
- Clarity on the meaning of the term "backward class of citizens".
- The identification criteria.
- Nature and extent of the reservations available.

HELD

The Bench was of the opinion that Article 16(4) was not an exception to Article 16(1). The majority of judges were of the view that Article 16(4) was exhaustive of reservations for only for the complete concept of reservations.The next task before the Court was regarding the term "backward class of citizens".

The Court said at the initial stage of recruitment, reservations can be made in favour of the backward class of citizens but once they enter the service, efficiency of administration demands that these members too compete with others and earn promotion like all others; no further distinction can be made thereafter. Crutches cannot be provided throughout one's career. That would not be in the interest of efficiency of administration nor in the larger interest of the nation.

The Court after this engaged itself with the identification criteria of the "backward class of citizens." Acknowledging all the petitioners that alleged that among those that come within backward class owing to the regular criteria are people who are economically advanced and are taking undue advantage of the reservation policies, the Court applied the "means test" and evolved the creamy layer doctrine.It held:

"Keeping in mind all these considerations, we direct the Government of India to specify the basis of exclusion - whether on the basis of income, extent of holding or otherwise - of 'creamy layer'. This shall be done as early as possible, but not exceeding four months. On such specification persons falling within the net of exclusionary rule shall cease to be the members of the Other Backward Classes (covered by the expression 'backward class of citizens') for the purpose of Article 16(4)."

REGARDING THE NATURE AND SCOPE OF RESERVATIONS THE COURT HELD

Sub-classification within the OBCs: "If Scheduled Tribes, Scheduled Castes and Other Backward Classes are lumped together, O.B.Cs. will take away all the vacancies leaving Scheduled Castes and Scheduled Tribes high and dry. The same logic also warrants categorisation as between more backward and backward. We do not mean to say we may reiterate - that this should be done. We are only saying that if a State chooses to do it, it is not impermissible in law."

One time reservation: The Court, holding that reservations were to be an initial affair not extending to promotions said that,

Reservations are not anti-meritorious. "It is undeniable that nature has endowed merit upon members of backward classes as much as it has endowed upon members of other classes and that what is required is an opportunity to prove it. It may not, therefore, be said that reservations are antimeridian."

50% rule: Reservations are not to exceed the allotted 50%, but, in extraordinary situations some relaxation in this rule may be given with extreme caution.

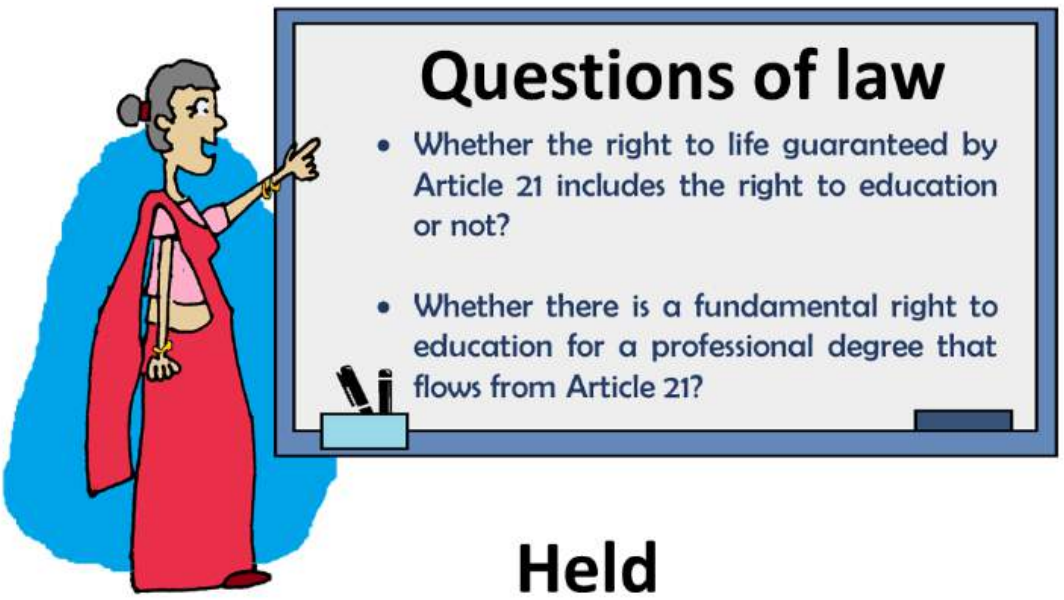
Unnikrishnan

vs. State of Andhra Pradesh

MANU/SC/0333/1993

Fact

The case involved a challenge by certain private professional educational facilities to the constitutionality of State laws regulating capitation fees charged by such institutions.



Held

- The Supreme Court held that the right to basic education is implied by the fundamental right to life (Article 21) when read in conjunction with the directive principle on education (Article 41). The Court held that the parameters of the right must be understood in the context of the Directive Principles of State Policy, including Article 45 which provides that the State is to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children under the age of 14.

- The Court ruled that there is no fundamental right to education for a professional degree that flows from Article 21. It held, however, that the passage of 44 years since the enactment of the Constitution had effectively converted the non-justiciable right to education of children under 14 into one enforceable under the law. It said,

"The right to free education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development."

- In addition, the Court said that, in order to treat a right as fundamental right, it is not necessary that it should be expressly stated as one in Part III of the Constitution: "the provisions of Part III and Part IV are supplementary and complementary to each other". The Court rejected that the rights reflected in the provisions of Part III (fundamental rights) are superior to the moral claims and aspirations reflected in the provisions of Part IV (directive principles)

Significance

The State responded to this declaration nine years later by inserting, through the Eighty-Sixth amendment to Constitution, Article 21-A, which provides for the fundamental right to education for children between the ages of six and fourteen.

S.R BOMMAI Vs UNION OF INDIA

MANU/SC/0444/1994

1985: Janata Dal led by Shri S.R Bommai came to power in the State of Karnataka

1989:Several individuals defected from the ruling party

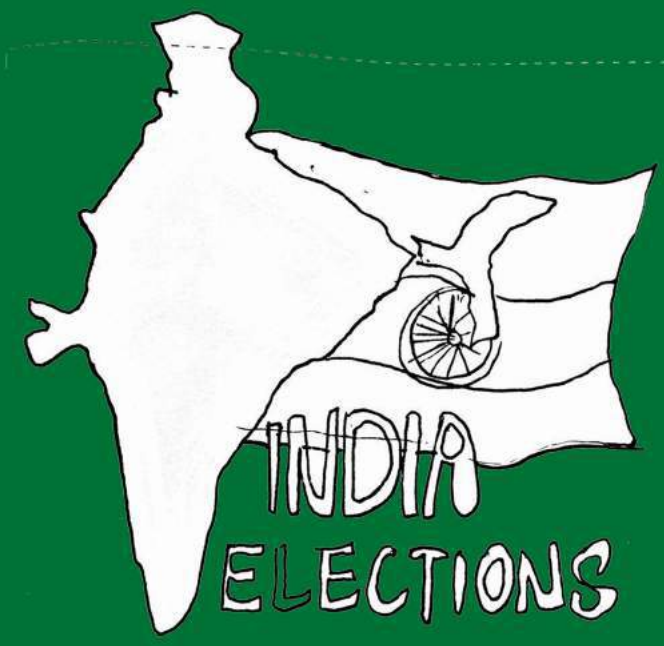
20th April: 7 who had defected wrote to the Governor reaffirming their support to Shri Bommai. Article 356 was invoked and the Bommai Government dismissed.

Reaaffirm support to Shri Bommai

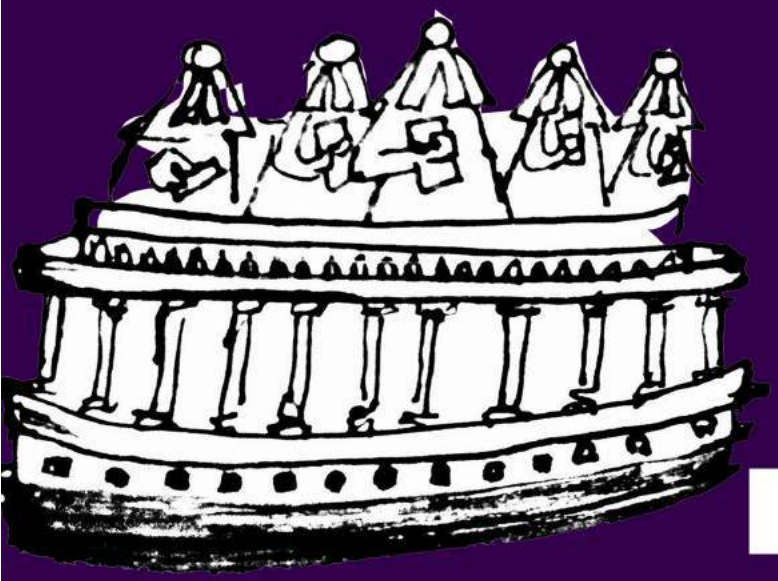
1992: After the fallout of the demolition of the Ram Janmabhoomi-Babri Masjid, the President invoked Article 356 of the Constitution and dismissed the Governments and dissolved the legislative assemblies of the states of Rajasthan, Madhya Pradesh and Himachal Pradesh.

Petitions were filed, challenging the validity of the proclamation issued.

The Honourable Supreme Court heard them conjointly.



Governments dissolved



QUESTIONS OF LAW

Whether the Presidential proclamation under Article 356 can be challenged in a Court of law?

Whether the President has unfettered powers to issue proclamation under Article 356(1) of the Constitution?

Whether the legislature dissolved by the President's proclamation can be revived if the same is set aside?

Whether the validity of the proclamation issued under Article 356 (1) can be challenged even after it has been approved by both Houses of the Parliament under clause (3) of Article 356?

Whether the Court can grant an interim stay against holding fresh elections?

HELD

It held that the Supreme Court or the High Court can strike down the proclamation if it is found to be mala fide or based on wholly irrelevant or extraneous grounds.

The Court held that the President's Power was a conditional power and not an absolute power and the existence of relevant material is a pre-condition to the formation of satisfaction.

Based on the Sarkaria Commission report ,the instances under which the application of Article 356 was to be held good were grouped under 1) political crises 2) internal subversion 3) physical breakdown 4) non compliance with the directions of the union executive.

The Court had the power to restore the State Government to its office in case it found the proclamation to be unconstitutional.

The validity of the proclamation issued under Article 356(1) can be challenged even after it has been approved by both the houses of the Parliament under clause (3) of Article 356.

Finally it was held that "in appropriate cases, the Court will have power by an interim injunction, to restrain the holding of fresh elections to the Legislative Assembly pending the final disposal of the challenge to the validity of the proclamation to avoid the fait accompli and the remedy of judicial review being rendered fruitless. However, the Court will not interdict the issuance of the Proclamation or the exercise of any other power under the Proclamation."

Sarla Mudgal

v.

Union of India

MANU/SC/0290/1995

Facts

In this case the Supreme Court emphasized the urgency of implementing Article 44 of the Constitution, which envisions replacing personal laws with a common set of laws governing every citizen.

The Court heard four petitions filed under Article 32 of the Constitution, under the provision of which individuals may seek redressal for the violation of their fundamental rights. The petitioners filed the case against the practice of solemnizing a second marriage by conversion to Islam, without dissolving the first marriage.

Questions of Law

- Whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnize a second marriage?
- Whether such a marriage, without having the first marriage dissolved under law, would be a valid marriage qua the first wife who continues to be Hindu?
- Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)?

Held

The Court held that under the Hindu personal law, **even after one of the spouses converted to Islam, there would be no automatic dissolution of the marriage**. If there were to be an automatic dissolution due to conversion, the Court said,

"It would be tantamount to destroying the existing rights of the other spouse who continues to be Hindu."

Recognizing that the existing Hindu law strictly enforces monogamy, the Court held that **a marriage solemnized under the Hindu Marriage Act, 1955 cannot be dissolved in any other way except on the grounds available within the Act itself** and that a second marriage by an apostate under the shelter of conversion to Islam would still be a marriage in violation of the Act which governs their first marriage.

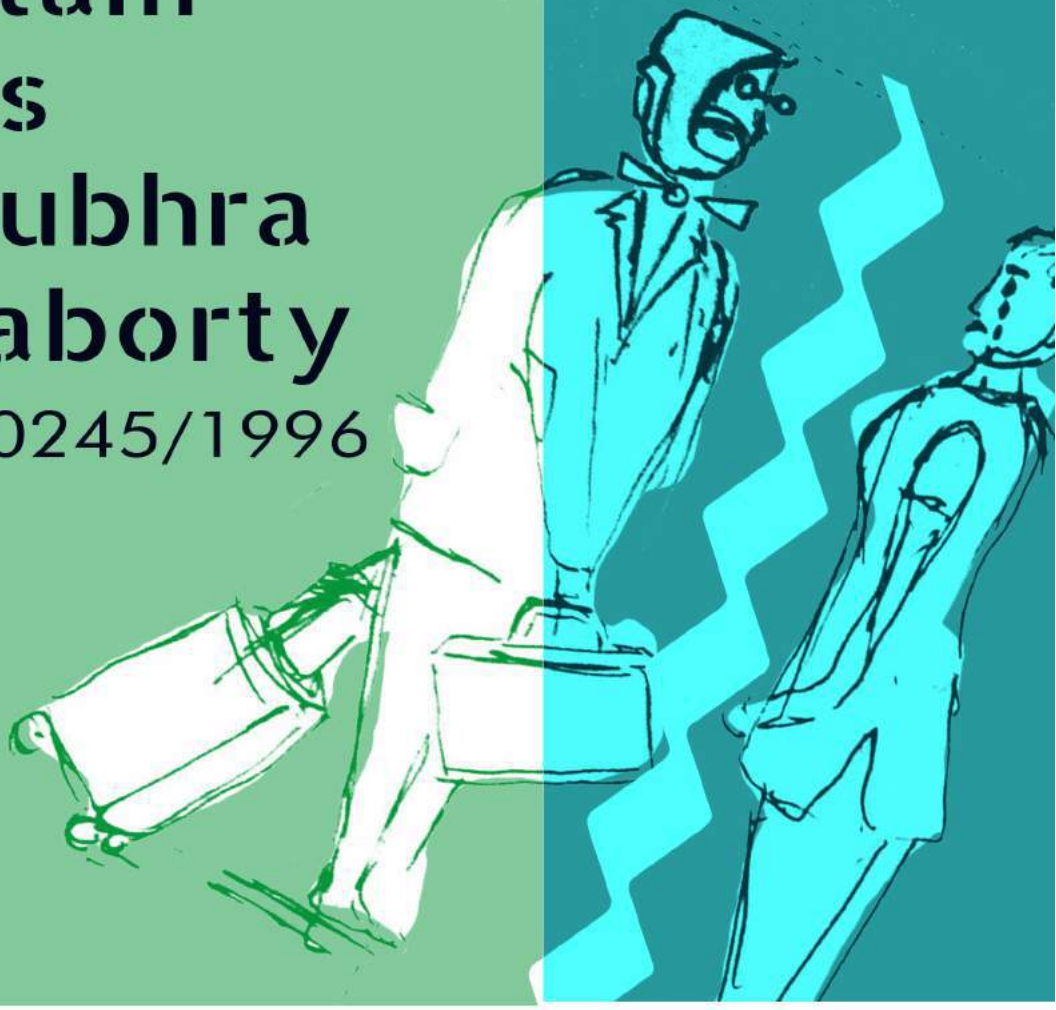
The Court recognized that Section 494 of the Indian Penal Code, which provides for a punishment extending to seven years of imprisonment in the event of remarriage during lifetime of husband or wife without dissolution of first marriage has the following essential ingredients: (1) having a husband or wife living; (2) marries in any case; (3) in which such marriage is void; (4) by reason of its taking place during the life of such husband or wife.

Observing that each of these ingredients was present, the Court held that **the act of a Hindu husband solemnizing a second marriage after converting to Islam, during the subsistence of the first marriage, attracts Section 494 of the IPC**.

In reiterating the pressing need for a Uniform Civil Code the Court recognized that role of the judiciary as a reformer and enforcer of the vision of the Constitution and emphasized the desirability of a uniform code for the protection of the oppressed and promotion of national unity and solidarity.

Shri Bodhisattwa Gautam vs Miss Subhra Chakraborty

MANU/SC/0245/1996



FACTS

Subhra Chakraborty a student of Baptist College, Kohima filed a complaint in the Court of the Judicial Magistrate, against Bodhisattwa Gautam a lecturer in the same college.

Miss Subhra and Bodhisattwa had an affair, in the course of which Miss Subhra got pregnant. After initially refusing to tie the knot, Bodhisattwa married her secretly. Subsequently he convinced her to abort the child. The second time she got pregnant he again compelled her to undergo surgery. In the middle of all this Bodhisattwa got employed in a college in Silchar. However when Miss Subhra decided to travel with him to Silchar he abandoned her in complete disregard of their marriage and his promises.

In the complaint filed, Miss Subhra alleged that Bodhisattwwa deceived her into living with him to have sexual intercourse and accused him of rape. She also alleged that he fraudulently made her believe that she was his legally wedded wife. She accused him of compelling her to undergo an abortion twice. Above all she complained of having suffered severe mental and physical pain due to the acts of the accused.

A criminal case was registered under several sections of the Indian Penal Code. The accused approached the High Court and subsequently the Supreme Court to get the complaint and the proceedings quashed. However, the Courts dismissed his petition and ordered him to pay monthly compensation to the victim during the pendency of the proceedings.

QUESTION OF LAW

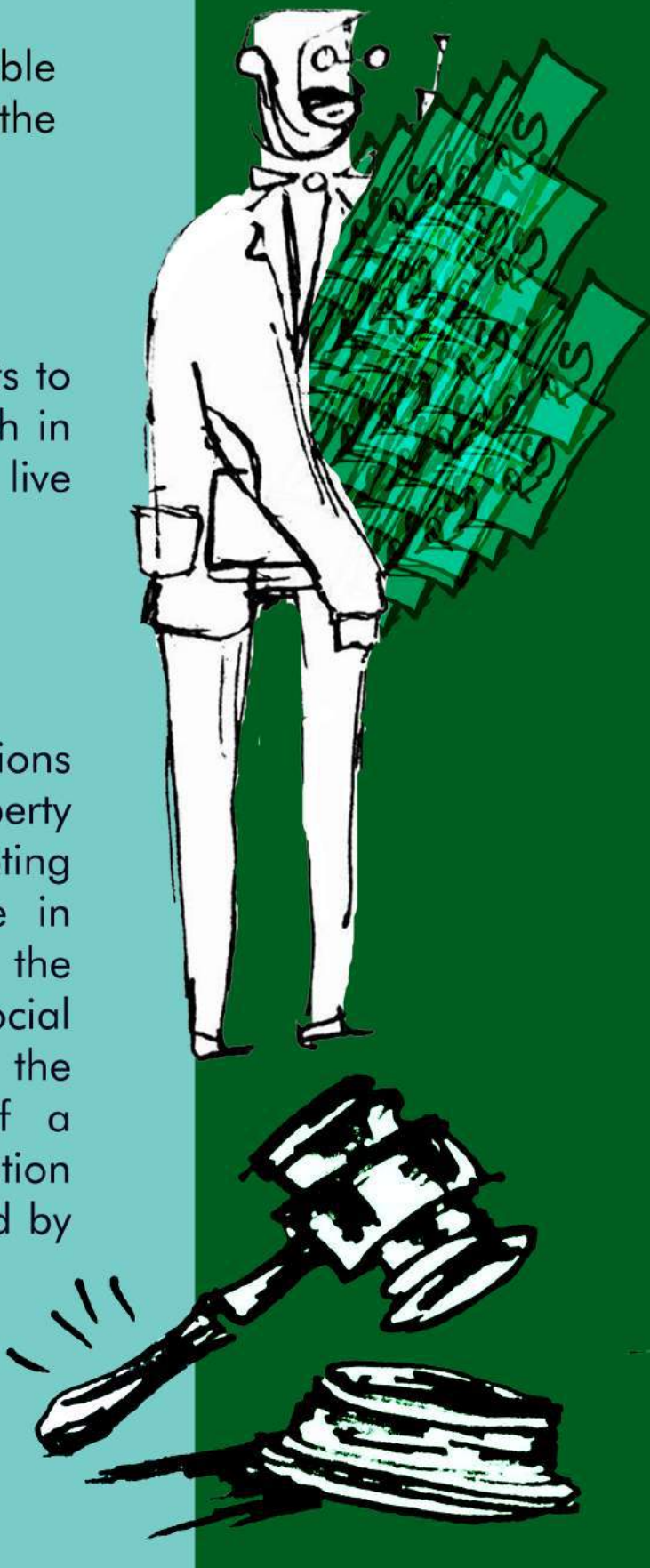
Can the accused be compelled to pay maintenance to the complainant?

HELD

- The Court found Bodhisattwa liable to pay compensation to the complainant.

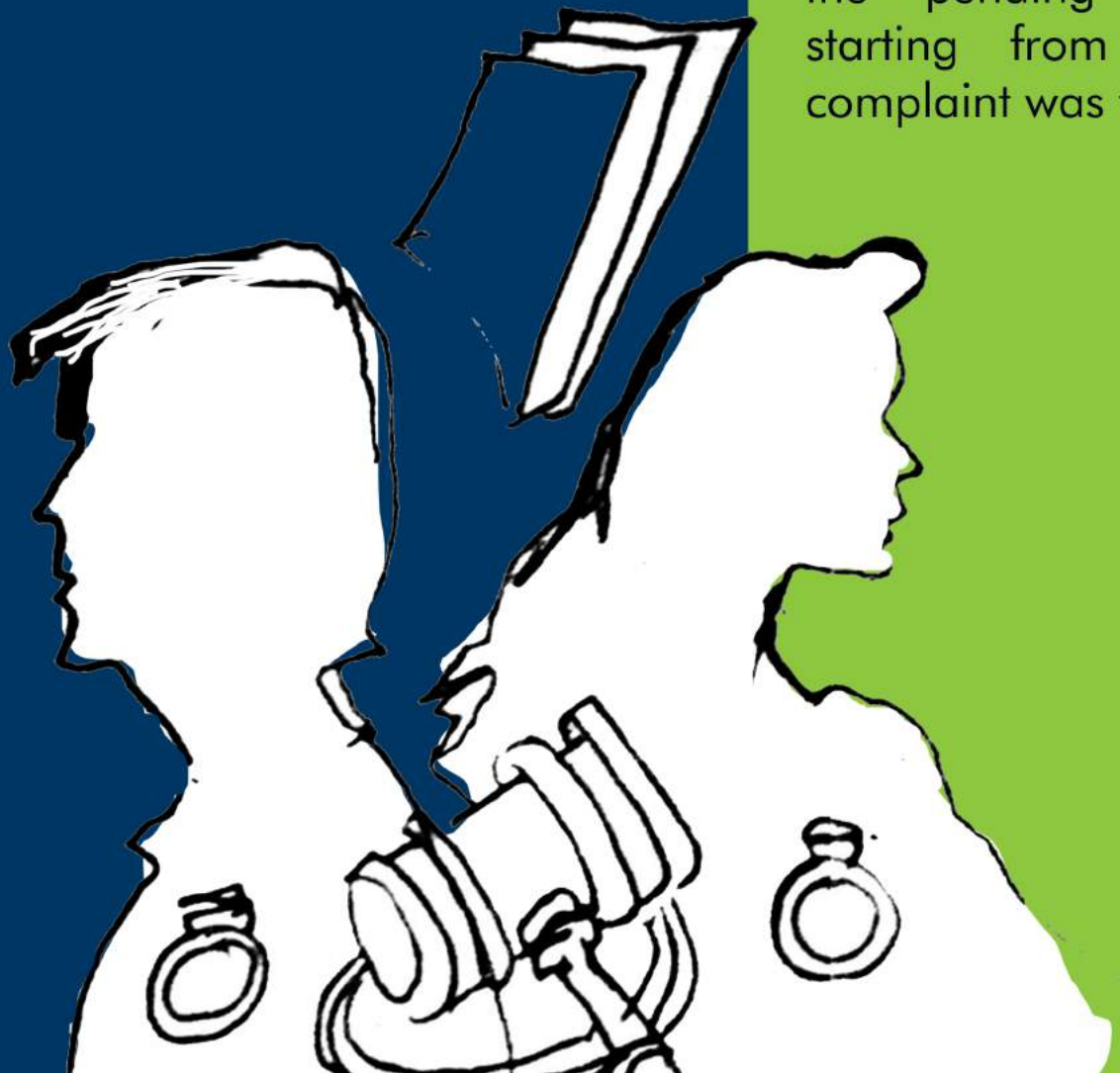
- The Court held that rape amounts to violation of the right to life which in Article 21 is defined as the right to live with human dignity.

- It found that Bodhisattwa's actions violated Chakraborty's right to liberty and life with human dignity. Noting the social barriers women face in India, and particularly the psychological and social consequences for rape victims, the Court ordered the creation of a Criminal Injuries Compensation Board to cover losses experienced by victims of sexual assault.



It also issued a set of guidelines to help indigent rape victims who cannot afford medical, psychological and legal services consistent with the Principles of the UN Declaration of Justice for victims of Crime and Abuse of Power, 1985.

The Court ordered Gautam to pay Rs. 1000 per month in maintenance costs for Chakraborty's livelihood during the pending criminal case, starting from the date the complaint was filed.



D.K. Basu vs. State of West Bengal

MANU/SC/0157/1997

FACTS

The Executive Chairman Legal Aid Services, West Bengal, a non-political organization addressed a letter to the Chief Justice of India drawing his attention to certain news items published in The Telegraph, The Statesman and Indian Express regarding deaths in police custody and requested the Court to develop "custody jurisprudence" and formulate modalities for awarding compensation to the victim and/or family members of the victim for atrocities and death caused in police custody. The Supreme Court treated the letter as a writ petition.

HELD

Appalled at the growing cases of custodial violence, the Court remarked: "Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizen."

Recognizing that custodial torture is tantamount to the infringement of fundamental right to life guaranteed under Article 21 of the Constitution of India, the Court held: "Custodial death is perhaps one of the worst crimes in a civilized society governed by the Rule of Law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem."

"Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'."

The Court also took notice of the fact that perpetrators of custodial violence rarely got punished. Manipulation of the circumstances leading to custodial deaths helped police officers escape liability. In order to prevent the abuse of police power and ensure transparency and accountability, the Court issued that the following guidelines be followed in all cases of arrest or detention:

"The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by atleast one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

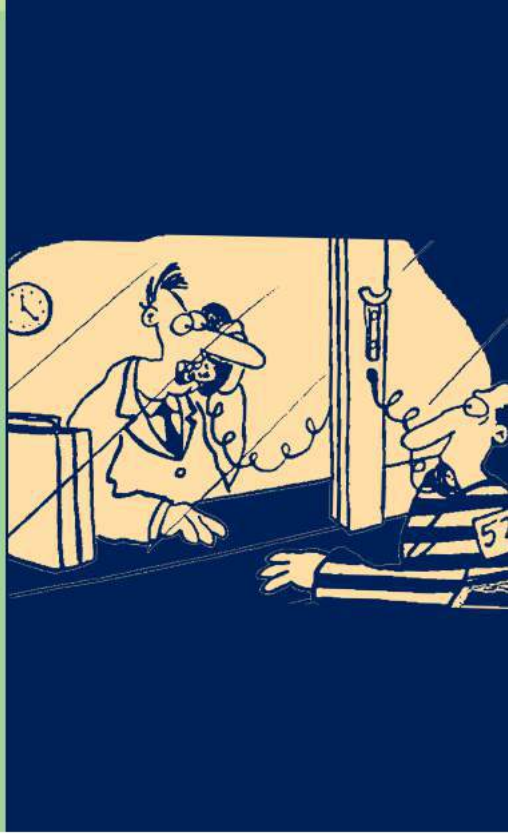
The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

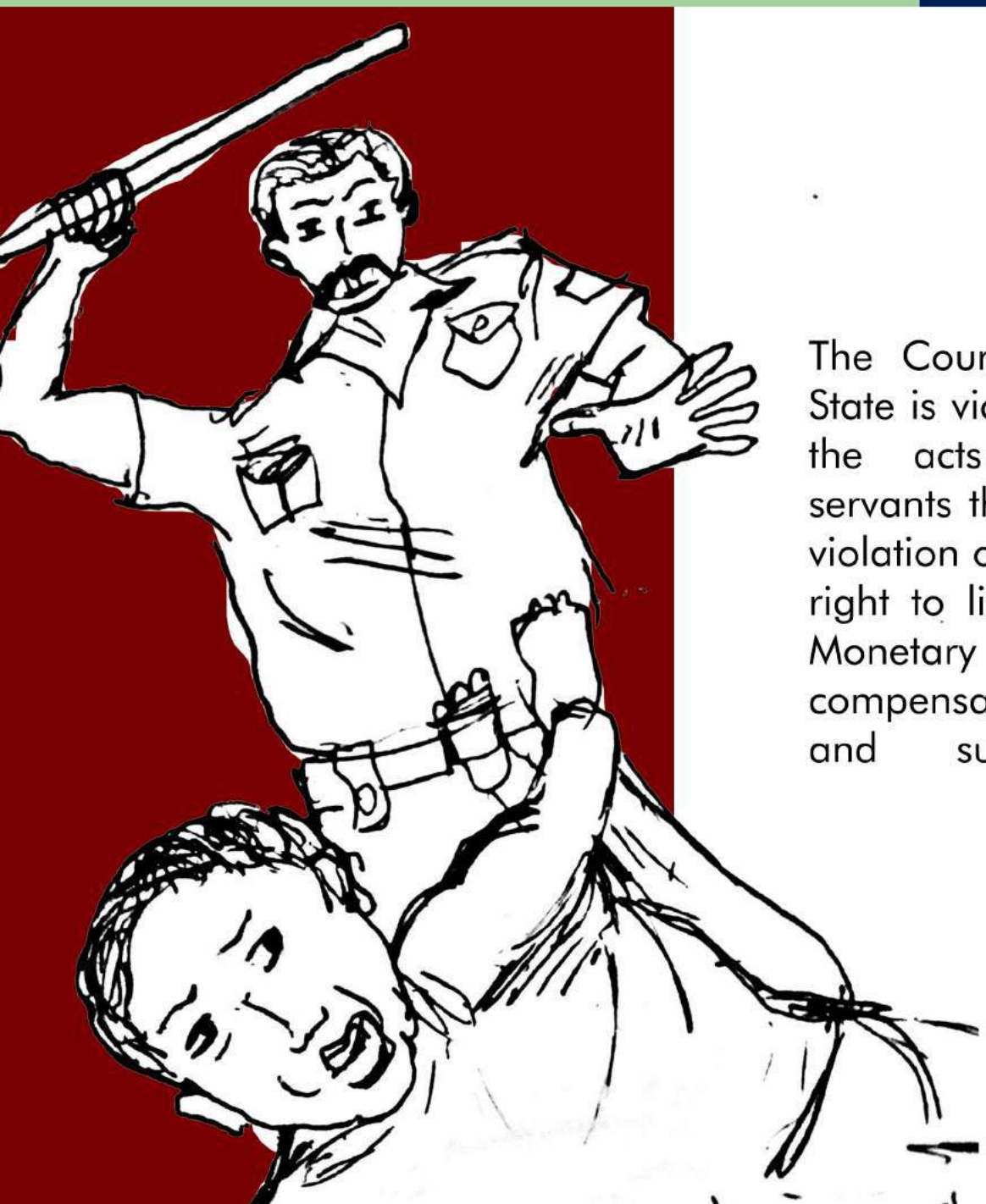
The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board"





The Court found that the State is vicariously liable for the acts of its public servants that resulted in the violation of the fundamental right to life of the citizens. Monetary or pecuniary compensation is an effective and suitable remedy.

L. CHANDRA KUMAR
Vs
UNION OF INDIA

MANU/SC/0261/1997

FACTS

This case was with respect to the Constitutional validity of sub- clause (d) of clause(2) of Article 323-A of and sub-clause (d) of clause(3) of Article 323-B of the Constitution of India, 1950. It also concerned the Constitutional validity of the Administrative Tribunals Act, 1985 and whether the Tribunals constituted under Part XIV- A of the Constitution of India were substitutes to High Courts in terms of judicial review

QUESTIONS OF LAW

Whether the Tribunals, constituted either under Article 323A or under Article 323B of the Constitution, possess the competence to test the Constitutional validity of a statutory provision/rule?

Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of Judicial review? If not, what are the changes required to make them conform to their founding objectives?

Whether the power conferred upon Parliament or the Stale Legislatures, as the case may be, by sub-clause (d) of clause (2) of Article 323A or by sub-clause (d) of clause (3) of Article 323B of the Constitution, totally exclude the jurisdiction of 'all Courts', except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in clause (1) of Article 323A or with regard to all or any of the matters specified in clause (2) of Article 323B, runs counter to the power of judicial review conferred on the High Courts under Articles 226/227 and on the Supreme Court under Article 32 of the Constitution?

HELD

The Court held that clause 2(d) of Article 323A and clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Along with the High Courts, tribunals created under Article 323B also have the power of Judicial review of legislative action.The decisions of the Administrative tribunals are subject to the writ jurisdiction of the High Courts.

In defining the jurisdiction of the Tribunals the Court held:

"The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal."

In order to ensure that the Tribunals function efficiently, the Court made the following suggestions:

"We are of the view that, until a wholly independent agency for the administration of all such Tribunals can be set-up, it is desirable that all such Tribunals should be, as far as possible, under a single nodal Ministry which will be in a position to oversee the working of these Tribunals. For a number of reasons that Ministry should appropriately be the Ministry of Law. It would be open for the Ministry, in its turn, to appoint an independent supervisory body to oversee the working of the Tribunals. This will ensure that if the President or Chairperson of the Tribunal is for some reason unable to take sufficient interest in the working of the Tribunal, the entire system will not languish and the ultimate consumer of justice will not suffer. The creation of a single umbrella organisation will, in our view, remove many of the ills of the present system. If the need arises, there can be separate umbrella organisations at the Central and the State levels. Such a supervisory authority must try to ensure that the independence of the members of all such Tribunals is maintained. To that extent, the procedure for the selection of the members of the Tribunals, the manner in which funds are allocated for the functioning of the Tribunals and all other consequential details will have to be clearly spelt out."

VISHAKA VS STATE OF RAJASTHAN

MANU / SC / 0786 / 1997

BACKGROUND

The immediate reason for the petition was the brutal gang rape of a social worker in a village of Rajasthan who had been involved in fighting against child marriage. This incident revealed the hazards to which a working woman may be exposed.

GUIDELINES TO PREVENT SEXUAL HARRASMENT OF WOMEN AT THE WORKPLACE

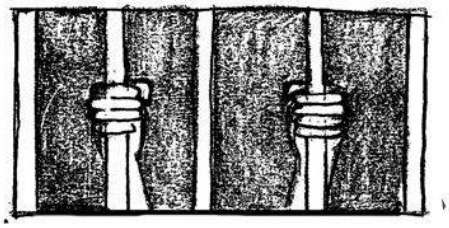
1 Duty of the employer to prevent, resolve and ensure prosecution of acts of sexual harassment

WHAT IS SEXUAL HARASSMENT AT THE WORKPLACE?

2 It is unwelcome sexually determined behaviour committed in circumstances where it is related to the victim's employment in terms of salary, or honorarium or other conditions- and may constitute a health and safety problem

3 Preventive steps to eliminate hostile working environments

4 Criminal proceedings should be initiated with the appropriate authority



5 Disciplinary action

COMPLAINT MECHANISM

6 A complaint mechanism must be established to redress grievances

7 A complaints committee should be instituted and headed by a woman

WORKERS INITIATIVE

8 Workers should be allowed to raise issues at appropriate fora

9 Sexual harassment awareness

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT WAS PASSED IN 2013

Samatha

vs.

State of Andhra Pradesh

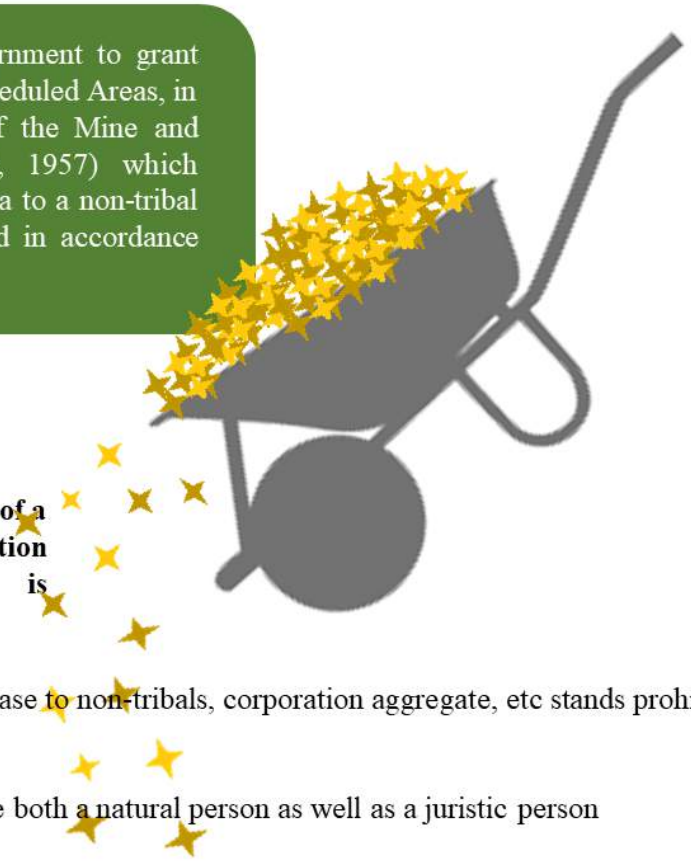
MANU/SC/1325/1997

Facts

Samatha is an advocacy and social action group working in Andhra Pradesh, fighting for the rights and protection of the tribal communities and the environment. Samatha filed a Special Leave Petition in the Supreme Court of India after the High Court and local courts dismissed their case against the Government of Andhra Pradesh for the leases given to private mining companies in the scheduled areas.

Questions of Law

This case questioned the power of the Government to grant mining leases in favour of non-tribals in the Scheduled Areas, in violation of the Regulation (Section 11(5) of the Mine and Mineral (Regulation and Development Act, 1957) which prohibits transfer of any land in Scheduled Area to a non-tribal and following this, whether the leases granted in accordance with the Mining Act to non-tribals are valid.



Held

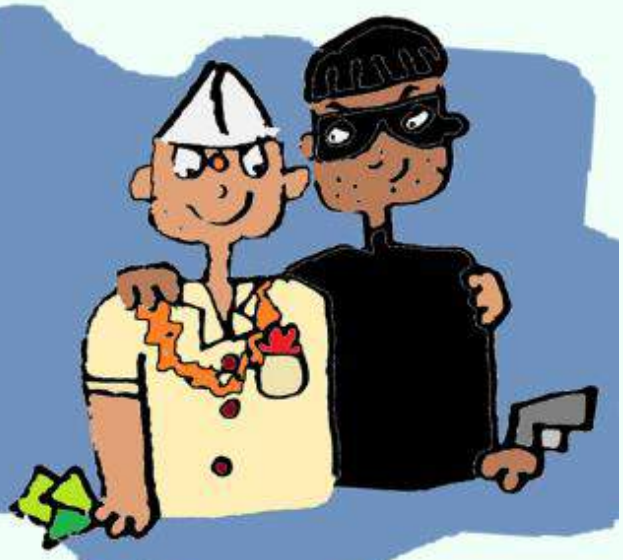
- **The Court held in its verdict that the transfer of a mining lease to non-tribals, company, corporation aggregate or partnership firm, etc is unconstitutional, void and inoperative**.
- Transfer of land in Scheduled Areas by way of lease to non-tribals, corporation aggregate, etc stands prohibited to prevent their exploitation in any form.
- The Court declared that a "person" would include both a natural person as well as a juristic person
- It also held that transfer of land to the Government or its instrumentalities is entrustment of public property as the aim of public corporations is in public interest and hence such transfers stand upheld.
- The Court directed, that at least 20% of the net profits should be set apart as a permanent fund as part of industrial/business activity for establishment and maintenance of water resources, schools, hospitals, sanitation and transport facilities by laying roads, etc.
- A renewal of lease will also be considered as a fresh grant of lease and therefore, any such renewal stands prohibited.

- In States where there is no legal provision providing for total prohibition of mining leases of land in Scheduled Areas, a Committee of Secretaries and a State Cabinet Sub Committee should be constituted and decision taken thereafter.

- Conference of all Chief Ministers, Ministers holding the Ministry concerned and Prime Minister, and Central Ministers concerned should take a policy decision for a consistent scheme throughout the country in respect of tribal lands.

VINEET NARAIN VS. UNION OF INDIA

MANU/SC/0827/1998



FACTS

The arrest of an alleged official of the terrorist outfit Hizbul Mujahideen revealed possible bribery payments made to several high-ranking Indian politicians and bureaucrats by the terrorist outfit. Known as the historic Hawala scandal, there was nothing done post the discovery in terms of a substantial investigation.

The present writ petitions were filed in the public interest under Article 32 of the Constitution of India alleging the failure of the Central Bureau of Investigation (CBI) to initiate investigations of the officials with the apparent intent of protecting implicated individuals who were extremely influential and powerful in the government.

QUESTION OF LAW

Whether any judicial remedy is available in a situation of delay in investigation by the CBI (which is under the control of the executive) in matters relating to accusations against high dignitaries?

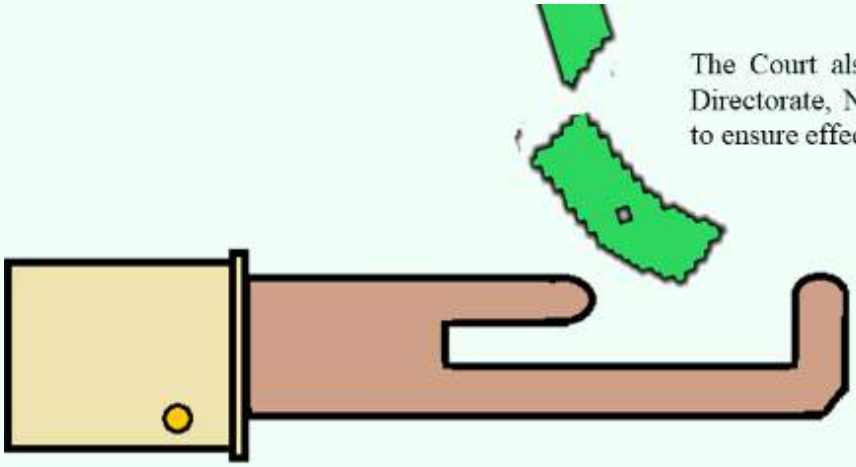
HELD

The Supreme Court in its judgment for the first time took cognizance of the nexus between high-ranking politicians, bureaucrats and criminals. Explaining the rationale behind the judgment, the Court expressed an urgent need for insulation of investigative agencies from any outside influences.

"This is the occasion for us to deal with the structure, constitution and the permanent measures necessary for having a fair and impartial agency. The faith and commitment to the rule of law exhibited by all concerned in these proceedings is the surest guarantee of the survival of democracy of which rule of law is the bedrock. ***The basic postulate of the concept of equality: "Be you ever so high, the law is above you" , has governed all steps taken by us in these proceedings."***

As regards the scope of the petitions and affirming the remedial role the judiciary can play in such cases, the Court said that anyone against whom there is reasonable suspicion ought to be treated equally and similarly under the law, which the Court said, the agencies had failed to do and therefore a scheme giving the much needed insulation was imperative.

The Court issued guidelines to ensure the independence and autonomy of the CBI and called for transparency in the selection of the CBI Director and put the Central Vigilance Commission (CVC), an independent governmental agency intended to be free from executive control or interference incharge of the CBI. **This directive removed the CBI from the supervision of the Central Government thought to be partly responsible for the inertia that contributed to the CBI's previous lack of urgency with respect to the investigation of high-ranking officials.** The CVC was now responsible for ensuring that allegations of corruption against public officials were thoroughly investigated regardless of the identity of the accused and without interference from the Government. It also issued guidelines to ensure independence and transparency of the CVC, giving it statutory status.



The Court also gave directions to the Enforcement Directorate, Nodal Agency and Prosecution Agency to ensure effective working and transparency.

The Court exercised its jurisdiction to monitor implementation of the guidelines pronounced in the light of an absence of legislative policy on public corruption

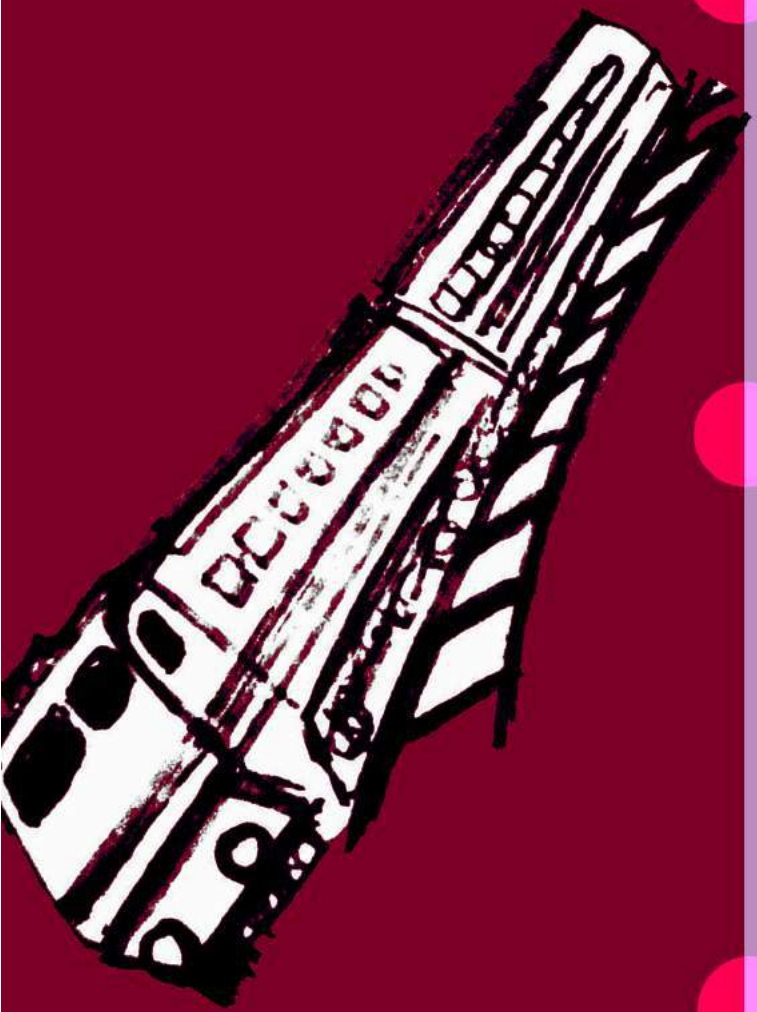
Chairman Railway Board vs. Chandrima Das

MANU/SC/0046/2000

FACTS

Mrs. Chandrima Das, a practising advocate of the Calcutta High Court, filed a petition under Article 226 of the Constitution against several employees of the Railways including the Chairman, Railway Board, claiming compensation for the victim, Smt. Hanuffa Khatoon, a Bangladeshi national who was gang-raped by many including employees of the Railways at Howrah Station of the Eastern Railway.

Mrs. Chandrima Das also claimed several other reliefs including a direction to the respondents to eradicate anti-social and criminal activities at Howrah Railway Station.



The High Court awarded a sum of Rs.10 lacs as compensation for Smt. Hanuffa Khatoon as it was of the opinion that the rape was committed at the building (Rail Yatri Niwas) belonging to the Railways and was perpetrated by the Railway employees.

The appellants appealed against this decision of the High Court.

QUESTIONS OF LAW

- Whether compensation can be claimed in a proceeding instituted under Article 226 of the Constitution of India?

- Whether the Railways/Union of India is liable to pay compensation to the victim?

HELD

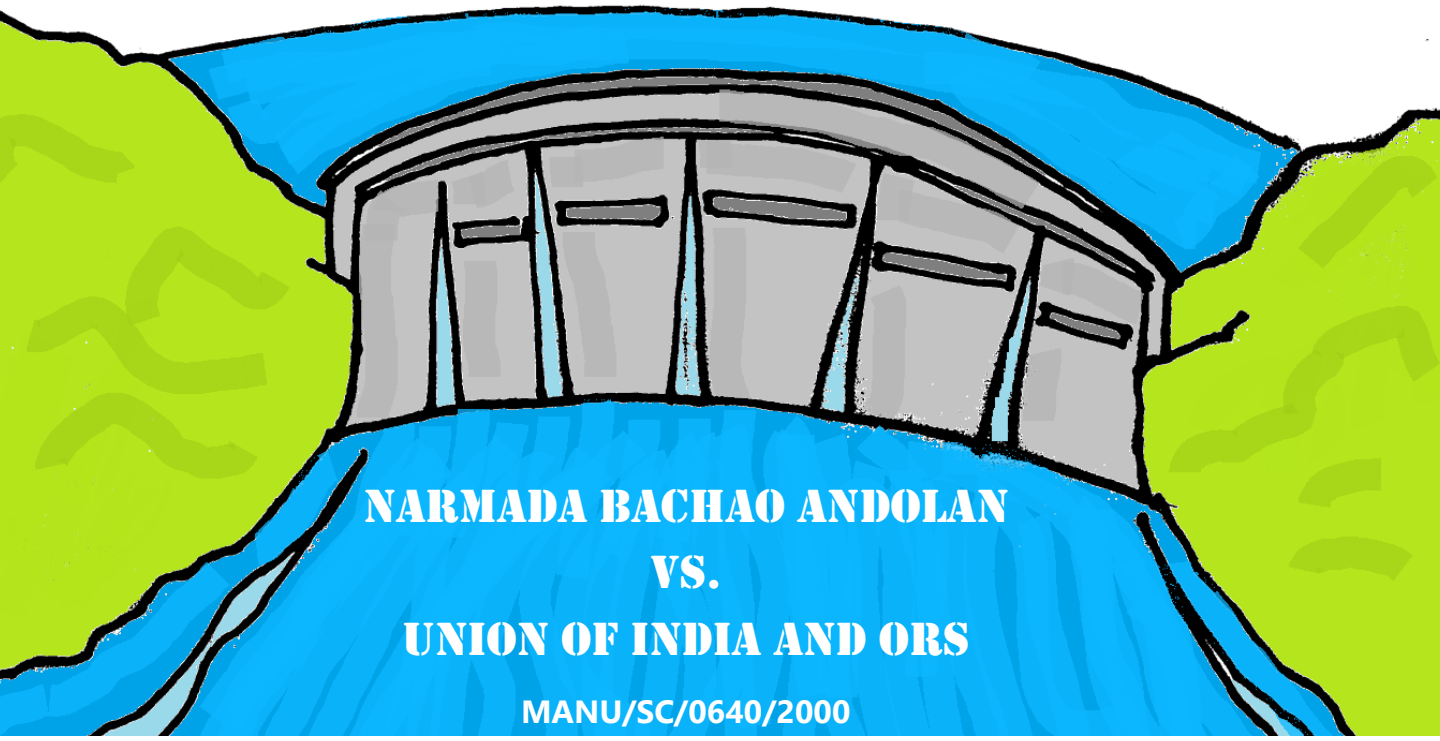
Upholding the validity of the claim of the victim for compensation, the Court held, "The contention that Smt. Hanuffa Khatoon should have approached the civil court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution cannot be accepted. Where public functionaries are involved and the matter relates to the violation of Fundamental Rights or the enforcement of public duties, the remedy would still be available under the Public Law notwithstanding that a suit could be filed for damages under Private Law."

PUBLIC FUNCTIONARIES PUBLIC LAW

COMPENSATION

The Right to Life guaranteed under Article 21 of the Constitution is available to citizens as well as non-citizens. The Court held that the State was under Constitutional liability to pay compensation to her, and as such, the previous judgment of the High Court allowing compensation is valid.

The Court found the Central Government vicariously liable for the offence of rape committed by the employees of the Railways. The Court said that in a welfare State, the functions of a Government are manifold – not only relating to defence and administration but also extending to spheres such as education, commercial, social, economic and even marital.



NARMADA BACHAO ANDOLAN
VS.
UNION OF INDIA AND ORS

MANU/SC/0640/2000

FACTS

In the year 1994, the petitioner, an anti-dam organization, filed a writ petition opposing the construction of the Sardar Sarovar Dam undertaken for the optimal utilization of the water resources of the Narmada river system. Lack of environmental clearances, extensive dislocation and inadequate rehabilitation plan were grounds on which it sought the construction of the dam to be stopped.

HELD

At the very outset the Court highlighted the advantages of the project. The contention raised by the petitioner that the project was averse to national interest was brushed aside by relying upon a 1990 World Bank report, which analyzed the cost and benefit of the project which basically said that the benefits of building the Sardar Sarovar Dam were so large that they outweighed the costs to human and environment disruption.

The project was not carried out without necessary environmental clearances. Ministry of Water Resources, Ministry of Environment and Forest and Government of Gujarat submitted detailed reports of investigations assessing the environmental impact of the project among others. Recognizing this, the Court said that it was evident that the Government was, in fact, deeply concerned with the environmental aspects of the project.

Contrary to the petitioner's claim that the project is likely to result in environmental degradation the Court observed that the project would make positive contribution for the preservation of environment in many ways such as, carrying water to drought prone areas and the ecology of water scarcity in the country being under stress, needed the benefits of this project to help sustain agriculture and spread green cover.

With respect to the question of rehabilitation of displaced tribal and non-tribal families, the Court noted the existence of an adequate re-settlement plan. As early as in 1979, the awards given by a Tribunal headed by Justice V.Ramswamy outlined a resettlement plan. It held:

- That those families who have had more than 25% of agricultural land acquired be entitled to irrigable land of choice to the extent of land acquired.Additionally, every project-affected person will be allotted a house plot free of cost and a re-settlement and rehabilitation grant.
- The civic amenities required by the award to be provided at places of re-settlement include one primary school for every 100 families, one Panchayat Ghar, one dispensary, one seed store, one children's park, one village pond and one religious place of worship for every 500 families; one drinking water well, approach road linking each colony to the main road, electrification, sanitary arrangement etc.

The Court observed the presence of an elaborate network of agencies and mechanisms for monitoring and implementing the rehabilitation plans.

NARMADA CONTROL AUTHORITY

A BODY CONSTITUTED AS A CONSEQUENCE OF THE TRIBUNAL AWARD OF 1979 CARRIED OUT THE FOLLOWING FUNCTIONS:

"To monitor the progress of land acquisition in respect of submergence land of Sardar Sarovar Project (SSP) and Indira (Narmada) Sagar Project (ISP).

To monitor the progress of implementation of the action plan of rehabilitation of project affected families in the affected villages of SSP and ISP in concerned States.

To review the rehabilitation and resettlement (R&R) action plan from time to time in the light of results of the implementation.

To review the reports of the agencies entrusted by each of the States in respect of monitoring and evaluation of the progress in the matter of re-settlement and rehabilitation.

To monitor and review implementation of re-settlement and rehabilitation programmes *pari passu* with the raising of the dam height, keeping in view the clearance granted to ISP and SSP from an environmental angle by the Government of India and the Ministry of Environment and Forests.

To coordinate States/agencies involved in the R&R programmes of SSP and ISP.

To undertake any or all activities in the matter of re-settlement and rehabilitation pertaining to SSP and ISP."

GRIEVANCE REDRESSAL MECHANISMS WERE INSTITUTED IN THE THREE STATES OF GUJARAT, MADHYA PRADESH AND RAJASTHAN TO ENABLE PROJECT-AFFECTED FAMILIES TO VOICE THEIR CONCERNS.

BEFORE PARTING, THE COURT ISSUED THE FOLLOWING DIRECTIONS:

1. “Construction of the dam will continue as per the Award of the Tribunal.”

2. “As the Relief and Rehabilitation Sub-group has cleared the construction up to 90 meters, the same can be undertaken immediately. Further raising of the height will be only *pari passu* with the implementation of the relief and rehabilitation and on the clearance by the Relief and Rehabilitation Sub-group. The Relief and Rehabilitation Sub-Group will give clearance of further construction after consulting the three Grievances Redressal Authorities.”

3. “The Environment Sub-group under the Secretary, Ministry of Environment & Forests, Government of India will consider and give, at each stage of the construction of the dam, environment clearance before further construction beyond 90 meters can be undertaken.”

4. “The permission to raise the dam height beyond 90 meters will be given by the Narmada Control Authority, from time to time, after it obtains the above-mentioned clearances from the Relief and Rehabilitation Sub-group and the Environment Sub-group.”

5. “The reports of the Grievances Redressal Authorities, and of Madhya Pradesh in particular, shows that there is a considerable slackness in the work of identification of land, acquisition of suitable land and the consequent steps necessary to be taken to rehabilitate the project oustees. We direct the States of Madhya Pradesh, Maharashtra and Gujarat to implement the Award and give relief and rehabilitation to the oustees in terms of the packages offered by them and these States shall comply with any direction in this regard which is given either by the NCA or the Review Committee or the Grievances Redressal Authorities.”

6. “Even though there has been substantial compliance with the conditions imposed under the environment clearance the NCA and the Environment Sub-group will continue to monitor and ensure that all steps are taken not only to protect but to restore and improve the environment.”

7. “The NCA will within four weeks from today draw up an Action Plan in relation to further construction and the relief and rehabilitation work to be undertaken. Such an Action Plan will fix a time frame so as to ensure relief and rehabilitation *pari passu* with the increase in the height of the dam. Each State shall abide by the terms of the action plan so prepared by the NCA and in the event of any dispute or difficulty arising, representation may be made to the Review Committee. However, each State shall be bound to comply with the directions of the NCA with regard to the acquisition of land for the purpose of relief and rehabilitation to the extent and within the period specified by the NCA.”

8. “The Review Committee shall meet whenever required to do so in the event of there being any un-resolved dispute on an issue which is before the NCA. In any event the Review Committee shall meet at least once in three months so as to oversee the progress of construction of the dam and implementation of the R&R programmes.
If for any reason serious differences in implementation of the Award arise and the same cannot be resolved in the Review Committee, the Committee may refer the same to the Prime Minister whose decision, in respect thereof, shall be final and binding on all concerned.”

JUSTICE adda

9. “The Grievances Redressal Authorities will be at liberty, in case the need arises, to issue appropriate directions to the respective States for due implementation of the R&R programmes and in case of non- implementation of its directions, the GRAs will be at liberty to approach the Review Committee for appropriate orders.”

10. “Every endeavor shall be made to see that the project is completed as expeditiously as possible.”

manupatra®
Power Your Legal Research™

M.C. Mehta vs. Kamal Nath

MANU/SC/0189/2002

FACTS

In 1990, Span Motels Pvt. Ltd., owners of Span Motels, initiated a venture by the name of Span Club. The club was built by encroaching upon large areas of land, which also included substantial forest land. Kamal Nath, the then Minister of Environment and Forest, known to have direct links to Span Motels was responsible for regularizing and leasing out the land to the company in 1994. The encroachment led to the swelling of river Beas that then changed its course and washed away Span Club. The concerned management used bulldozers and earthmovers to change the course of the river for the second time.

In 1995 a massive flood was caused harming property worth 105 crores.

In 1996: The Court passed a judgment

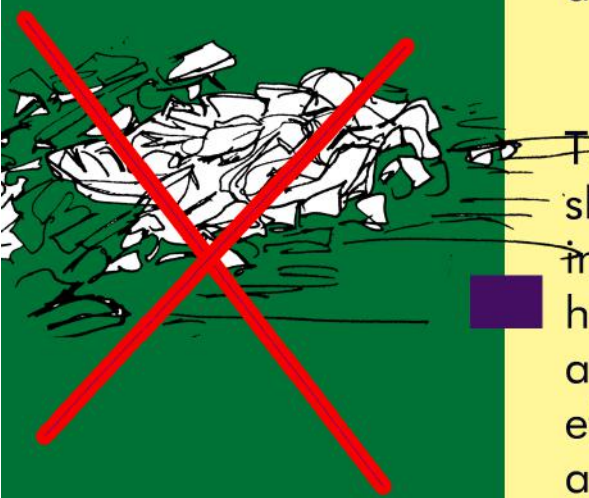
The prior approval granted by the Government of India, Ministry of Environment and Forest and the lease deed in favour of the Motel were quashed.

The Himachal Pradesh Government was directed to take over the area and restore it to its original natural conditions.

The Motel to pay compensation by way of cost for the restitution of the environment and ecology of the area.

The pollution caused by various constitutions made by the Motel in the riverbed and the banks on the river Beas to be removed and reversed.

The Motel shall not discharge untreated effluents into the river. It was directed that the Himachal Pradesh Pollution Control Board inspect the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Motel is not conforming to the prescribed standards, action in accordance with law be taken against the Motel.



The Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into river Beas. The Board shall inspect all the hotels/institutions/factories in Kullu-Manali area and in case any of them are discharging untreated effluent/waste into the river, the Board shall take action in accordance with law.

The Court also recognised the Public Trust Doctorine which means, that the soveriegn holds in trust for the public some resources regardless of private property ownership, as part of the law of the land.

The case, which was decided by the Court by its judgment in 1996, was brought before the Court again for determination of the quantum of pollution fine.

QUESTIONS OF LAW

The question involved in this case was regarding the extent of the responsibility of the polluter and the quantum of the pollution fine and nature of damages they are expected to pay.

HELD

The Court in its judgment held that harm to the environment amounted to threatening fundamental rights as guaranteed by the Constitution and thus the damages are not only limited to restorative purposes but also as damages to victims. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21 of the Constitution. In the matter of enforcement of rights under Article 21 of the Constitution, this Court, besides enforcing the provisions of the Acts referred to above, has also given effect to Fundamental Rights under Article 14 and 21 of the Constitution and has held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance

The Court in this case established the principle of exemplary damages and polluter pays principle. It said, "Pollution is a civil wrong. By its very nature, it is a Tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender. The powers of this Court under Article 32 are not restricted and it can award damages in a PIL or a Writ Petition as has been held in a series of decisions. In addition to damages aforesaid, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner"

SPAN HOTEL

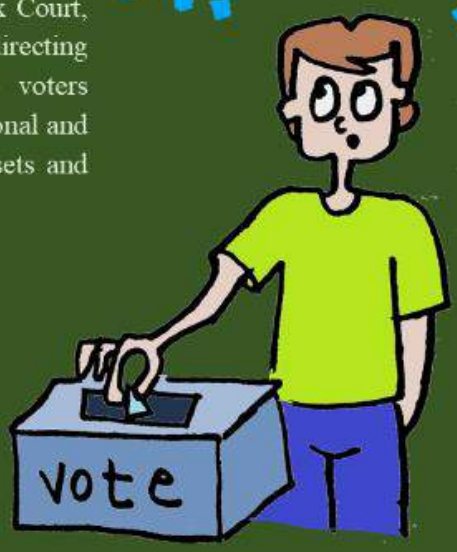
A fine of Rupees 10 lakhs was imposed on Span Hotels in the form of exemplary damages.

Union of India vs. Association for Democratic Reforms

MANU/SC/0394/2002

FACTS

The Union of India approached the Apex Court, challenging the order of the High Court directing the Election Commission to secure to voters information regarding candidates educational and criminal background as well as their assets and liabilities.



QUESTIONS OF LAW

- Whether voters have a right to know the relevant particulars of individuals contesting elections?
- Whether Election Commission is empowered to issue directions as ordered by the High Court?

HELD

The Court held that citizens have a right to know about public functionaries and candidates for office, including their assets and criminal and educational backgrounds, and this right is derived from the Constitutional right to freedom of speech and expression.

Recognizing the necessity of acceding to voters the right to know about the antecedents of candidates, the Court held:

"In our opinion, the decision of even illiterate voter, if properly educated and informed about the contesting candidate, would be based on his own relevant criteria of selecting a candidate. In democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens – voters. In a democratic form of Government, voters are of utmost importance."

Bringing voters right to information within the sweep of Article 19(1)(a) of the Constitution of India, the Court held:

Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voters' speech or expression in case of election would include casting of votes; that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must."

Citing Article 324 of the Constitution of the India, which empowers Election Commission to issue directions to secure citizens the right to information about candidates, the Court said,

"In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, Commission can fill the vacuum till there is legislation on the subject."

Ex Capt. Harish Uppal vs. Union of India & Anr

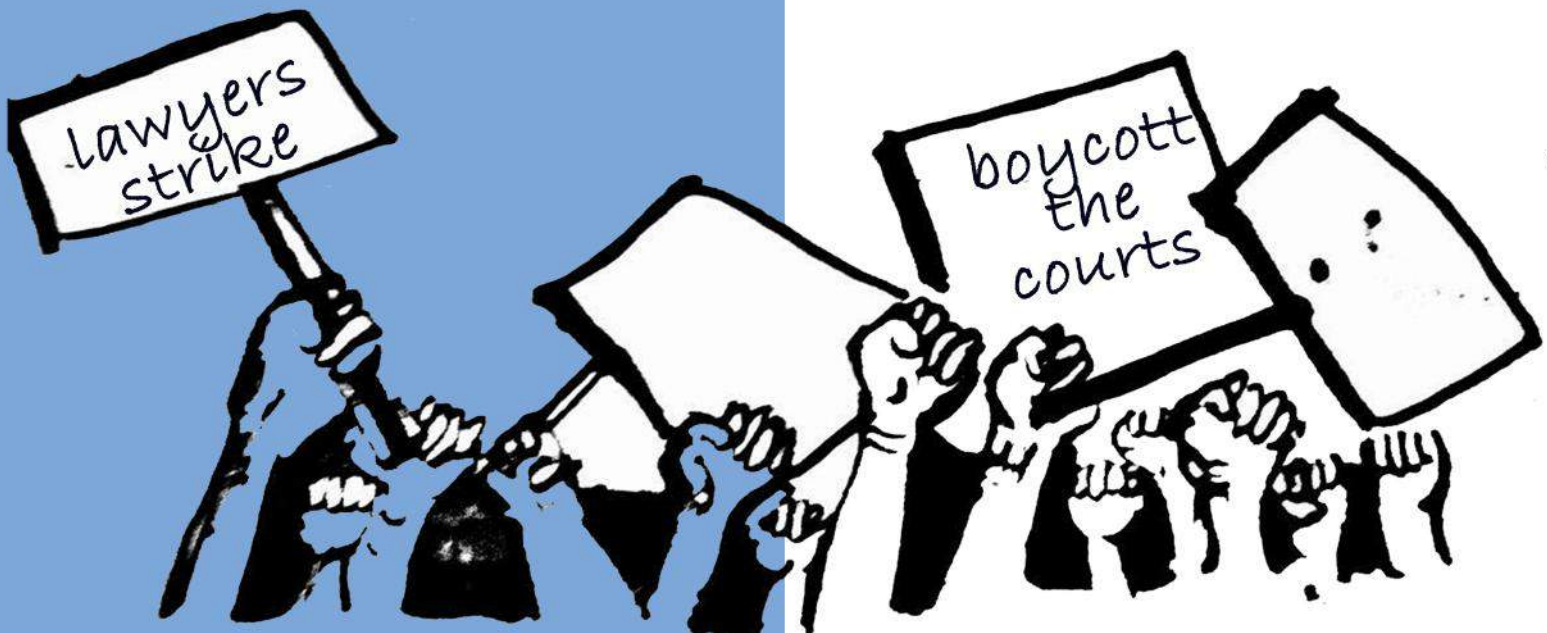
MANU/SC/1141/2002

FACTS

In all these Petitions a declaration was sought that strikes and/or calls for boycott by lawyers be declared illegal.

QUESTIONS OF LAW

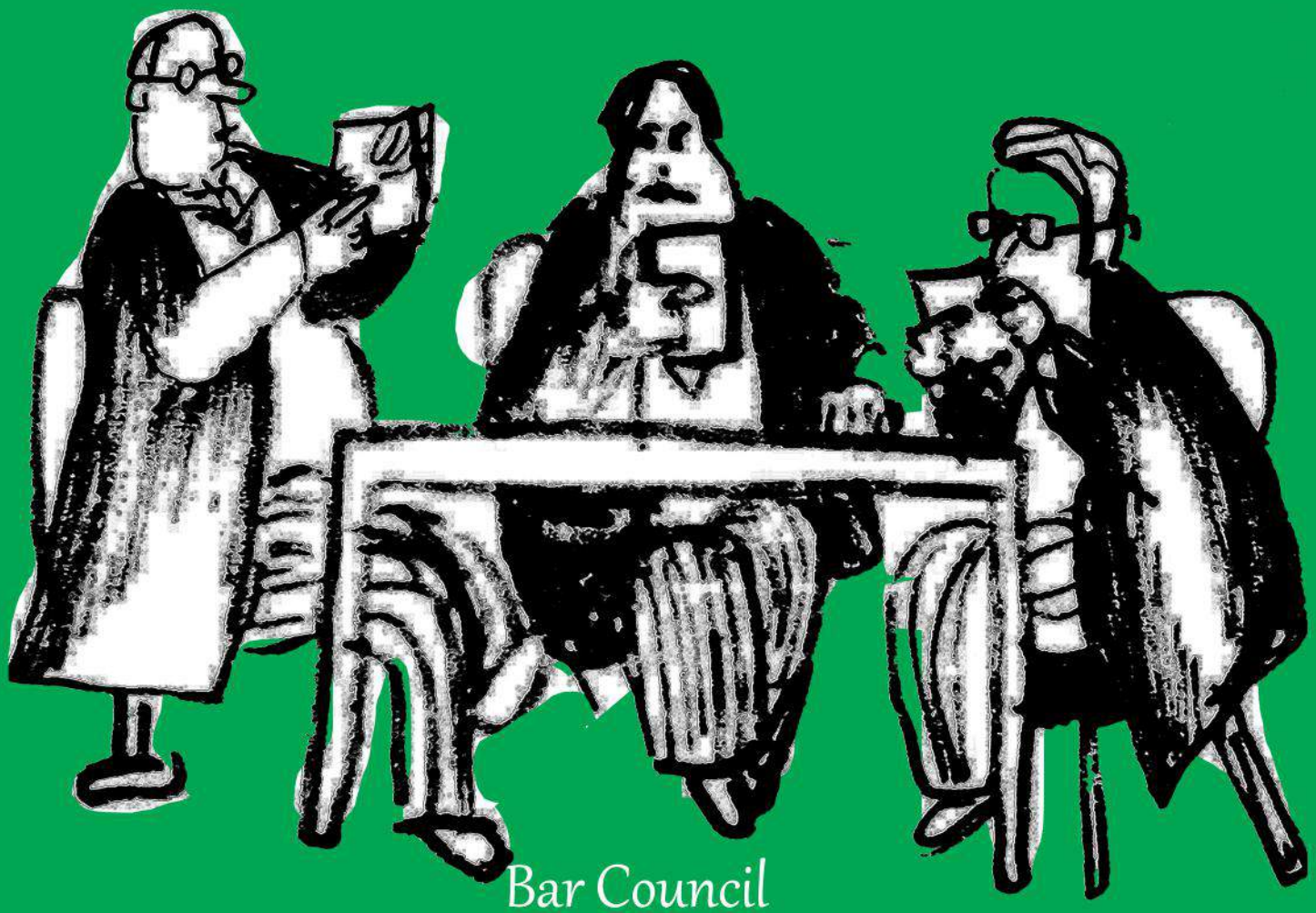
Whether lawyers have a right to strike and/or give a call for boycotts of Courts?



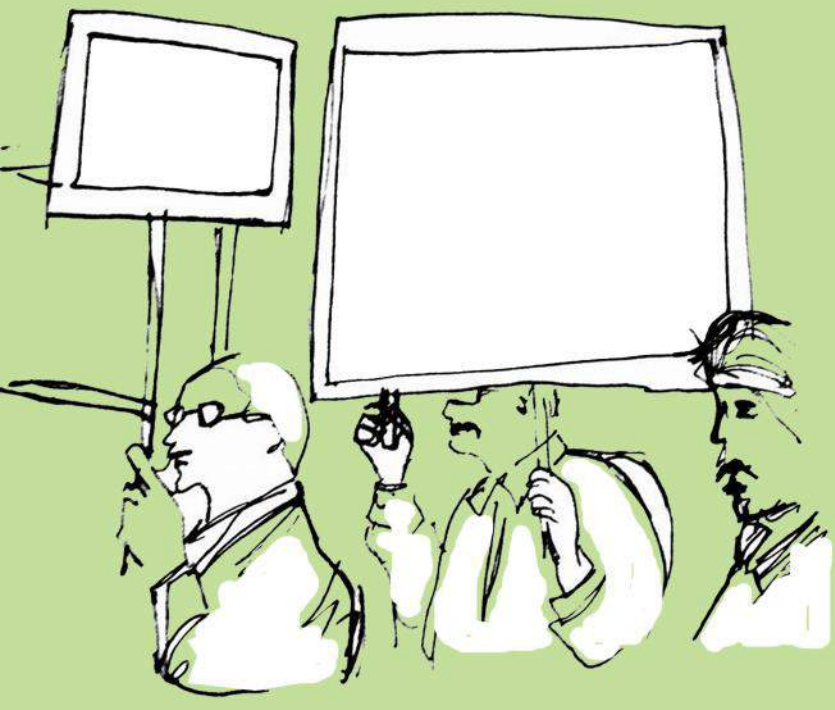
HELD

The Court held that a strike by lawyers is illegal and unethical. Recognizing the Courts obligation to hear and decide cases, the bench said that the Court couldn't adjourn a case merely because lawyers are on strike. If the lawyer, or a party does not appear in Court, the necessary consequences contemplated in law will follow.

Regarding the role of the Bar Council in ensuring the smooth functioning of the Courts, the Court said that the Bar Council ought to uphold the dignity of the Courts and ensure there is no unprofessional behaviour and conduct.



Sighting Article 145 of the Constitution and Section 30 of the Advocates Act which gave power to frame rules to the Supreme Court and the High Court respectively, the Court warned the Bar that the Courts may have to frame rules above and beyond the powers of the Bar Councils to deal with the conduct of Advocates guilty of contempt and/or unprofessional behaviour.



The Court, therefore, acknowledged that the right to strike does exist and can be exercised if a rare situation demands so. However, the Apex Court restricted the right to strike of Advocates with regards to the significant role they play in the administration of justice. For all other's this sacred right continued to hold in good force.

PUCL VS. UNION OF INDIA & ANR

MANU/SC/0234/2003

FACTS

In Union of India v Association of Democratic Reforms Case the Supreme Court had held that a citizen/voter has a right to know about the antecedents of candidates contesting elections. In order to enforce such a right the Court made it mandatory for candidates contesting elections to furnish information regarding their criminal records, educational background and assets and liabilities to the Election Commission.

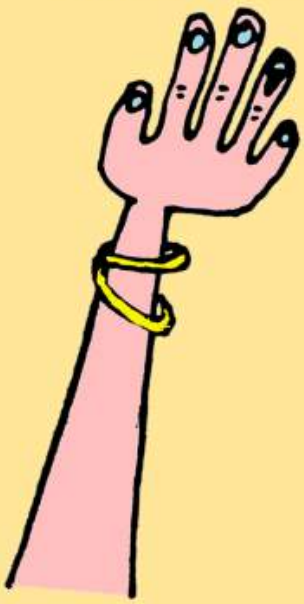
However, with the Representation of Peoples Amendment Act, 2002, the legislature nullified the directions given in the Association of Democratic Reforms case.

The petitioner in the given case challenged the constitutional validity of Section 33B of Representation of Peoples Act, which limited the area of disclosure to the criminal background of the candidate. It found the Section inadequate and violative of citizen's right to freedom of expression guaranteed under Article 19(1) (a) of the Constitution of India.

QUESTIONS OF LAW

Whether Section 33B of the Representation of Peoples Act falls foul of Article 19(1) (a) for limiting the area of disclosure?

Whether the Parliament acted beyond its competence in deviating from the directives given by this Court to the Election Commission in Democratic Reforms Association case



HELD

The Supreme Court of India, recognizing the importance of the voter in a democracy, emphasized that Article 19(1)(a) includes the right of voters to have basic information about their candidates. It held that even though the right to vote itself may not be a fundamental right, the expression of opinion through the action of casting a vote is part of Article 19(1)(a).

In recognizing the need to balance the citizen's right to information about candidates, and the candidates right to privacy the Court held that the standards need to be applied vis-à-vis the public affairs, governance and the disclosure relating to personal life of the candidate. However, it did hold that the candidate's right to privacy is subject to an overriding public interest.

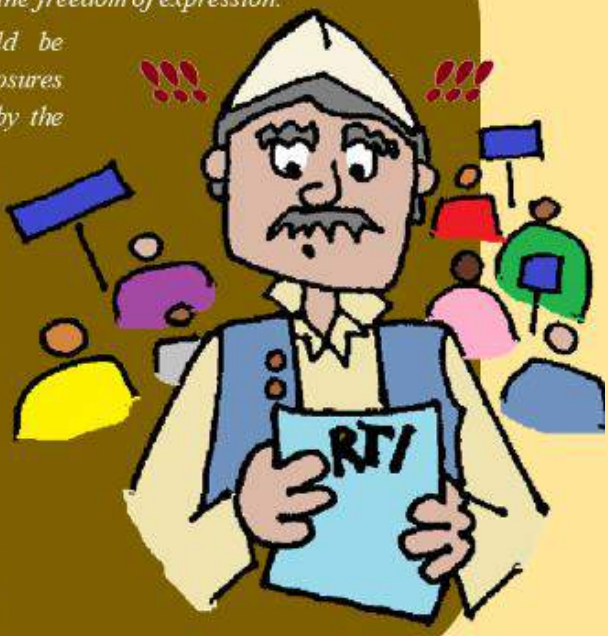
Although the Court acknowledged the fact that the directions given in the Association of Democratic Reforms Case were Ad Hoc in nature it held that the legislature must give them due weightage while legislating on the subject matter they covered.

The Court found Section 33B of the impugned legislation unconstitutional.
It gave the following reasons for its decision:

"The right to information should be allowed to grow rather than being frozen and stagnated; but the mandate of Section 33B prefaced by the non obstante clause impedes the flow of such information conducive to the freedom of expression."

"The second reason why Section 33B should be condemned is that by blocking the ambit of disclosures only to what has been specifically provided for by the amendment, the Parliament

failed to give effect to one of the vital aspects of information, viz., disclosure of assets and liabilities and thus failed in substantial measure to give effect to the right to information as a part of the freedom of expression. The right to information which is now provided for by the legislature no doubt relates to one of the essential points but in ignoring the other essential aspect relating to assets and liabilities as discussed hereinafter, the Parliament has unduly restricted the ambit of information which the citizens should have and thereby impinged on the guarantee enshrined in Article 19(1) (a)."



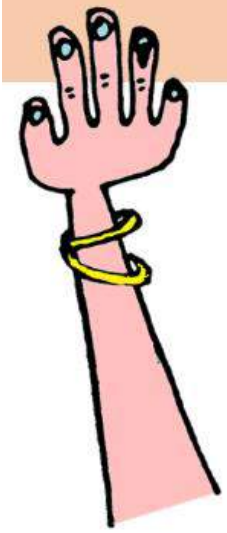
The Court discussed right to information about candidates with respect to specific aspects.

- Criminal background and pending criminal cases against candidates- The Court found what the Parliament had provided i.e. Section 33A of the Representation of Peoples Act, with respect to criminal background as adequate.
- Disclosure of assets and liabilities – The Court found disclosure of assets and liabilities essential for giving effect to citizens right to information. It held:

"The public awareness of financial position of the candidate will go a long way in forming an opinion whether the candidate, after election to the office had amassed wealth either in his own name or in the name of family member's viz., spouse and dependent children. At the time when the candidate seeks re-election, the citizens/voters can have a comparative idea of the assets before and after the election so as to assess whether the high public office had possibly been used for self-aggrandizement. Incidentally, the disclosure will serve as a check against misuse of power for making quick money-a malady, which nobody can deny, has been pervading the political spectrum of our democratic nation. As regards liabilities, the disclosure will enable the voter to know, inter alia, whether the candidate has outstanding dues payable to public financial institutions or the Government. Such information has a relevant bearing on the antecedents and the propensities of the candidate in his dealings with public money."

- Educational Qualifications – The Court did not find disclosure of information regarding educational qualifications of a candidate an essential component of the right to information flowing from Article 19(1)(a) of the Constitution.

Rameshwar Prasad & Ors
vs
Union Of India & Anr
MANU/SC/0399/2006



FACTS

Following the elections to the Bihar Legislative Assembly in 2005, no party was able to form Government on its own. Under such a situation a notification was issued under Article 356 imposing President's rule and the Assembly was kept in suspended animation. Later, apprehending horse-trading and large scale defections with the object of gaining power, the Governor submitted a report to the President on 27th April as well as 21st May expressing the same. Following the Governors report the President by an order dissolved the assembly, even before the first meeting.

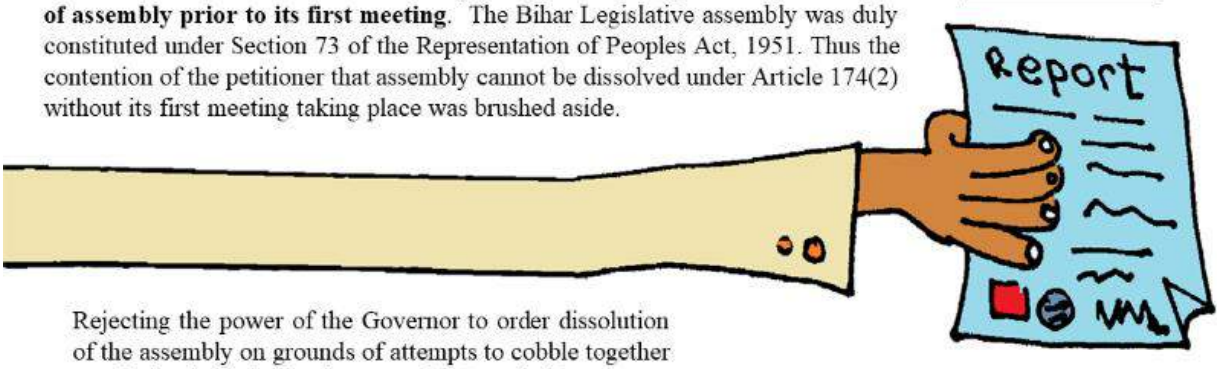
Writ petitions were filed under Article 32 of the Constitution challenging the constitutionality, legality and validity of the President Order to dissolve the assembly.

QUESTIONS OF LAW

- Is it permissible to dissolve the Legislative Assembly under Article 174(2) (b) of the Constitution without its first meeting taking place?
- Whether the proclamation dated 23rd May 2005 dissolving the Assembly of Bihar is illegal and unconstitutional?
- If the answer to the aforesaid question is in affirmative, is it necessary to return to the previously existing state of affairs?
- What is the scope of Article 361 granting immunity to the Governor?

HELD

The Court held that there is a difference between 'duration of the assembly' and 'the due constitution of the Assembly'. While Article 172 deals with the former, it is Section 73 of the Representation of People Act, 1951 that deals with the latter. **There is no constitutional or statutory provision, which prohibits dissolution of assembly prior to its first meeting**. The Bihar Legislative assembly was duly constituted under Section 73 of the Representation of Peoples Act, 1951. Thus the contention of the petitioner that assembly cannot be dissolved under Article 174(2) without its first meeting taking place was brushed aside.



Rejecting the power of the Governor to order dissolution of the assembly on grounds of attempts to cobble together a majority through illegal means, the Court held:

"Acceptance of such a proposition as a relevant consideration to invoke exceptional power under Article 356 may open a floodgate of dissolutions and has far reaching alarming and dangerous consequences. It may also be a handle to reject post-election alignments and realignments on the ground of same being unethical, plunging the country or the State to another election."

The order, dissolving the assembly was found to be unconstitutional. Article 356 of the Constitution requires that proclamation be issued on the basis of **"relevant material"** suggesting that a **situation has arisen in which the State Government cannot be carried on in accordance with the provisions of the Constitution** However in the present case the Governor's report on the basis of which the President issued the order dated 23rd May was found to be irrelevant.

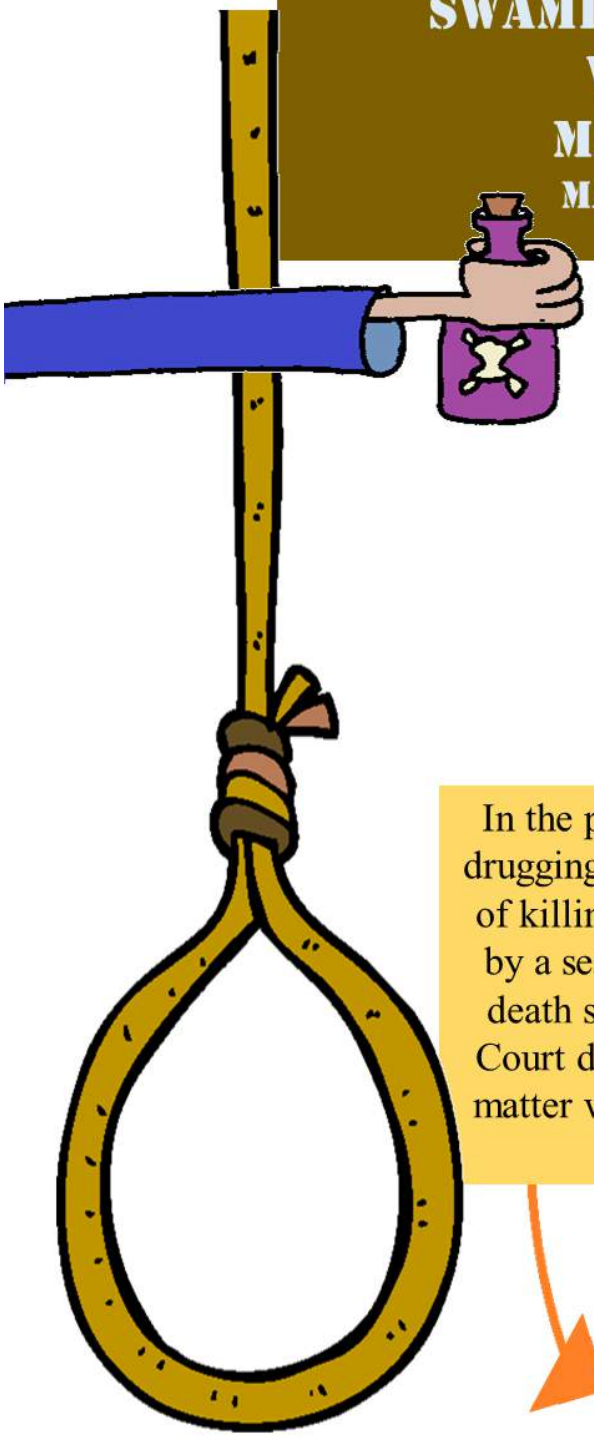
"The power conferred by Art. 356 upon the President is a conditioned power. It is not an absolute power. The existence of material -- which may comprise of or include the report(s) of the Governor -- is a pre-condition."

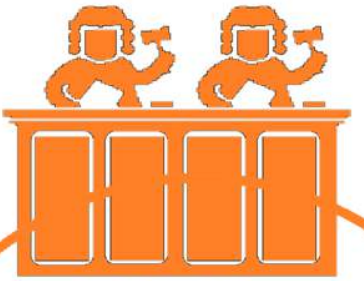
"Undisputedly, a Governor is charged with the duty to preserve, protect and defend the Constitution and the laws, has a concomitant duty and obligation to preserve democracy and not to permit the 'canker' of political defections to tear into the vitals of the Indian democracy. But on facts of the present case, we are unable to accept that the Governor by reports dated 27th April and 21st May, 2005 sought to achieve the aforesaid objective. There was no material, let alone relevant, with the Governor to assume that there were no legitimate realignment of political parties and there was blatant distortion of democracy by induced defections through unfair, illegal, unethical and unconstitutional means."

Despite the unconstitutionality of the proclamation, the Court could not restore the assembly as the election process was already initiated. The Court took a pragmatic view in the hope that the electorate would give a decisive verdict.As regards the question of the Governor's immunity, defining the ambit of immunity provided by Article 361 to the Governor, the Court held that the Governor enjoys complete immunity, not being answerable to any Court for the exercise and performance of his powers.
However, the Court reiterated that Article 361(1) does not take away the power of the Court to examine the validity of the action including the ground of malafide.

SWAMI SHRADDHANANDA VS. STATE OF MAHARASHTRA

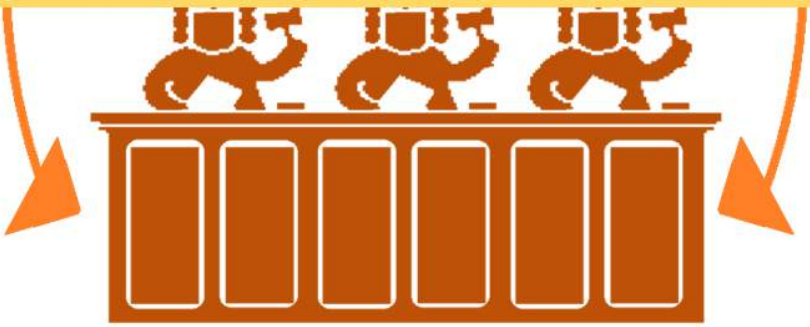
MANU/SC/3096/2008





FACTS

In the present case, the appellant was held guilty of drugging and burying his wife alive and consequently of killing her. He was sentenced to death for murder by a session's court. The High Court confirmed his death sentence. A two-judge bench of the Supreme Court delivered a split judgment on the case and the matter was referred to a three-judge bench to review the death sentence.



QUESTION OF LAW

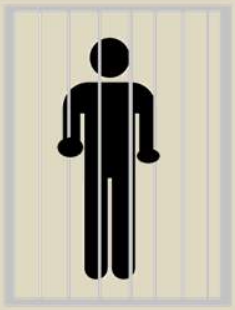
Whether a death sentence can be commuted to a lesser punishment?

HELD

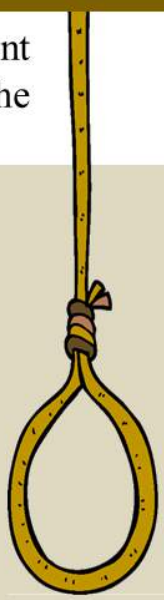
Sighting and reasserting the decision in Bachan Singh, the Court commuted the death sentence in the given case to that of life imprisonment. Recognizing that the "rarest of rare" standard set in Bachan Singh was a relative one, the Court said,

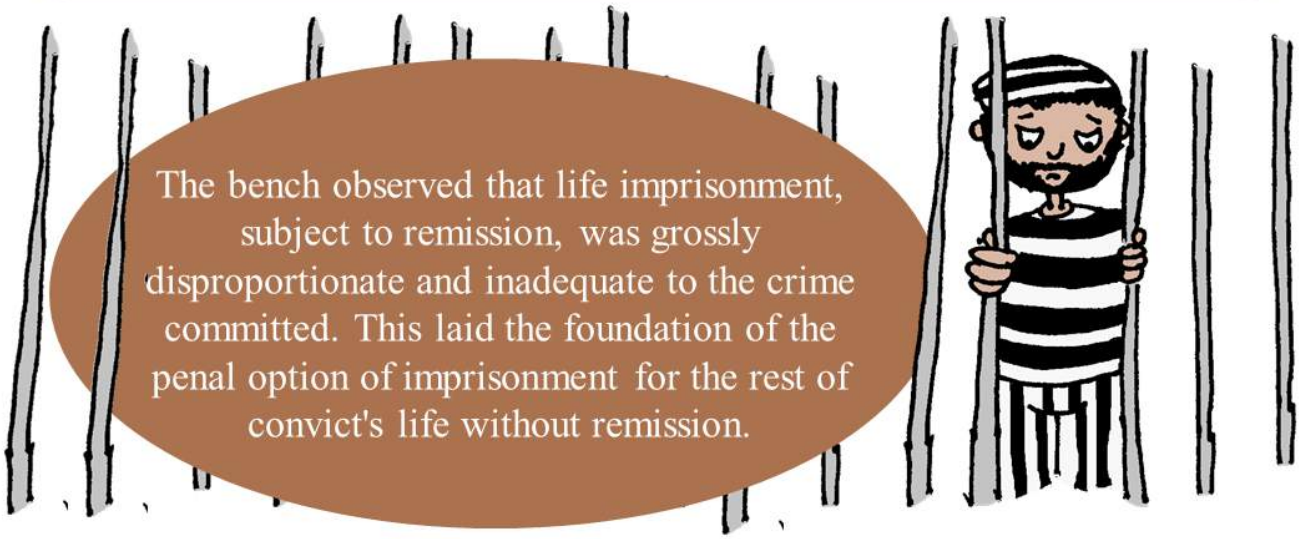
"The truth of the matter is that the question of death penalty is not free from the subjective element and the confirmation of death sentence or its commutation by this Court depends a good deal on the personal predilection of the judges constituting the bench."

The Court, however, said that the imprisonment of 14 years which went under the euphemism of life imprisonment would be inadequate in the given case. It said,

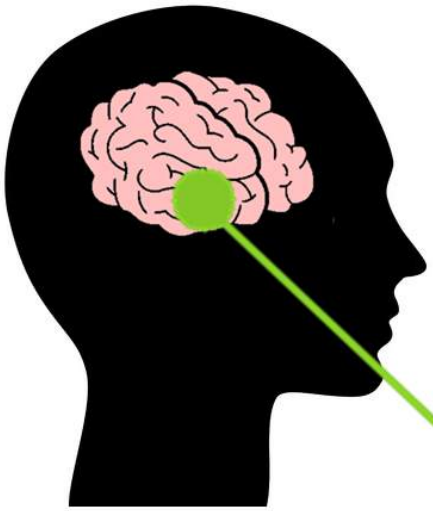


"The formalisation of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of the rare cases. This would only be a reassertion of the Constitution Bench decision in Bachan Singh (supra) besides being in accord with the modern trends in penology."





The bench observed that life imprisonment, subject to remission, was grossly disproportionate and inadequate to the crime committed. This laid the foundation of the penal option of imprisonment for the rest of convict's life without remission.

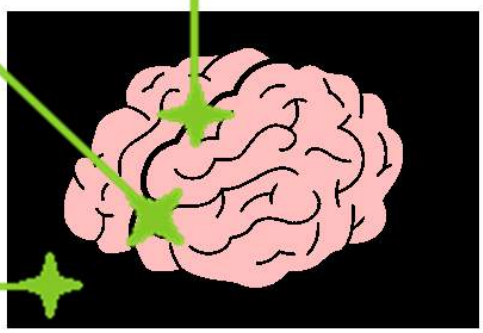


Selvi vs. State of Karnataka

MANU/SC/0325/2010

FACTS

In the present case, the appellant Selvi's daughter married a man belonging to a different caste against the wishes of her family. In 2004, the man was brutally murdered and Selvi, along with two others became suspects. The prosecution in this case sought permission of the Court to conduct polygraph and brain mapping tests on the three persons, such permission was granted. When the results of these tests showed deception, the prosecution sought permission to conduct narcoanalysis on the three persons, which was granted by the magistrate. The three then challenged this decision in the Karnataka High Court but failed to get relief. They then appealed to the Supreme Court.



In this present batch of criminal appeals objections were raised in respect of instances where individuals who are the accused, suspects or witnesses in an investigation have been subjected to tests such as Narcoanalysis, Brain Electrical Activation Profile (BEAP), Functional Magnetic Resonance Imaging (FMRI) and Polygraph,without their consent.

QUESTIONS OF LAW

- Whether the involuntary administration of certain scientific techniques, namely narcoanalysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) test for the purpose of improving investigation efforts in criminal cases comes within the scope and meaning of the fundamental rights guaranteed to all citizens?
- Whether the involuntary administration of such techniques is a reasonable restriction on `personal liberty' as understood in the context of Article 21 of the Constitution?
- Question of self incrimination and whether these tests are protected within the scope of Article 20(3) which says that no person shall be forced to be a witness against himself.

HELD

The Court in its decision said that **compulsory brain mapping; polygraph and other such tests are in violation of Articles 21 and 20(3) of the Constitution of India.** Saying that such tests used to obtain information would amount to self-incrimination within the meaning of Article 20(3), and can thus not be admitted as evidence. The Court stated that Article 20(3) protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to show guilt or not.

"Article 20(3) aims to prevent the forcible 'conveyance of personal knowledge that is relevant to the facts in issue'. The results obtained from each of the impugned tests bear a 'testimonial' character and they cannot be categorised as material evidence."

On the violation of personal liberty as guaranteed under Article 21, the Court said,

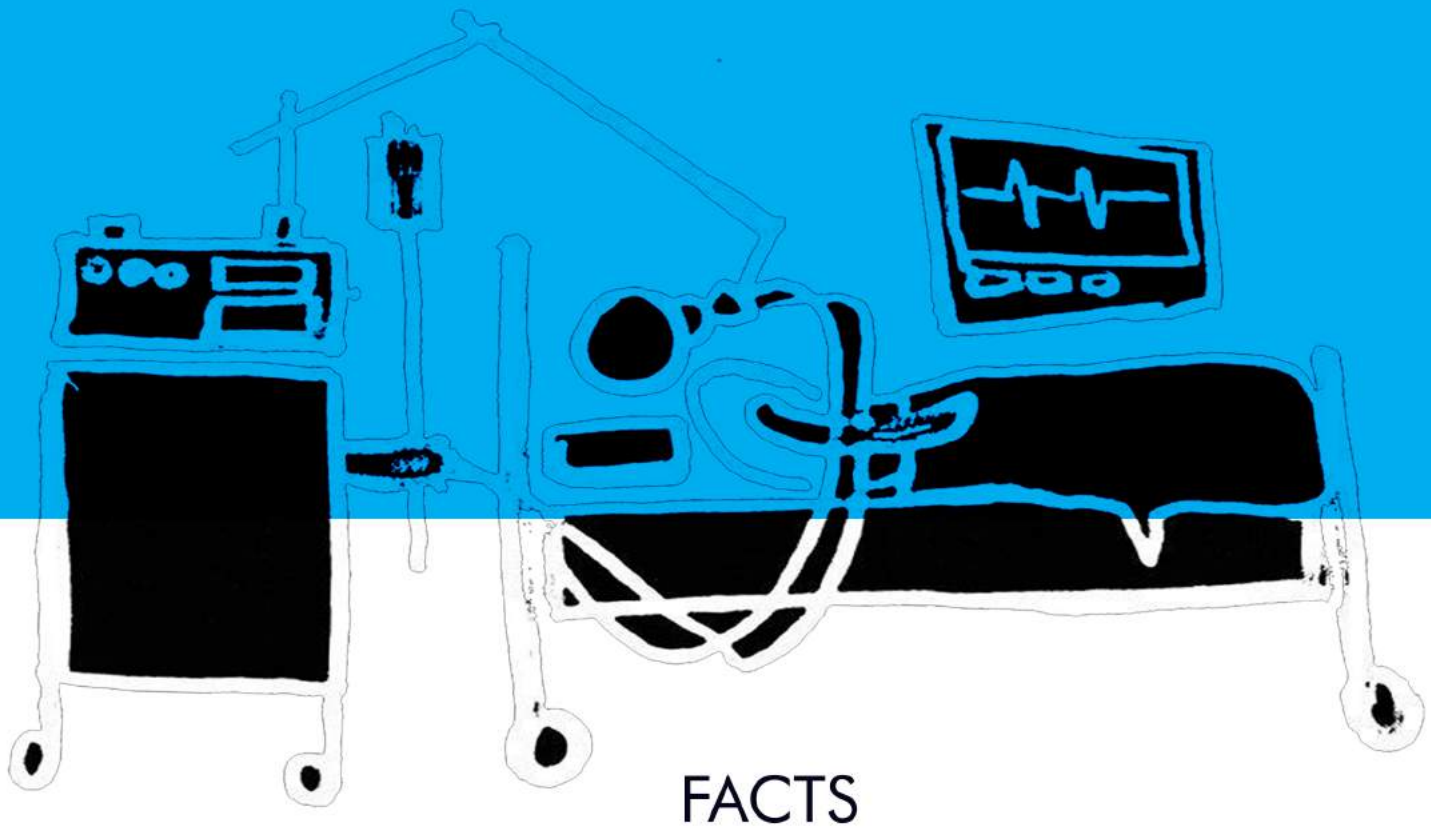
"We hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to ***an unwarranted intrusion into personal liberty****. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place"*

Addressing the widely pondered question of such a decision benefiting criminals, the Court said,

"One could argue that some of the parties who will benefit from this decision are hardened criminals who have no regard for societal values. However, it must be borne in mind that ***in Constitutional adjudication our concerns are not confined to the facts at hand but extend to the implications of our decision for the whole population as well as the future generations****."*

Aruna Ramachandra Shanbaug vs. Union of India

MANU/SC/0176/2011

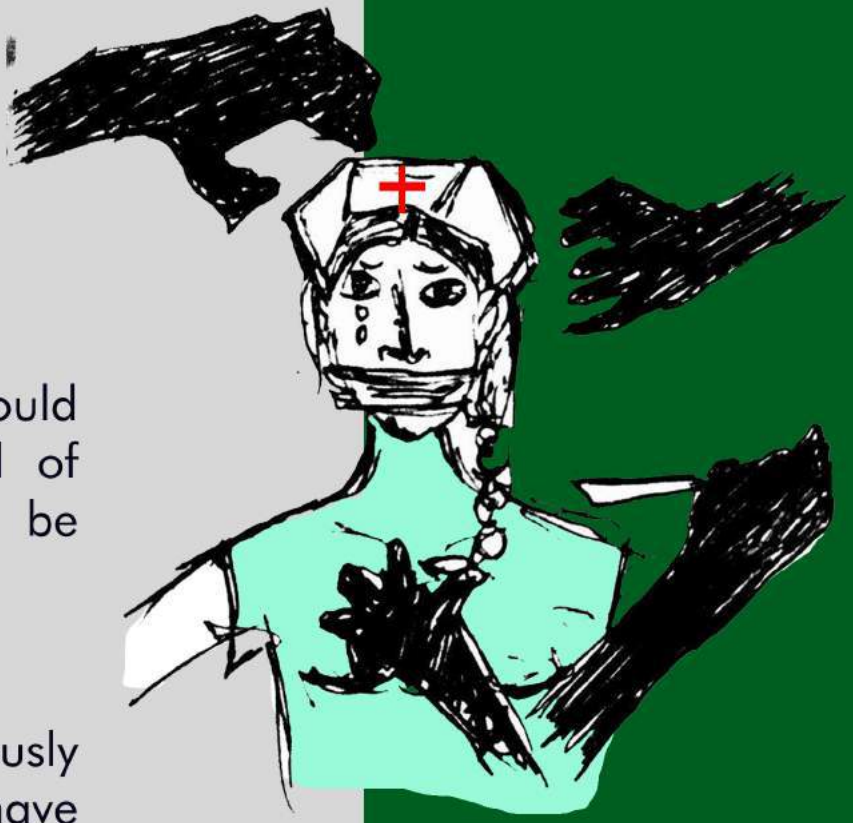


FACTS

Aruna Shanbaug, a nurse working in King Edwards Memorial Hospital, Mumbai was physically and sexually assaulted by a sweeper working in the hospital. As a result of the attack Aruna Shanbaug suffered severe brain damage. She became incapable of carrying out essential life functions.

Ms. Pinky Virmani filed a writ petition on behalf of Aruna Shanbaug, who lay in a permanent vegetative state (PVS) for 36 years, and pleaded with the court to stop the respondents from feeding Aruna, thus allowing her to die peacefully.

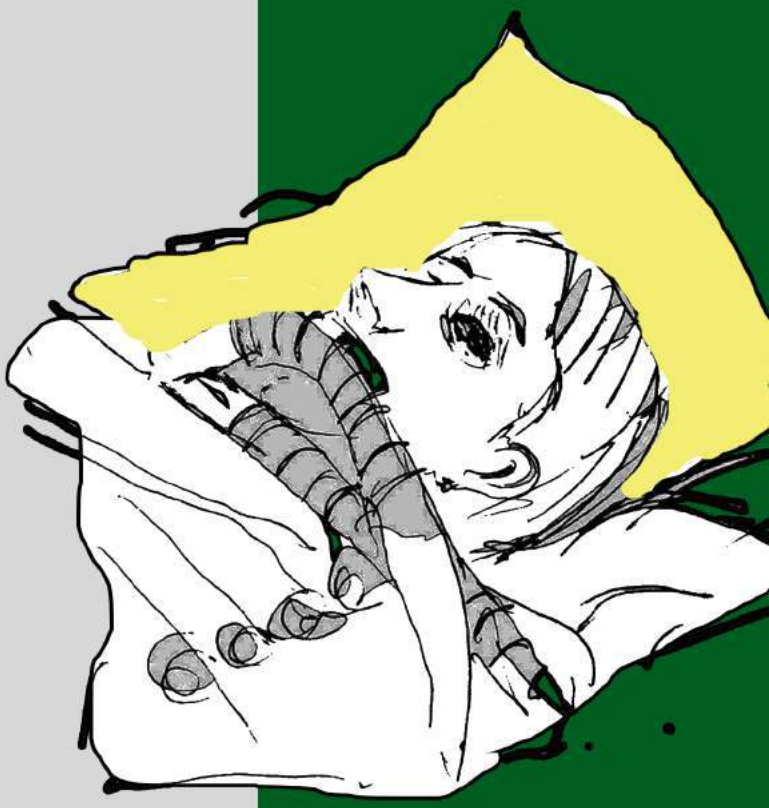
QUESTIONS OF LAW



- If a person is in a PVS, should withholding or withdrawal of life sustaining therapies be permissible?

- If a patient has previously expressed a wish not to have life-sustaining treatments in case of futile care or a PVS, should his/her wishes be respected when the situation arises?

- In case a person has not previously expressed such a wish, if his family or next of kin makes a request to withhold or withdraw futile life-sustaining treatments, should their wishes be respected?

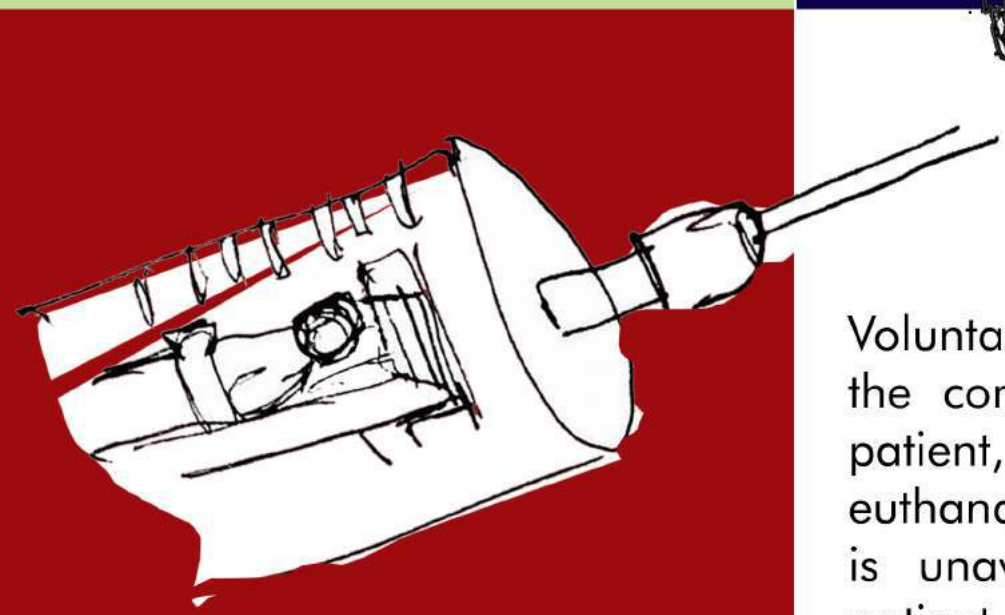


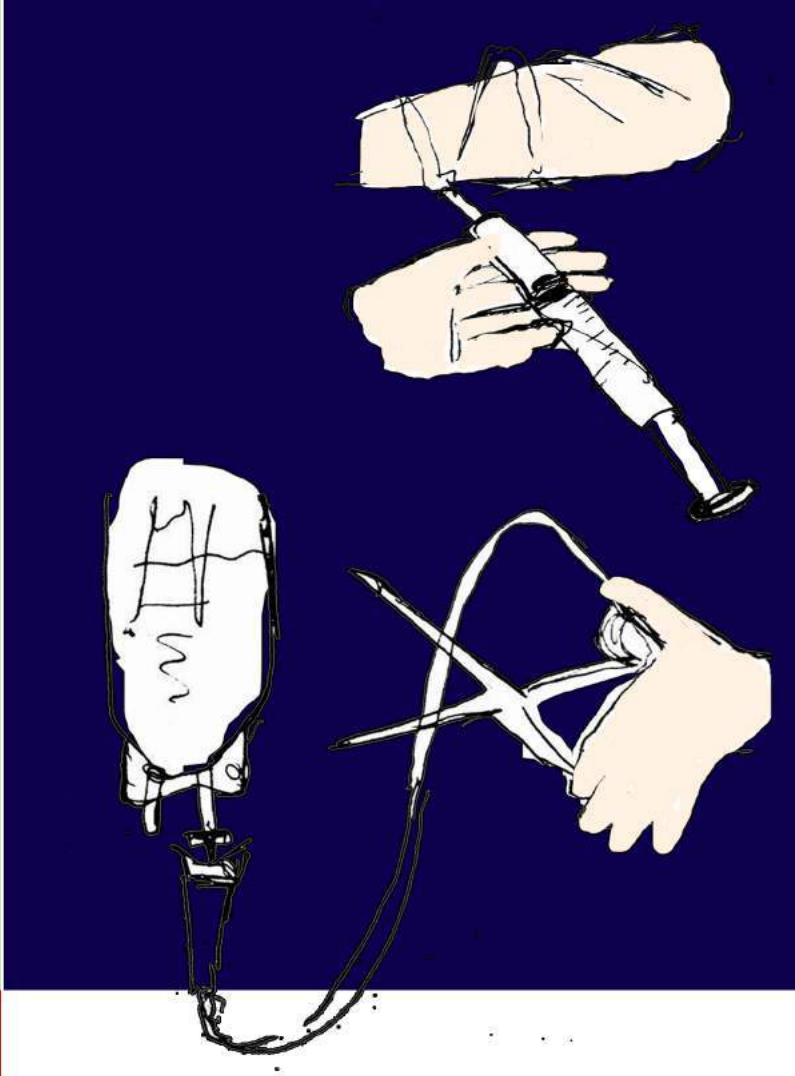
Active euthanasia

It entails the taking of specific steps such as the use of lethal substances to cause the patient's death, e.g. a lethal injection given to a person with a terminal illness who is in great agony.

Passive euthanasia

It entails withholding of medical treatment for the continuance of life, e.g. withholding the use of a dialysis machine despite it being essential for the survival of the patient's kidneys.

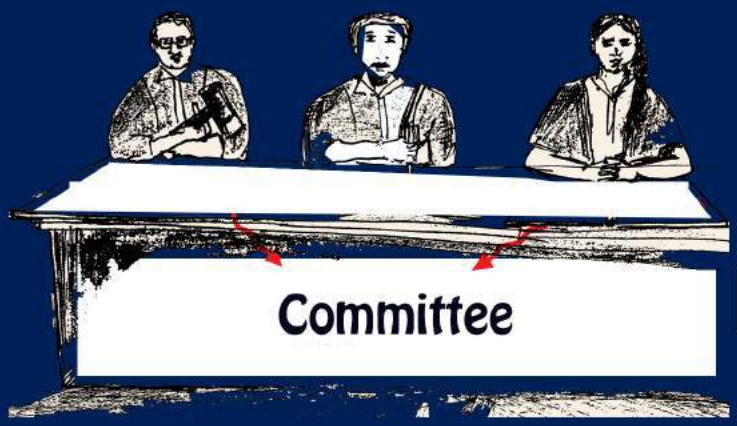




HELD

Voluntary euthanasia is where the consent is taken from the patient, whereas non voluntary euthanasia is where the consent is unavailable e.g. when the patient is in a coma, or is otherwise unable to give consent.

"The Court recognized active euthanasia as illegal and passive euthanasia as legal."



Application for withdrawal of life-support
Procedure to be followed by the High Court

- On receiving an application the Chief Justice of High Court shall constitute a bench of at least two judges to decide whether to grant approval or not.
- Before giving its decision the bench is to seek the opinion of a committee of three reputed doctors of which one should preferably be a neurologist, one a psychiatrist and the third a physician.
- The committee shall submit a report to the bench after examining the patient, analyzing the health records, and taking in the views of the hospital staff.
- Simultaneously the High Court shall issue notices to relatives of the victim and take into consideration their opinion.
- The Court shall give its verdict keeping in mind the interest of the patient ,only after considering the views of the medical practitioner as well as the relatives and surrogates.

Society for Unaided Private Schools of Rajasthan vs. Union of India

MANU/SC/0311/2012

FACTS

The Right of Children to Free and Compulsory Education Act 2009 (RTE Act) was enacted through the 86th Amendment to the Constitution of India by adding Article 21A which requires the state to provide free and compulsory education to all children between 6 and 14 years of age. The Act also provides for a 25% quota of school seats to be reserved for children from weaker and disadvantaged sections in private schools.

The Society for Unaided Private Schools challenged the constitutionality of Section 12 of the RTE Act by arguing that the practice of expecting private schools to follow particular regulations would violate Article 19 of the Constitution and their right to practice any profession. It would also violate the right of minority groups to operate their own schools under Article 30 of the Constitution.

QUESTION OF LAW

- Whether the 2009 Act violates Article 19(1)(g) of the Constitution, which gives every citizen the right to practise any profession or occupation.
- Whether Article 30 of the Constitution is violated, which protects the right of minority groups to establish and administer private schools.

HELD

The Court started out by talking about the essence of the 2009 Act, which it said aimed at making right to free and compulsory education justiciable, envisaging each child having access to a neighborhood school, and the role universal elementary education can play in strengthening the social fabric of democracy.

"Education is a process which engages many different actors: the one who provides education (the teacher, the owner of an educational institution, the parents), the one who receives education (the child, the pupil) and the one who is legally responsible for the one who receives education (the parents, the legal guardians, society and the State). These actors influence the right to education."

The Court upheld the constitutionality of the mandatory quota to private and state-run schools. The government may constitutionally require private schools to reserve 25% of its admission places for students from disadvantaged backgrounds

The Court argued that the RTE Act is "child centric and not institution centric", which meant that ensuring children received an education was a priority regardless of whether it burdened the private school. It said,

"Primary responsibility for children's rights, therefore, lies with the State and the State has to respect, protect and fulfil children's rights and has also got a duty to regulate the private institutions that care for children, to protect children from violence or abuse, to protect children from economic exploitation, hazardous work and to ensure humane [sic] treatment of children. Non-state actors exercising the state functions like establishing and running private educational institutions are also expected to respect and protect the rights of the child, but they are not expected to surrender their rights constitutionally guaranteed."

The Court distinguished between private schools and private minority schools, established under Article 30 of the Constitution. The Court reasoned that requiring private minority schools to implement the 25% quota would interfere with the rights of minorities to to administer institutions of their choice under Article 30 of the Constitution and would therefore violate these rights.

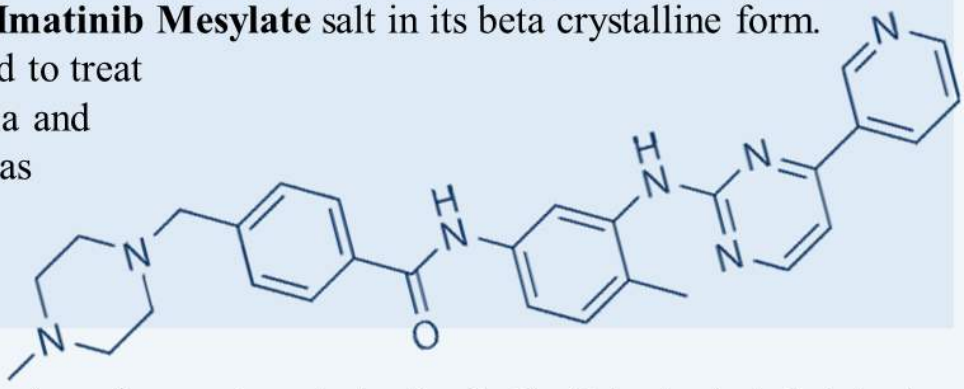
Novartis Ag
v.
Union of India & Others

MANU/SC/0281/2013

FACTS

In 1998, Novartis, a pharmaceutical company, filed an application of patent for a specific variation of the **Imatinib Mesylate** salt in its beta crystalline form. Imatinib Mesylate is used to treat chronic myeloid leukemia and is marketed by Novartis as

"Gleevec"



In 2005, as part of a series of amendments to the India Patents Act that took effect on January 1, 2005, the Indian Parliament adopted Section 3(d), which does not allow a patent to be granted to inventions involving new forms of a known substance unless it differs significantly in properties with regard to its ability to produce the intended result, that is, its efficacy.

Novartis had challenged the Constitutional validity of Section 3(d), saying that it was incompatible with the worldwide intellectual property standards decided under the WTO TRIPS Agreement, in the Madras High Court in 2007, which was subsequently rejected.

In 2013, Novartis, by way of a special leave petition approached the Supreme Court against the rejection by the Indian Patent Office based on the Madras High Court ruling.

Question of Law

The question in the given case was regarding the scope of Section 3(d) of the Indian Patent's (Amendment) Act 2005; whether the invention was inconsistent with its provisions and if it did fall within its ambit, whether it qualified the tests of novelty and innovation as provided for in the Act?

HELD

The Court held that the beta crystalline form of Imatinib Mesylate, failed the test of Section 3(d), of the Indian Patent Act.

On the question of whether the product at hand came within Section 3(d), the Court said that since the product is simply a new form of a known substance, Section 3(d) is attracted and that the provisions therein ought to be satisfied.

The patenting criteria, which was laid down in terms of efficacy in Section 3(d) was interpreted along the lines of **therapeutic efficacy and not merely physical efficacy.** As regards the parameter of therapeutic efficacy and the advantages and benefits that may be taken into account for determining the enhancement of therapeutic efficacy, the court said that the therapeutc efficacy of a medicine must be judged strictly and narrowly.

The Court affirmed that India had adopted a standard of pharmaceutical patenting stricter than that followed by the US or the EU. In India, a patent applicant must not only show that a new form of a known compound is different from an old form (physical efficacy), but that the modification will result in an improvement in the treatment of the patient (therapeutic efficacy), which, the Court held, Novartis had been unsuccessful in doing.

manupatra®
Power Your Legal Research™

JUSTICE adda

Lily Thomas vs. Union of India

MANU/SC/0687/2013

FACTS

Two PILs were filed, asking to declare sub-section (4) of Section 8 of The Representation of the People Act 1951 , which allowed convicted MPs, MLAs and MLCs to continue in their posts , provided they appealed against their conviction/sentence in higher Courts within three months of the date of judgment by the Trial Court, as ultra vires the Constitution of India.

QUESTIONS OF LAW

- Whether Parliament has the legislative power to enact sub-section (4) of Section 8 of The Representation of the People Act 1951 ?
- Whether sub-section (4) of Section 8 of The Representation of the People Act 1951 , is ultra vires the Constitution of India?

HELD

The Court held that any Member of Parliament (MP), Member of Legislative Assembly (MLA), or Member of Legislative Council (MLC) who is convicted of a crime and awarded a minimum of two-year imprisonment, loses membership of the House with immediate effect.

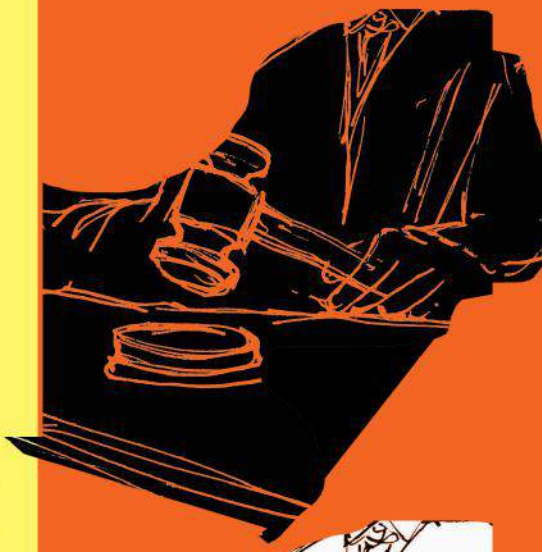
Section 8(4) of The Representation of the People Act 1951 was prospectively (i.e. from the date of the decision) struck down as unconstitutional being beyond the legislative competence of the Parliament.

The Constitution of India provides the subject domains in which the Parliament and State Legislatures can pass laws. Article 102(1)(e) and 191(1)(e) of the Constitution of India give the Parliament the right to develop laws with regard to disqualifications for 'to be elected' and 'sitting' members of Parliament and State Legislatures.

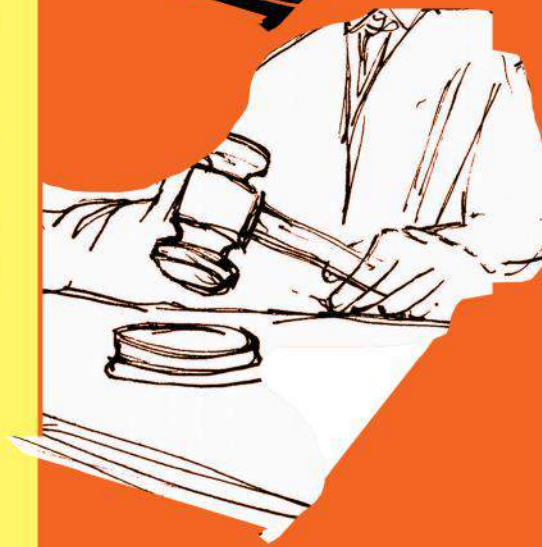
- The Court said that the Parliament is competent to provide, by law, for situations where an MP or MLA shall stand disqualified from membership of the House according to the Constitution

- The Constitution does not authorize the Parliament to pass a law that effectively stays the disqualification and allows such disqualified member to continue as an MP or MLA.

- The Constitution provides that once a member is disqualified the seat of such member shall 'thereafter' stand vacated. Once disqualified by reason of a conviction, the Constitution says, the MP or MLA ceases to be a member of the House.



- Section 8(4), however, allowed such MP or MLA to continue in the House, even after the conviction.Applying this reasoning to the issue of the case, the Court held that Section 8(4) is "beyond the powers conferred on Parliament by the Constitution".



State of Maharashtra & Anr vs. Indian Hotel and Restaurants Association

MANU/SC/0702/2013

FACTS

The instant case came before the Supreme Court as an appeal against a High Court judgment concerning the statewide ban by the Maharashtra Government on dance performances in bars. The ban was selective in nature; while Section 33A of the Bombay Police Act 1951 prohibited 'any type of dancing' in an "eating house, permit room or beer bar", section 33B allowed dance performances in three star and above hotels and other 'elite' establishments. The State justified the ban by asserting that bar dancing corrupts morals and causes exploitation of women bar dancers. Due to the ban, 75,000 women workers became unemployed.

QUESTION OF LAW

Whether the ban against dance performances in bars across Maharashtra is unconstitutional, being in violation of Article 14 and 19 of the Constitution?

HELD

The Court in its judgment held that the ban was unconstitutional and upheld the judgment of the Bombay High Court in saying that the **prohibition on dancing violated the right to carry on one's profession/occupation under Article 19(1)(g) of the Constitution and that disallowing dances in some establishments while permitting them in others was arbitrary and infringed the right to equality under Article 14.** It said,

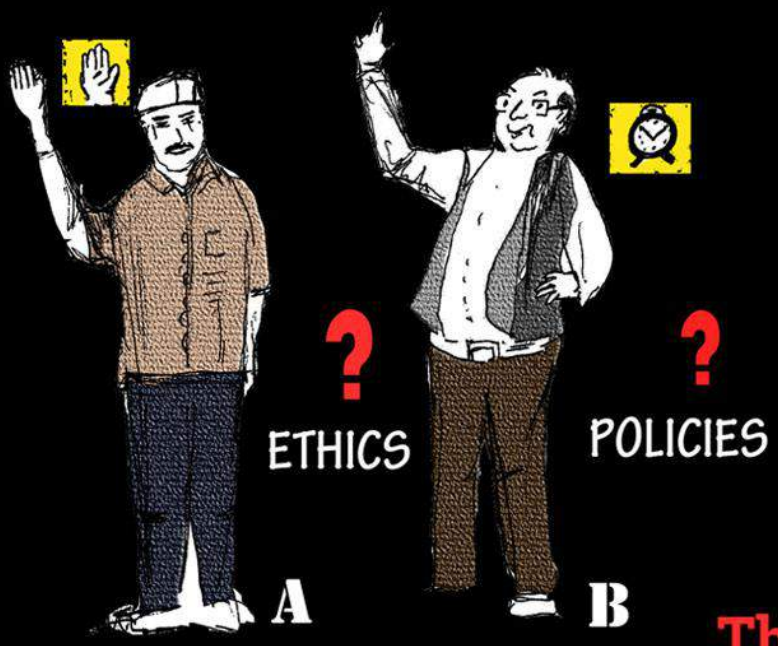
"Our judicial conscience would not permit us to presume that the class to which an individual or the audience belongs brings with him as a necessary concomitant a particular kind of morality or decency. We are unable to accept the presumption which runs through Sections 33A and 33B that the enjoyment of same kind of entertainment by the upper classes leads only to mere enjoyment and in the case of poor classes; it would lead to immorality, decadence and depravity."

The Court highlighted that restrictions in the nature of prohibition cannot be said to reasonable as there could be several lesser alternatives available which would be sufficient and adequate in order to ensure the safety of women. The Court criticized the ban and stated that it had in fact resulted in many women being forced to enter into prostitution. In this case, the Court argued, that the remedy was worse than the disease and advanced that it would be much more advisable if measures could be made to ensure the safety as well as the working conditions of bar dancers. The solution therefore should not to be to curb women's freedom but to focus on empowerment.

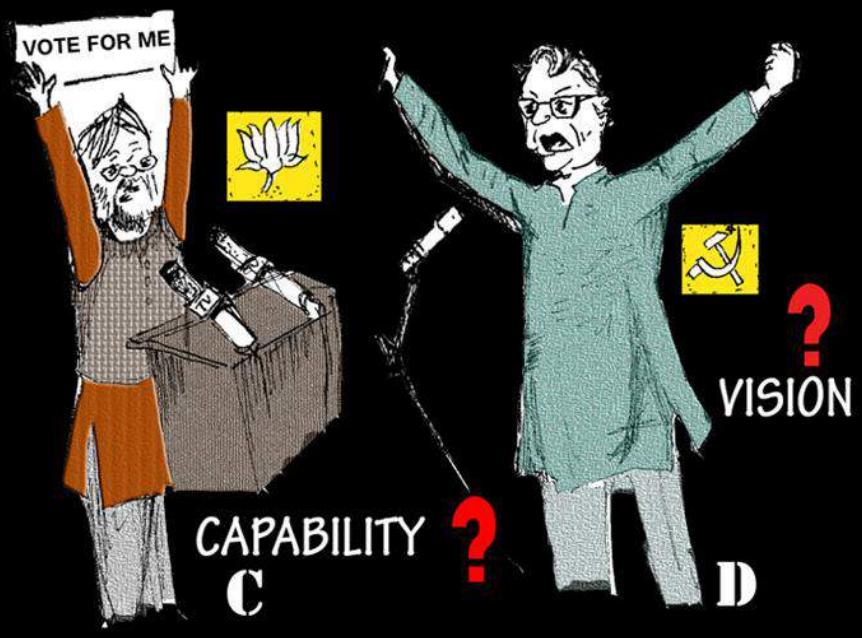
"This has led to the unemployment of over 75,000 women workers. It has been brought on the record that many of them have been compelled to take up prostitution out of necessity for maintenance of their families. In our opinion, the impugned legislation has proved to be totally counter productive and cannot be sustained being ultra vires Article 19(1)(g)."

PEOPLE'S UNION FOR CIVIL LIBERTIES AND ANR. VS. UNION OF INDIA (UOI) AND ANR.

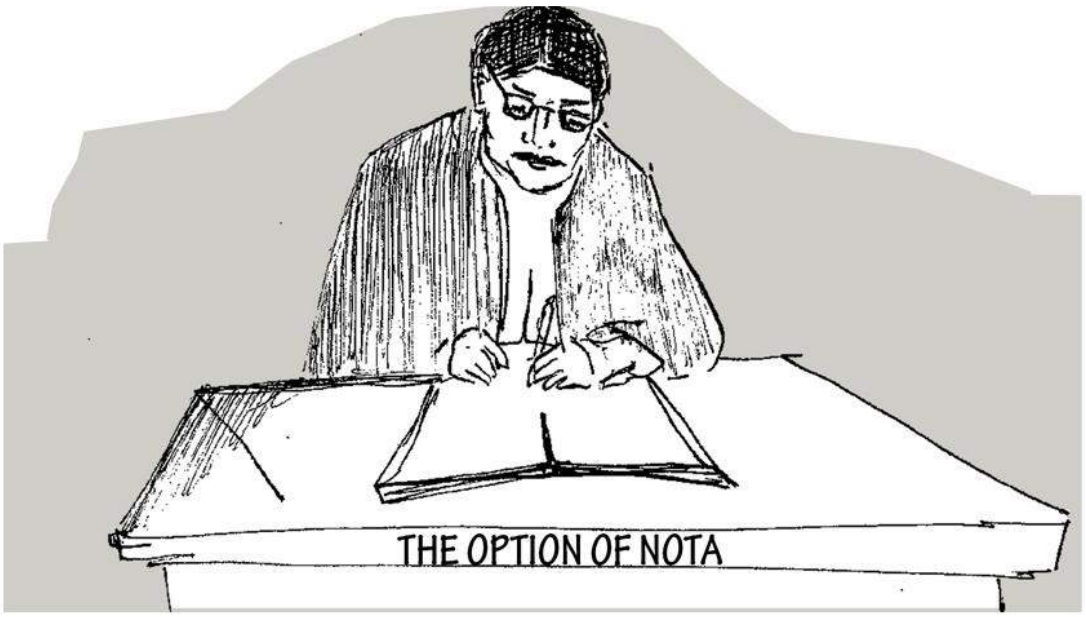
MANU/SC/0987/2013



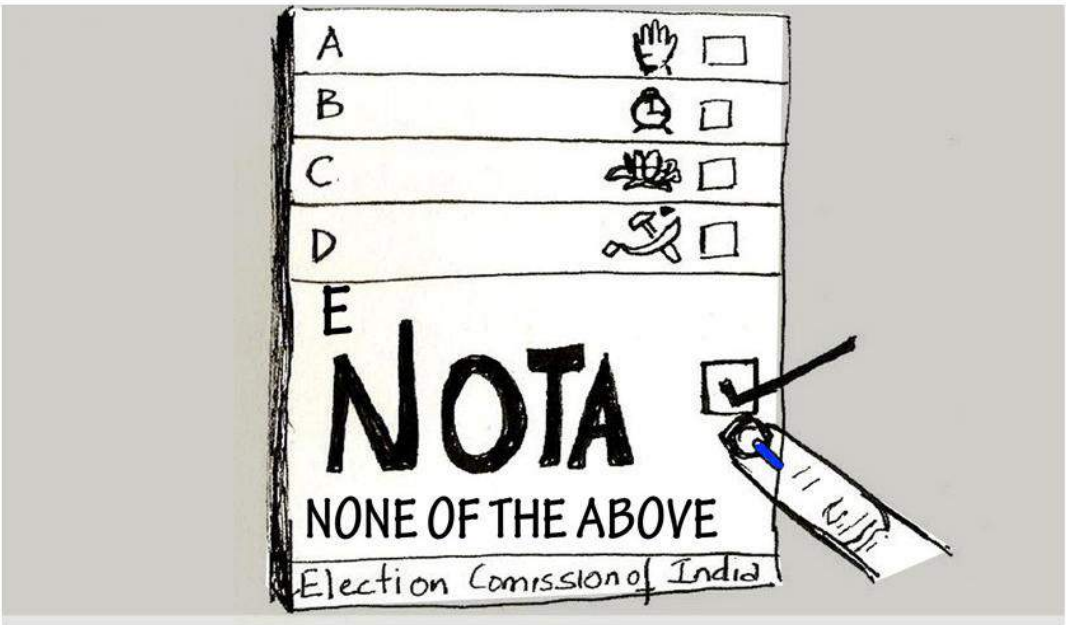
The NOTA Case




A
B
C
D
I don't want to vote for any of these candidates
but I want to register my dissatisfaction
how can I do that and protect my privacy?
UNHAPPY VOTER
ELECTORAL OFFICER


THE OPTION OF NOTA

The Supreme Court of India gave voters the right to cast a negative vote against all candidates who they deemed unworthy of being elected. This meant that the voter could select a "none of the above" (NOTA) button on the Electronic Voting Machine instead of any member from a party.



The Court held:

> **...For democracy to survive, it is essential that the best available men should be chosen as people's representatitves for proper governance of the country**

> **...Democracy is all about choice. This choice can be better expressed by giving voters an opportunity to verbalize themselves unreservedly**

> **...Giving right to a voter not to vote for any candidate while protecting his right of secrecy is extremely important in a democracy. Such an option gives the voter the right to express his disapproval with the kind of candidates that are being put up by the political parties**

> **...Political parties will realize that a large number of people are expressing their disapproval...be forced to accept the will of the people and field candidates who are known for their integrity**

Abhay Singh vs . State of Uttar Pradesh and Ors .

MANU/SC/1256/2013

THE CASE AT HAND

Is the use of signs and symbols of authority- the red beacon or convoys/escorts- by public servants or people holding public office contrary to the ethos of our constitution?

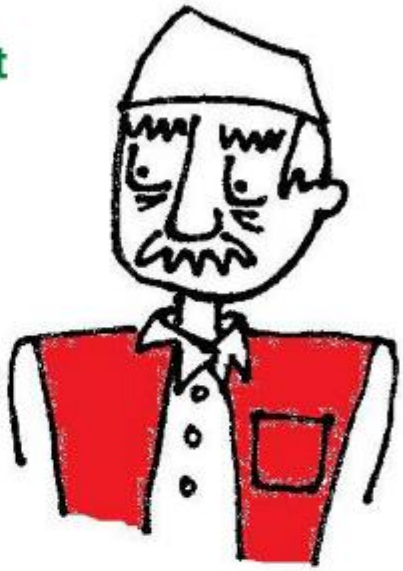
The red lights symbolize power and a stark distinction between those who are allowed to use it and those who are not

A large number people using vehicles with red lights have no respect for the laws of the country and they treat ordinary citizens with contempt

“

Our public servants in various departments of Government have to shed their role as rulers and have to become true servants of the people that their compeers are in all free countries.

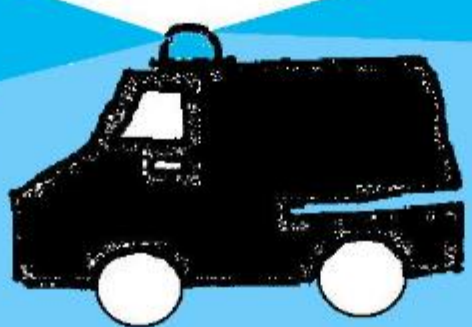
”



-Dr. Rajendra Prasad, addressing the Constituent Assembly, 15.08.1947

THE VERDICT

The verdict forbade the use of red beacons in a manner that compromised the dignity of other citizens. The red beacon could not be used for the purpose of asserting power or superiority over any other individual. The court emphasised how it was a privilege only to be exercised while on duty and that it was co-terminus with one's position.



Furthermore, the court declared that operational agencies that required unhindered access to the road- ambulance services, fire services, emergency maintenance, police vehicles- would be entitled to use different coloured lights in order to distinguish them from other government vehicles. This would be done so as to ensure prompt service for those citizens in dire need.

SHATRUGAN CHAUHAN & ANR. VS. UNION OF INDIA

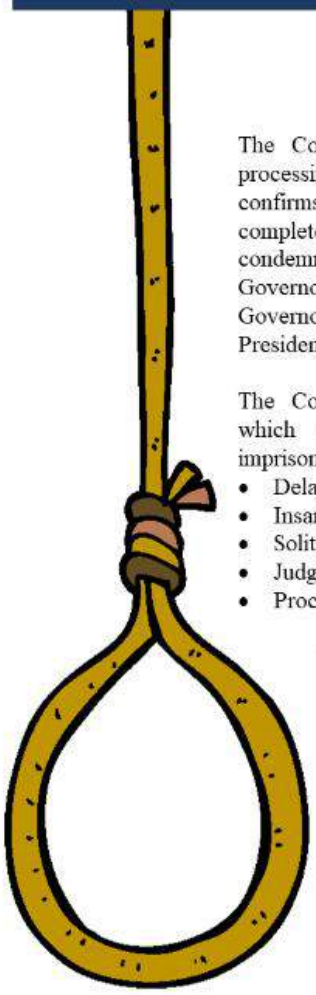
MANU/SC/0043/2014

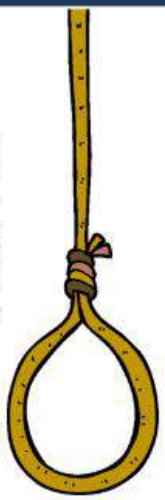
FACTS

These writ petitions before the Supreme Court of India, were filed by those convicted and awarded the death sentence and after the rejection of their mercy petitions by the Governor and the President of India.

QUESTION OF LAW

Whether the execution of the sentence to death after the rejection of mercy petitions by the President of India is unconstitutional and whether such a death sentence can be commuted to imprisonment for life?





HELD

The Court began by discussing the procedure for processing the mercy petition. First, the Supreme Court confirms the death sentence. Once the judicial process is complete, executive action is brought against it. The condemned man can send a mercy petition to the Governor under Article 161 of the Constitution. If the Governor rejects it, another petition is submitted to the President under Article 72 of the Constitution.

The Court examined in detail circumstances under which death sentence could be commuted to imprisonment. These were

- Delay
- Insanity
- Solitary Confinement
- Judgments declared *per incuriam*
- Procedural Lapses

Delay

The Court held that the death sentence of a condemned prisoner could be commuted to life imprisonment on the ground of delay on the part of the Government in deciding the mercy plea. It said,

"Keeping a convict in suspense while consideration of his mercy petition by the President for many years is certainly an agony for him/her. It creates adverse physical conditions and psychological stresses on the convict under sentence of death. Indisputably, this Court, while considering the rejection of the clemency petition by the President, under Article 32 read with Article 21 of the Constitution, cannot excuse the agonizing delay caused to the convict only on the basis of the gravity of the crime."

Solitary Confinement

It was submitted by some of the petitioners that they were kept in solitary confinement from the date of imposition of death sentence. The Court held that it is unconstitutional and should not be allowed in prisons.

Judgments Declard *Per Incuriam*

The Court on this ground, reviewed its previous judgments and none were found to be erroneous or wrongly decided.

Insanity

In this batch of cases, two convict prisoners prayed for commutation of death sentence into sentence of life imprisonment on the ground that the unconscionably long delay in deciding the mercy petition has caused the onset of chronic psychotic illness, and in view of this the execution of death sentence will be inhuman and against the well-established canons of human rights.

The Court held that insanity is a relevant factor for consideration by the Court.

Procedural Lapses

It was the claim of the petitioners that the prescribed procedure for disposal of mercy petitions was not duly followed in these cases and the lapse in following the prescribed rules have caused serious injustice to both the accused and their family members.

The Court held that even death convicts have to be treated fairly in the light of Article 21 of the Constitution.

"It is well established that exercising of power under Article 72/161 by the President or the Governor is a Constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitutional framers did not stipulate any outer time limit for disposing the mercy petitions under the said Articles, which means it should be decided within reasonable time. However, when the delay caused in disposing the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of this Court to step in and consider this aspect. ***Right to seek for mercy under Article 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive.*** *Every Constitutional duty must be fulfilled with due care and diligence; otherwise judicial interference is the command of the Constitution for upholding its values."*

The death sentence of 15 convicts was commuted to life imprsionment due to delay in mercy plea decisions.

National Legal Services Authority vs. Union of India (UOI) and Ors.

MANU/SC/0309/2014

WHO IS THE THIRD GENDER?

Transgender is an umbrella term used to describe persons whose gender identity, gender expression or behaviour does not conform to their biological sex. Advocates in India refer to them as the 'third gender'.

WHY IS LEGAL RECOGNITION OF THIS GENDER IMPORTANT?

Gender is a significant issue in the legal sphere because it determines rights in relation to marriage, adoption, inheritance, succession, taxation and welfare. Pre-existing law in India only recognised the binary genders of male and female. Due to the lack of legislation protecting the rights of transgender people, this community faced discrimination in various areas of life. This case sought to demonstrate that the lack of legal measures to cater to the needs of transgenders went against the principles of the Constitution.

ARTICLE 14
The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

As a right accorded to "any person", Article 14 extends equally to male, female and transgender people. Hence, transgender people are entitled to equal legal protection of the law in all spheres, including employment, healthcare, education and civil rights. Discrimination on the grounds of sexual orientation and gender identity impairs equality before the law and equal protection of the law

ARTICLE 15
Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

The reference to "sex" is to be understood as prohibiting all forms of gender bias and gender-based discrimination, including discrimination against transgender people

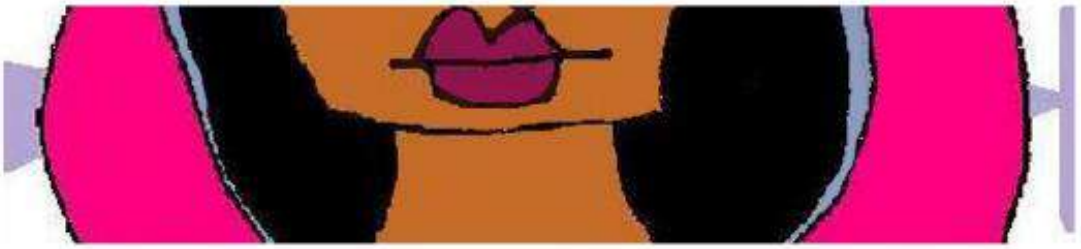
ARTICLE 16
Equality of opportunity in matters of public employment

ARTICLE 19(1)(a)
All citizens shall have the right to freedom of speech and expression

As gender identity lies at the core of one's personal identity, expressing one's gender identity through words, dress, action or behaviour is included in the right to freedom of expression

ARTICLE 21
Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law

The right to choose one's gender identity is integral to the right to lead a life with dignity and therefore falls within the scope of the right to life.

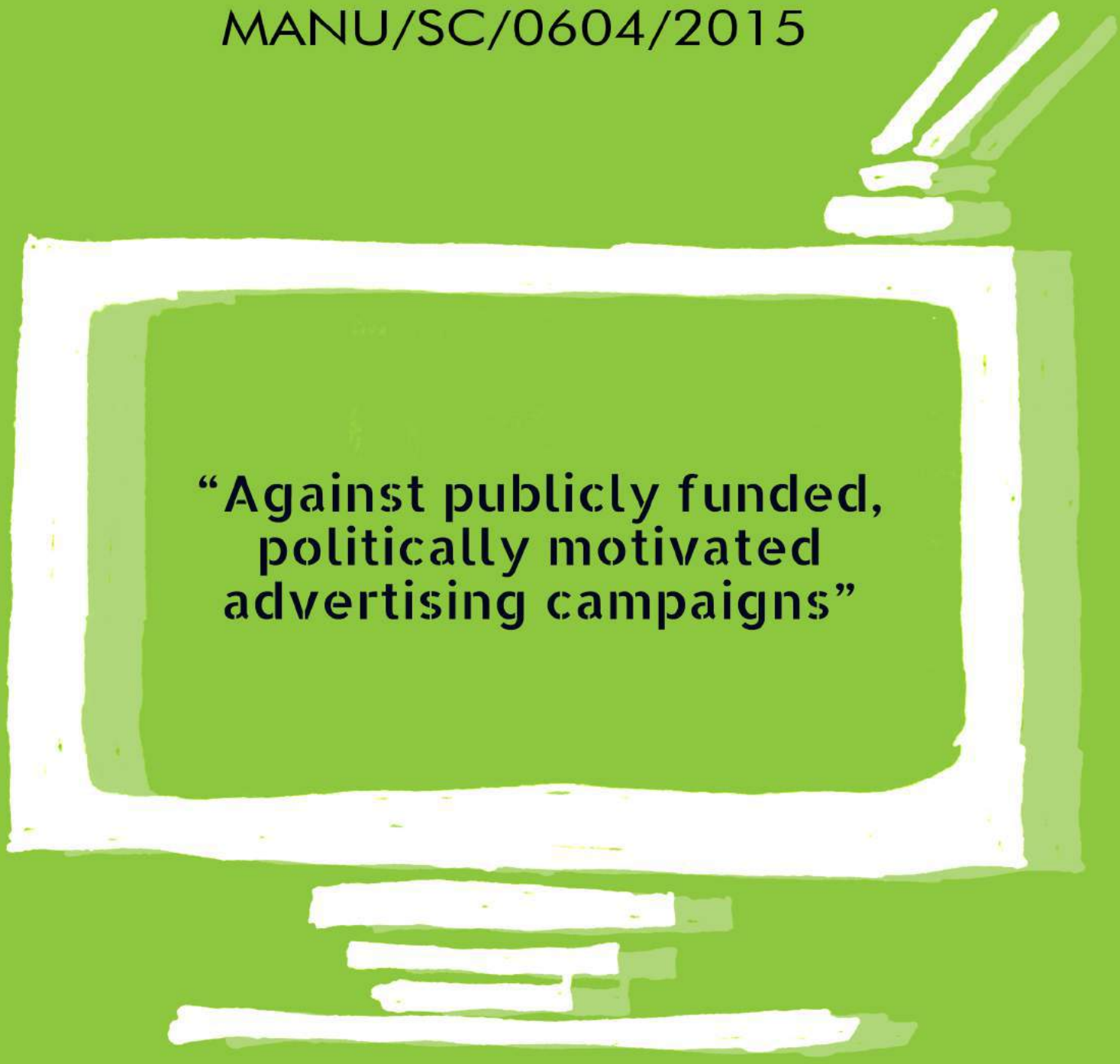


THE VERDICT

"-We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution"

Common Cause vs. Union of India

MANU/SC/0604/2015



Writ petitions were filed in public interest under Article 32 of the Constitution of India, seeking to restrain Union and State Governments from using public money to fund their politically motivated advertising campaigns. It was asserted, that the use of public funds for advertising by public authorities to project particular personalities, parties without any attendant public interest amounted to a violation of Article of 14 and Article 21 of the Constitution of India.

The petitioner sought a writ of mandamus along with specific guidelines to prevent further misuse of public money by successive Governments.

HELD

There is no policy to regulate the content of Government advertisements in place and the guidelines issued by the Directorate of Advertising and Visual Publicity (DAVP) does not cover the subject matter in question to check the misuse of public funds for the same. The Court said that it has the right to interfere whenever the Government acts unreasonably and contrary to public interest.

It held that advertising is a very useful tool available to Governments. However it must not be misused. The moment it is used to derive political mileage, rather than to disseminate vital information to the public the whole purpose of it gets frustrated.

Absence of legislation on the issue raised in the petition

↓

The Court constituted a committee to formulate guidelines for ensuring publically motivated advertising campaigns.

5 Principles to regulate the content of advertisments

- Advertising campaigns are to be related to Government responsibilities.
- Materials should be presented in an objective, fair and accessible manner and designed to meet objectives of the campaign.
- Not directed at promoting political interests of a Party.
- Campaigns must be justified and undertaken in an efficient and cost- effective manner.
- Advertisements must comply with legal requirements and financial regulations and procedures.

Shreya Singhal vs. Union of India

MANU/SC/0329/2015

Facts

Two women were arrested by the police for posting allegedly offensive comments on Facebook with regard to the correctness of shutting down the city of Mumbai after the death of a politician. Arrests were made under Section 66A of the Information Technology Act of 2000 (ITA), which punishes persons who through a computer resource or communication device send any information that is grossly offensive, or with the knowledge of its falsity. The information transmitted is meant to be for the purpose of causing annoyance, inconvenience, danger, insult, injury, hatred, or ill will.

The women then filed a petition, challenging the constitutional validity of Section 66A on the ground that it violates the right to freedom of expression.

Question of Law

Whether Section 66A of the IT Act, 2000 violates freedom of expression under Article 19(1) (a) of the Constitution of India and is therefore unconstitutional?

Held

The Court stated that Section 66A curtails a citizen's right to freedom of speech and expression and discussed three concepts necessary in understanding the fundamental right under Article 19(1)(a).

"There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc"

It held that the public's right to know is directly affected by Section 66A.

Section 66A is not saved by any of the eight subjects covered in Article 19(2). The causing of annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will fall outside the purview of Article 19(2) which talks about the reasonable restrictions on the right given by Article 19(1).

The court discussed the how the impugned law did not have a proximate relationship with the following four subject matters enlisted in Article 19(2) of the Constitution of India:

A) Public Order

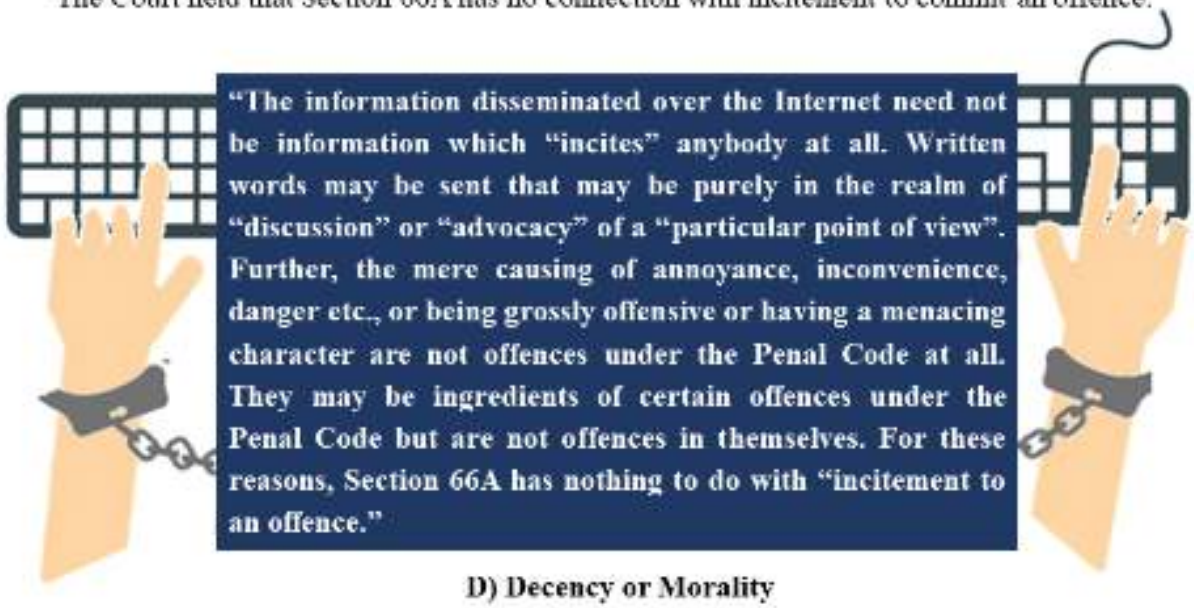
The Court held that Section 66A had no implication on public order. It said that there is no ingredient of incitement in this offence and is not an immediate threat to public safety or tranquility and thus has no proximate relation to public order as a ground for reasonable restriction on the right to freedom of expression.

B) Defamation

The Court also held that Section 66A does not concern itself with reputation or injury to reputation, which is a basic ingredient for defamation. Clarifying thus that the Section is not aimed at defamatory statements at all.

C) Incitement to an offence

The Court held that Section 66A has no connection with incitement to commit an offence.



D) Decency or Morality

The Court again held that Section 66A does in no way create an offence, which can fall within the expression "decency", or "morality"

Section 66A was also struck down as unconstitutional on account of its vagueness. The court found the expressions used in the section open-ended and undefined. It held:

"Every expression used is nebulous in meaning. What may be offensive to one may not be offensive to another. What may cause annoyance or inconvenience to one may not cause annoyance or inconvenience to another. Even the expression "persistently" is completely imprecise – suppose a message is sent thrice, can it be said that it was sent "persistently"? Does a message have to be sent (say) at least eight times, before it can be said that such message is "persistently" sent? There is no demarcating line conveyed by any of these expressions – and that is what renders the Section unconstitutionally vague."

The court acknowledged the chilling effect Section 66A had on the freedom of speech and expression. The terms used in the section virtually create an offence of every sort of information disseminated through the internet.

"Information that may be grossly offensive or which causes annoyance or inconvenience are undefined terms which take into the net a very large amount of protected and innocent speech. A person may discuss or even advocate by means of writing disseminated over the internet information that may be a view or point of view pertaining to Governmental, literary, scientific or other matters which may be unpalatable to certain sections of society. It is obvious that an expression of a view on any matter may cause annoyance, inconvenience or may be grossly offensive to some. A few examples will suffice. A certain section of a particular community may be grossly offended or annoyed by communications over the internet by "liberal views" – such as the emancipation of women or the abolition of the caste system or whether certain members of a non proselytizing religion should be allowed to bring persons within their fold who are otherwise outside the fold. Each one of these things may be grossly offensive, annoying, inconvenient, insulting or injurious to large sections of particular communities and would fall within the net cast by Section 66A. In point of fact, Section 66A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net."

Information circulated through the Internet ought to be treated differently. Challenge to Article 66A for being violative of Article 14 cannot be accepted.

JUSTICE adda

manupatra®
Power Your Legal Research™

Supreme Court Advocates on Record vs. Union of India

MANU/SC/1183/2015

FACTS

The National Judicial Appointments Commission (NJAC) Bill and the Constitutional (121st Amendment) Bill, 2014, which establishes the NJAC* was introduced in August 2014 in Lok Sabha. Both the Houses of Parliament passed the bill within 3 days of its introduction and it became a law in January 2015 when the President gave his assent to the Bill. The NJAC was to replace the two-decade old collegium system** of appointing judges to the higher judiciary. The NJAC Act however was challenged in Supreme Court.

* The NJAC was a proposed body which would have been responsible for the appointment and transfer of judges to the higher judiciary in India. Its composition included the Chief Justice of India (CJI), two senior most judges, the Union Minister of Law and Justice and two eminent persons. These two eminent persons would be nominated by a committee consisting of the Chief Justice of India, Prime Minister of India and Leader of Opposition in the Lok Sabha.

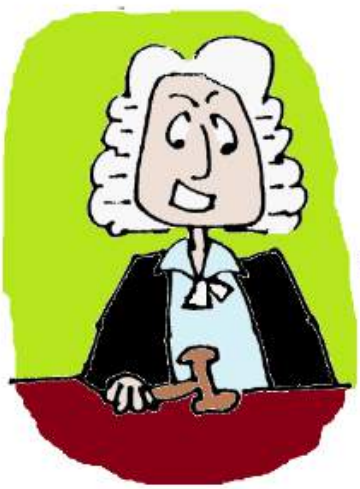
**The collegium system is a process through which decisions related to appointments and transfer of judges in supreme court and high court is taken by a collegium which consists of CJI, four senior most judges of Supreme Court and three members of concerned high court.

QUESTION OF LAW

Whether the NJAC Act was unconstitutional?

HELD

In a collective order, in 2015, a Constitutional Bench of the Supreme Court struck down the NJAC Act by a majority of 4:1, on the grounds that it was unconstitutional. The Court raised the following inconsistencies with the Act:



- The court said that there was a lack of clarity on the role of the President. And since in the new proposed system, the President's decision is subject to the opinion of two eminent persons, neither of who is Constitutionally accountable, it would curtail his discretionary power. It said that the NJAC Act made serious and unconstitutional inroads into Article 124(2)* of the Constitution which gives powers to the President to appoint Judges to the Supreme Court after consulting the Chief Justice and other judges.

- On the role of the Chief Justice of India and the Judiciary it said that the 99th Amendment Act reduced the Chief Justice of India, the head of the judiciary to merely one of the six members of the NJAC – It said that such a provision would be *"denuding him/her of conventional, historical and legitimate Constitutional significance and authority and substantially skewing the appointment process postulated by the Constituent Assembly and the Constitution"*

The Court went on to say that such an amendment also tried to amend the basic structure of the Constitution by unsettling the entire scheme of appointing judges as was postulated by the Constituent Assembly.

- On the role of the two eminent persons and the power of veto they held it said,

> *"There can be no objection to consultation with eminent persons from all walks of life in the matter of appointment of judges, but that these eminent persons can veto a decision that is taken unanimously or otherwise by the Chief Justice of India (in consultation with other judges and possibly other eminent persons) is unthinkable – it confers virtually a monarchical power on the eminent persons in the NJAC, a power without any accountability"*

- On the role of the Law Minister it said that its inclusion was counter- productive – going against the grain of the Judiciary's struggle for independence to the exclusion of the Executive.
- On transparency it said,

> *"The balance between transparency and confidentiality is very delicate and if some sensitive information about a particular person is made public, it can have a far reaching impact on his/her reputation and dignity. The 99th Constitution Amendment Act and the NJAC Act have not taken note of the privacy concerns of an individual."*

- In conclusion, holding the Amendment unconstitutional, the Court said that it impinged on the independence of the judiciary and the matter of appointment of judges, which was a foundational and integral part of the independence of the judiciary.

As a result of this judgment,
the collegium system was revived