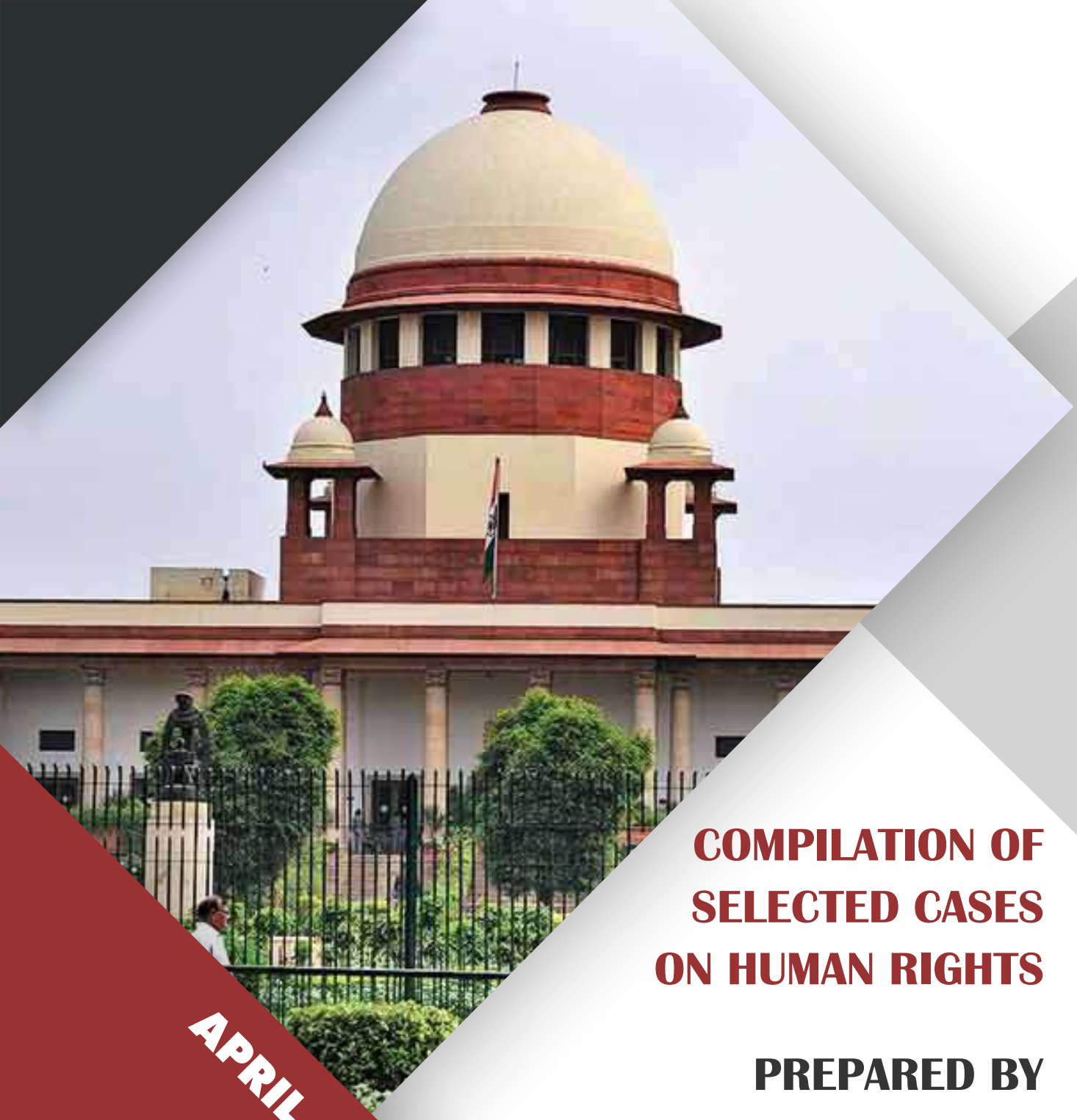

COMPILATION OF SELECTED CASES ON HUMAN RIGHTS

PREPARED BY TEAM PROBONO INDIA

APRIL 2021

ProBono India
SocioLegally Yours !

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“To deny people their human rights is to challenge their **very humanity.”**

- Nelson Mandela

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Disclaimer

Team ProBono India has made all efforts to summarize the cases from original cases retrieved from AIR, SCC, Manupatra and other leadings databases. For some cases, team has tried to summarize cases from the available sources as they could not find original ones.

Dr. Jyotsna Yagnik
B.Com., LL.M., Ph.D. in Law
Arbitrator and A. D. R. Trainer, Director, Yagnik Law Academy
Former Principal Judge, City Civil & Sessions Courts, Ahmedabad

FOREWORD

The preamble of the Universal Declaration of Human Rights States:-

"....It is essential if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

All human beings are born with equal and inalienable rights and fundamental freedoms. Human Rights are those minimal rights that every individual must have against the State or other public authorities. Human rights are standards that allow all people to live with dignity, freedom, equality, justice, and peace. Protection of the dignity through safeguarding their fundamental rights is essential for harmony in the society, as its violation can have grave impact on individual in particular and on society in general. These minimal and fundamental inherent rights should not be violated on any such grounds of gender, race, caste, ethnicity, religion etc.

Mahatma Gandhi issued a press statement directed at the meeting, quoting from the All India Congress Committee resolution of August 8, 1942, which said:

"The future peace, security and ordered progress of the world demand a world federation of free nations. An independent India would gladly join such a world federation and co-operate on an equal basis with other countries in the solution of international problems. Thus, the demand for Indian independence is in no way selfish. Its nationalism spells internationalism."

The Constitution of India is the longest written constitution of any sovereign democratic country in the world. It be responsible for and describes Fundamental Rights, Directive Principles and the Duties of Citizens. It declares India to be a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC, assuring its citizens of justice, equality and liberty to promote fraternity among them. Fundamental rights in the sense of civil liberties with their modern attribute are a development parallel to the growth of constitutional government in India. These rights are directed against racial discrimination and to securing basic human

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rights for all the people irrespective of race, colour, creed, sex, place of birth in the matter of access to public places, offices and services.

This compilation is based on ideology of universalism, as universal conceptions argue human rights are inalienable, self-evident and applicable to all human beings. There are various individuals came together to help showcase the importance of passion and patience. I would like to appreciate **Dr. Kalpeshkumar L. Gupta (Founder, ProBono India)** and the whole team for taking such efforts that would help people understand the efforts that the front line members take to keep our world a better place to live in.

The case compilation has been titled as **"Compilation of Selected Cases on Human Rights".** The topic was chosen as it is one of the absolute rights of every individual that suffer in direct and indirect manner across every corner that make individual deprive of their elementary rights. The onerous task of bringing this Human Rights compilation project by team to its ultimate conclusion has been accomplished by a dedicated team of enthusiastic twenty-two students, ably led by their ever-energetic mentor Dr. Kalpeshkumar. The coming together of these students under the banner of their guide-teacher demonstrates that apart from the loaming in classroom setting, legal knowledge realizes its true meaning and potential when the students employ their professional skills to educate and liberate the common people, Interestingly, the students did not know one another before joining this project but Dr. Kalpeshkumar cemented them into one solid block. Even with numerous unpredictable challenges thrown by the Covid-19, the term work, perseverance and determination of the group made them to achieve yet another milestone.

I hope that this compilation would encourage enthusiastic law students and faculty to take more projects of this nature. I wish all the best to the compilers of this book.

Prof. (Dr.) Jyotsna Yagnik
Director – Yagnik Law Academy, Ahmedabad
Former Pro Vice Chancellor and Director of School of Law & Justice, Adamas University, Kolkata
Former Principal Judge, City Civil Court, Ahmedabad, Gujarat

PREFACE

Human Rights are not a privilege conferred by the government. They are every human being's entitlement by virtue of his humanity.

- *Mother Teresa*

India is democratic country as every citizen enjoys certain rights, which are very essential for any human being to live freely and independently. One of the main objectives of being part of democracy is the protection of the basic rights of the citizens. The Government of India has given due consideration and recognition for protection of Human Rights. The Constitution of India and the Government of India recognizes these rights of the people and shows deep concern towards them. They are inalienable, universal and independent rights that can never be withdrawn and are justifiable with legal and moral norms. They include all basic and humanitarian rights includes Social, Civil, Political, Economic and Cultural Rights. Human Rights are the basic elementary rights that every individual is entitled on basis of their common humanity. Human Rights are inherited by every human being, regardless of their nationality, sex, colour, religion, language or other related differentiate status. The status of human rights is not limited to states or nation, this is something every human on this earth is entitled. Human Right is recognized internationally with all preferential treatment. As specified under Article 1 of Universal Declaration of Human Rights states:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

This compilation is based on ideology of universalism as universal conceptions argue human rights are inalienable, self-evident and applicable to all human beings. There are various individuals came together to help showcase the importance of passion and patience. **Dr. Kalpeshkumar L Gupta (Founder, ProBono India)** the pioneer in the field of the law came up with the idea of this compilation and with the help of enthusiastic volunteers, this project has been successfully completed. The process of coming together, learning, and then sharing knowledge is what helps knowledge grow in the true sense, and this project forwards this form of learning.

The case compilation has been titled as **"Compilation of Selected Cases on Human Rights"**. The topic was chosen as it is one of the absolute rights of every individual that suffer in direct and indirect manner across every corner that make individual deprive of their

elementary rights. Therefore, through this compilation, we want the readers to understand the concept with cases of Human Rights and challenge faced across society.

The compilation is the result of hard work and determination of twenty one law students pursuing law in different corners of India. In truth, credit of the current level of success goes to each and every member who helped this work become a reality. The enthusiasm and compassion of these students under the guidance of the pioneer Dr. Kalpeshkumar kept the project alive and developing while it was in the process of development. Sir kept us motivated and determinate through the period of the compilation of this project.

The project began with me being appointed as a student coordinator of this exemplary compilation under the banner of ProBono India, which was indeed a pleasure and a learning experience for me. It was a sheer pleasure for me to work and share this project with the like-minded and talented group of people. Here is an introduction to my beloved team:

1. **Anvita Bhardwaj** *(Symbiosis Law School, Noida)*
2. **Apoorva Bhangla** *(Kirit P. Mehta School of Law, NMIMS Mumbai)*
3. **Arushi Anand** *(Vivekananda Institute of Professional Studies, New Delhi)*
4. **Arushi Gupta** *(Vivekananda Institute of Professional Studies, New Delhi)*
5. **Chetna Panwar** *(Gujarat National Law University, Gujarat)*
6. **Deeksha Dhingra** *(Symbiosis Law School, Pune)*
7. **Kumar Yuvraj** *(Symbiosis Law School, Nagpur)*
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9. **Jothi Poorna S** *(Bharath Institute of Law, Chennai)*
10. **Namah Bose** *(Rajiv Gandhi National University of Law, Punjab)*
11. **Nilabhro Bhattacharya** *(Rajiv Gandhi National University of Law, Punjab)*
12. **Pooja Lakshmi** *(Bennett University, Greater Noida)*
13. **Priti Anchaliya** *(V.T.Choksi Sarvajanik Law College, Surat)*
14. **Raisha Bansal** *(Ajeenkya D Y Patil University, Pune)*
15. **Raju Kumar** *(Chanakya National Law University, Patna)*
16. **Rishi Raj** *(Symbiosis Law School, Noida)*
17. **Ritika Kanwar** *(Institute of Law, Nirma University, Ahmedabad)*
18. **Sakshi Agrawal** *(Indore Institute of Law)*
19. **Sakshi Mehta** *(Symbiosis Law School, Noida)*
20. **Tanya Katyal** *(Delhi Metropolitan Education, New Delhi)*

21. Tanishqua Pande *(Symbiosis Law School, Noida)*

A journey of about two months ended on May 20, 2021, as we concluded our compilation and the hustle came to an end. The project was completed through the learning of each individual in the compilation, which was a key learning from the initiative. The idea behind this compilation is to understand and embrace the principles of human equality and dignity and the commitment to respect and the purpose of protection of elementary rights for all people. With the idea of such basic and predominant theme, Dr. Kalpeshkumar wanted all of us to understand that *"Whether tales are told by the light of a campfire or by the glow of a screen, the prime decision for the teller has always been what to reveal and what to withhold. Whether in alone or with images, the narrator should be clear about what is to be shown and what is to be hidden."* I am thankful to the team and Dr. Kalpeshkumar for the never-ending support, believe and hard work.

We hope our effort helps the readers to understand the approaches and inspires great creations!

On behalf of the Team ProBono India,

Aishwarya Singh

(Coordinator)

ABBREVIATION

AAPSU	All Arunachal Pradesh Students' Union
AIR	All India Reporter
B.M.C.	Bombay Municipal Corporation
CBSE	Central Board of Secondary Education
CCRC	Committee of Citizenship Rights for Chakma's
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CJI	Chief Justice of India
CPC	Civil Procedure Code
CRC	Rights of the Child
Crl	Criminal
Cr.LJ	Criminal Law Journal
CrPC	Criminal Procedure Code
DPSP	Directive Principles of State Policy
HC	High Court
HON'BLE	Honourable
HR	Human Rights
ICCPR	International Convention on Civil and Political Rights
IPC	Indian Penal Code
J.	Justice
JJ	Juvenile Justice
LGBT	Lesbian, Gay, Bisexual, and Transgender
LSA	Legal Services Authorities Act
NALSA	National Legal Services Authority
NEFA	North-East Frontier Agency
NHRC	National Human Rights Commission
NCT	National Capital Territory
NGO	Non Governmental Organization
NO.	Number
ORS	Others

PIL	Public Interest Litigation
PCMA	Prevention of Child Marriage Act
POCSO	Protection of Children from Sexual Offences Act
PUCL	People's Union for Civil Liberties
SC	Supreme Court
SC	Scheduled Cast
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SCLSC	Supreme Court Legal Services Committee
SLSA	State Legal Services Authority
SLP	Special Leave Petition
SRS	Sex Reassignment Surgery
SSP	Senior Superintendent of Police
ST	Scheduled Tribe
UOI	Union of India
UDHR	Universal Declaration of Human Rights
UPSC	Union Public Service Commission
UTs	Union Territories
V.	Versus
VS	Vegetative State
WP	Writ Petition
YRS.	Years

LIST OF CASES

CASE NO. 1

NATIONAL LEGAL SERVICES AUTHORITY

V.

UNION OF INDIA & ORS.

(AIR 2014 SC 1863)

RECOGNITION OF TRANSGENDER AS THE THIRD GENDER & A MINORITY CLASS.

ABSTRACT

The Indian Society is insensitive towards the feelings and grievances faced by the transgender community. More often than not, members of the society abuse and ridicule the transgender society, sideline them and treat them as untouchables. The society fails to embrace different gender identities of such people, a mindset which warrants change.

National Legal Services Authority (NALSA) was constituted under Legal Services Authority Act, 1987. It provides free legal services to weak and marginalized sections of the society. NALSA came forward to advocate the cause of the Trans community and filed a writ petition to address their grievances.

The Transgender Community moved the Court seeking a legal declaration of their gender identity. They prayed "transgender" be recognized as a gender other than male and female. It was cited that non-recognition of their gender identity will result in the violation of Article 14 and Article 21 of the Constitution. Therefore, they prayed for the recognition of Transgender as the third gender which would provide them with legal and constitutional protection.

In the following judgment, the Court recognized Transgender as the third gender citing the right of people to self-identify their gender. Furthermore, 'Eunuchs' and 'Hijras' were also allowed to identify themselves as the "third gender". The Court also clarified that gender identity did not refer to biological characteristics rather it referred to it as "an innate perception of one's gender". In order to tackle the stigma against the Trans, the Court categorized them as a minority and directed for the formulation welfare schemes to uplift them.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Civil) No. 400 of 2012
Jurisdiction	:	Supreme Court of India
Case Filed On	:	2012
Case Decided On	:	April 15, 2014
Judges	:	Justice K.S. Radhakrishnan, Justice A.K. Sikri
Legal Provisions Involved	:	Constitution of India- Article 14, 15, 16, 21, Indian Penal Code- Section 377
Summary Prepared By	:	Anvita Bhardwaj Symbiosis Law School, Noida

2. BRIEF FACTS OF THE CASE

Two civil writ petitions were filed in the Supreme Court to safeguard and protect the rights of the people who belonged to the transgender community. The National Legal Services Authority filed a Writ Petition in 2012 (petition number 400 of 2012). In the year 2013, a similar writ petition was filed by Pooja Mata Nasib Kaur Ji Women Welfare Society, a registered society that is associated with and works for the protection of transgender (*Kinnar*) community.

An individual, Laxmi Narayan Tripathi, who identifies himself as a '*Hijra'*, also came forward and approached the Court where he impleaded in the present case. He claimed that his fundamental rights were being violated and the members of the transgender community were being discriminated against. As per the petitions, the petitioners sought the inclusion of transgender as the third gender. Failure to recognize the third gender would result in violation of Article 14, Article 19 and Article 21.

3. ISSUES INVOLVED IN THE CASE

I. Whether it is necessary to safeguard the rights and interests of persons who identify themselves with the third gender?

II. Whether someone who is born male but has female orientation has the right to be identified as a female; a similar question arises when an individual uses surgery to alter his/her sex.?

III. Whether an individual who doesn't identify either as a male or a female has the right to be categorized as a "third gender".

4. ARGUMENTS OF THE PARTIES

Petitioner

The petitioners argued that the concept of binary genders i.e. male and female strikes at the core of Article 14 and Article 21, that respectively guarantees the Right to Equality and the Right to Life and Personal Liberty. As per the petitioners, the normalization of binary genders has alienated and victimized individuals who do not identify as either male or female. Due to non-identification as the third gender, basic human dignity of such people is violated and that violation marginalizes them and forces them to live isolated from the society.

Respondent

On the other hand, the respondents argued that the state has already set up a committee known as "Expert Committee on Issues Relating to Transgender" and that committee is already looking into ways in which they can uplift the transgender community and help them live a dignified and prosperous life. They contended that the Committee is going to consider the views of the petitioners in a much-detailed manner and formulate robust policies and therefore, this petition should not be discussed in the Court.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Constitution of India

- **Article 14:** The Right to Equality before the law

  The Court recalled that the state shall not deny "any person" equality before the law or equal protection of the laws. Article 14, in ensuring equal protection, imposes a positive obligation on the state "to ensure equal protection of laws by bringing in necessary social and economic changes". Discrimination on the grounds of sexual orientation and gender identity impairs equality before the law and equal protection of the law and violates Article 14.

- **Article 15:** Article 15 includes a requirement to take affirmative action for the advancement of socially and educationally disadvantaged groups. The Court notes that transgender persons have not been afforded special provisions as envisaged under Article 15(4) for the advancement of the socially and educationally backward. They constitute such a group and the state is bound to take some affirmative action to remedy the injustice done to them for centuries.
- **Article 16:** Article16 prohibits discrimination in certain areas based on a list of grounds, including sex. The reference to "sex" is to be understood as prohibiting all forms of gender bias and gender-based discrimination, including discrimination against transgender people. The emphasis put on tackling sex-based discrimination in the Constitution means that people have a "fundamental right to not be treated differently for the reason of not being in conformity with stereotypical generalisations of the binary genders".
- **Article 19:** The Court stated that expressing one's gender identity through words, dress, action or behavior is included in the right to freedom of expression (Article 19). Privacy, self-identity, autonomy and personal integrity are fundamental rights protected by Article 19. As gender identity lies at the core of one's personal identity, gender expression and presentation, it has to be protected under Article 19(1)(a) of the Constitution. Often the state and its authorities, either due to ignorance or otherwise, fail to digest the innate character and identity of transgender persons, which it must do in order to realize their Article 19 rights.
- **Article 21:** The Court held that 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 (Article 21). The Court noted that Article 21 has been broadly interpreted to include all aspects that make a person's life meaningful. It protects the dignity of human life, personal autonomy and privacy. As recognition of one's gender identity lies at the heart of the right to dignity and freedom, it must be protected under Article 21 of the Constitution.

6. JUDGEMENT IN BRIEF

The leading judgment in this case was given by Justice Radhakrishnan. It was noted by the Court that the transgender community had faced disadvantage and prejudice since the 18th century in India. It was acknowledged that the transgenders do face social exclusion when

they are discriminated against in areas of life such as health care, education, employment etc. While reaching the decision, the Court stated that an integral part of one's personality is gender identity. It is one of the most basic aspects of self-discrimination, dignity and freedom. 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 which is guaranteed by Article 21. Safeguarding transgender rights was a matter of both National and International importance. Article 21 is time and again broadly interpreted to be exclusive of people's needs and grievances.

Recognition of Gender Identity lies at the heart of Right to live with freedom and dignity. Further, Article 14 ensures equality before the law. It imposes a positive obligation on the State to ensure 'equal protection' by making necessary socio-economic changes. Article 14 is a right enjoyed by "any person" (similarly, the reference to "citizen" in Article 15 is gender-neutral) and so applies equally to men, women and transgender people, who do not identify clearly as male or female. Hence, transgender people are entitled to equal legal protection of the law in all spheres, including employment, health care, education and civil rights. Any discrimination on the grounds of sexual orientation and gender identity impairs equality before the law and equal protection of the law and violates Article 14.

The Centre and State governments were directed by the Supreme Court to grant legal recognition of gender identity; it may be male, female or transgender. Non-recognition of third gender in both criminal and civil statutes such as those relating to marriage, adoption, divorce, etc. is discriminatory to the transgender. Availability of all fundamental rights to be ensured to transgender as it is in case of males and females.

For people who are transitioning, the Court stated that a person's psyche should be followed and they should be subjected to use the 'Psychological Test' rather than the 'Biological Test'. Insisting on Sex Reassignment Surgery (SRS) as a pre-requisite to change one's gender to be considered illegal.

Where health and sanitation matters are concerned the Centre and State governments are directed to follow proper measures and provide quality medical care to the transgender. Further, separate toilets and other facilities to be established for them by the public authorities. Along with this, the transgender community is recognized as a "socially and economically backward" class Therefore, the Centre and State governments are directed to formulate social welfare schemes for them while ensuring an extended reservation via Article

15 and Article 16 in educational institutions as well as public appointments. Measures to tackle stigma against the Trans community to be undertaken by the government to ensure their upliftment and treatment as equals.

7. COMMENTARY

The society does not have an understanding of the transgender community and have some transphobic elements within it. Due to such mentality, the transgender community faces inequality in every sphere of life, be it education, employment, or health.

This judgment was a fresh ray of hope for the transgender society. The trans community has suffered in silence long enough and faced social discrimination and large-scale injustice. Though this judgment will not bring a radical change in the society, it is a start to right the wrongs that have taken place against transgenders for centuries together.

It is the first judgment to legally recognize non-binary gender identities and uphold the fundamental rights of transgender persons in India. The judgement also directed Central and State governments to take proactive action in securing transgender persons' rights.

After this judgment, the transgender community will garner more respect for themselves as for the first time ever, they have gained legal recognition. Further, the formulation of social welfare schemes for them in public and sanitation spheres will help them have some ease in life and improve their quality of life.

The Court recognized the community as socially and economically backward, which is a way forward for the community. After this recognition the government will be able to formulate social welfare schemes for them and also reserve seats for them in education as well as employment spheres.

This will help in tackling the stigma against the transgender community and hopefully bring some public awareness. Public awareness will help in changing the mindset of the society and hopefully the transgender community will not feel like outcasts in their own country.

CASE NO. 2

NAVTEJ SINGH JOHAR

V.

UNION OF INDIA

(AIR 2018 SC 4321)

DECRIMINALISATION OF SECTION 377 OF THE INDIAN PENAL CODE, 1860.

ABSTRACT

The present case is a landmark judgment that held Section 377 under Indian Penal Code, 1860 as unconstitutional. The judgment reversed the decision in *Suresh Kumar Koushal v. Naz Foundation*[1] which had overturned the judgment in *Naz Foundation v. State (NCT of Delhi)*[2]. The landmark judgment is a watershed moment for gender equality as well as social justice in India as it provides the LGBTQ community various rights such as right to life, privacy, freedom of choice and most of all right to freedom of self-expression.

Section 377 was deeply dealt with in this case in relation with the concept of homosexuality. The section criminalized homosexuality. The questions that arose was regarding the constitutionality of the section and whether it only stated sexual orientation or also encompassed sexual choice of partner in it. The section was held unconstitutional with regards to consensual sex between adults of same sex. The Court ruled that sexual orientation is an important element of privacy, liberty, dignity and equality. The intimacy between two consenting adults who are of the same sex should not bother the interests of the state.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Criminal) No. 76 of 2016
Jurisdiction	:	Supreme Court of India
Case filed On	:	April 27, 2016

[1](2014) 1 SCC 1
[2] (2009) 111 DRJ 1

Case Decided On	:	September 6, 2018
Judges	:	Justice Dipak Mishra CJI, Justice A. N. Khanwilkar, Justice D.Y. Chandrachud, Justice Indu Malhotra, Justice R. F. Nariman
Legal Provisions Involved	:	Constitution of India Article 14, 15, 19 and 21 Section 377 of Indian Penal Code, 1860
Case Summary Prepared By	:	Apoorva Bhangla Kirit P. Mehta School of Law, NMIMS University, Mumbai

2. BRIEF FACTS OF THE CASE

In 2009, the Delhi High Court struck down Section 377 of Indian Penal Code (IPC) in the case of *Naz Foundation v. Government of NCT of Delhi*. In the case the petitioners had challenged the Constitutionality of Section 377 on the ground that it is violative of Articles 14, 15, 19 and 21 of the Constitution. It was contended that the provision was a Victorian era law and was not suitable for the present world. The High Court struck down the said provision and held that Section 377 violates the right to personal liberty, the right to live with dignity and right to privacy of an individual.

However, in 2013 the decision of the Delhi High court was challenged by Suresh Kumar Koushal. In the case of *Suresh Kumar Koushal v. Naz Foundation* the Supreme Court overturned the decision of the Delhi High Court and reinstated Section 377 of IPC. The reasoning given by the bench was that the power to make a provision unconstitutional is only with the Parliament. Further, they stated that only a small fraction of the society belongs to the LGBTQ community and that the High Court had made error by depending on international precedents to protect the "so-called rights of the LGBT community".

The present writ petition was filed by five individuals belonging to the LGBTQ community challenging the constitutionality of Section 377 of IPC. They challenge the provision that criminalizes sexual intercourse between two consenting adults by rendering the act against the order of nature.

3. ISSUES INVOLVED IN THE CASE

I. Whether Section 377 of the Indian Penal Code violates right to equality under Article 14, freedom of speech and expression under Article 19 and right to live with dignity under Article 21 of the Constitution?

II. Whether Article 15 is violated by provision that discriminates between individuals based on their sexual orientation?

4. ARGUMENTS OF THE PARTIES

Petitioner

The counsel for the petitioners relied on *K. S. Puttuswamy v. Union of India*[3] in which the court laid the ratio that an essential attribute of privacy is sexual orientation. That's why it becomes necessary that sexual orientation as well as right to privacy is protected as without the freedom to enjoy basic fundamental rights, an individual's identity may lose it importance, a sense of dread may wash over and their existence would be reduced to mere survival. LGBTQ also has the right to privacy and can has right to exercise their choice without fearing humiliation.

Further, the counsel reaffirmed the decision of the Delhi High Court in the *Naz Foundation* case and also relied on the case of *Manoj Narula v. Union of India*[4] to give example on Constitutional Morality. They stated that that the Supreme Court is the protector of the Constitution and is the last judge of the constitutional rights. Therefore, should do away with social disregards and protect constitutional morality.

The counsel further relied on cases to substantiate their contentions like *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*[5] and *Common Cause v. Union of India*[6] where the court has held that the right to life and liberty has been guilty under Article 21 and it becomes useless if it is not conferred upon every individual which also includes the LGBT community. The counsel next relied upon the Justice J. S Verma Committee on Amendments to Criminal Law under which it was stated that sexual orientation is part of sex under Article 15. Therefore, Article 15 is violated by Section 377 on this contention. Additionally, counsels

[3] 2017 10 SCC 1
[4]2014 9 SCC 1
[5]1981 SCC 1 608
[6]2018 5 SCC 1

stated that due to fear of persecution the LGBT community did not disclose their identity and do not approach the court.

Respondent

The counsel for the respondent contended that sexual orientation does not come under the ambit of Article 15 of the Constitution, that's why it is not violated. They further placed reliance on *Fazal Rab Choudhary v. State of Bihar*[7] under which it was held that Section 377 implied sexual perversity that was against the order of nature. Therefore, the state had the jurisdiction to put restrictions on the activities that man and women partake in that are offensive or against the order of the nature.

The counsel relied on the case of *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*[8] while contending that the interest of the society, country and community is more important than the individual citizen irrespective of how important the citizen's interest are. Further, the counsel contended that the court does not have the authority to add, delete or amend the words of the provision. Also, in case the section is decriminalised then the system of family and the institution of marriage will be affected as till now it happened between male and female. Further, it will result in a number of social issues which the legislature is not ready for at this point of time and the issues that will rise will be risky for the existing laws.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The case is based on the constitutionality of Section 377 of IPC. Section 377 states that, "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine". The language in the provision was debated as the words 'carnal intercourse against the order of nature" was ambiguous and as such no meaning could be attributed to it. The Section is from the Victorian Era which has been long gone and therefore there is no need for it to remain in continuance for it is violative of Articles 14, 15, 19 and 21 as stated by Justice Nariman.

The fundamental rights provided in the Constitution to the Citizens of India is sacrosanct in nature. However, these rights are dynamic as well as perennial. No static and pre-established

[7](1982) 3 SCC 9
[8](2005) 8 SCC 534

interpretation of them can be made as it would be against the principles of equality, liberty and dignity and the foundation of the constitution.

6. JUDGEMENT IN BRIEF

The five-judge bench in the present case unanimously struck down Section 377 of IPC. The court engaged in diverse arguments based on social morality, definition of 'order of nature', fundamental rights, minor community etc. The court relied on the cases of *National Legal Services Authority v. Union of India*[9] and *K.S. Puttaswamy v. Union of India*[10] to reiterate that sexual orientation as well as gender identity are essential to one's personality and by denying the LGBT community the right to privacy and the right to choose a partner regardless of their sex is violative of a dignified life under Article 21 as it also encompasses sexual autonomy under it.

Further, the court held that the section placed an unreasonable restriction on the right to freedom of expression as consensual sex is a private matter does not harm the legitimate interests of the state and no degradation of public morality is caused by it. The LGBT community is a sexual minority that has been humiliated and discriminated by the State and society but also by their own families. The right under Article 19 (1) (a) would be violated of the provision continue to exist as it would lead to a chilling effect. Transformative Constitutionalism as a principle provides the judiciary a duty to ensure the supremacy of the Constitution with the help of constitutional morality that maintains the social fabric of the society. One of the intrinsic features of Constitutional Law is doctrine of progressive realization of rights that helps in maintaining checks and balance on the economic social and cultural rights as stated by Justice Dipak Misra and Justice Khanwilkar. The court stated that Homosexuality is not a mental disorder as mention under the Mental Healthcare Act, 2017. By treating it as such could lead to grave consequences on mental health of the person.

The court also said that it does not matter if the provision only caters to a small fraction of the society, individuals from the LGBT community are also entitled to enjoy the right of privacy as well as human dignity. The provision puts a restriction on a particular community on the basis of their gender identity as the right to equality under Article 14 and 15 is violated by the sodomy law. The state must ensure that human right of the LGBT community is protected irrespective of the majoritarian approval of the government.

[9] (2014) 5 SCC 438
[10] 2017 10 SCC 1

Even though Section 377 was gender neutral on the face of it, still it effaced identities of the LGBT communities. The provision promoted rule by the law rather than rule of law. Sexual expression and intercourse between consenting adults in private cannot be treated as 'carnal intercourse against the order of nature". The stigma and humiliation faced by the LGBT community is the result of social ethics and morality and opposes the rule of liberty. The social morality must be ignored by the judiciary and constitutional morality must be maintained.

7. COMMENTARY

The judgement consisted of intrinsic implications and consequences by answering substantial question of law. A great number of provisions were taken into consideration in the present case. The language of Section 377 of IPC suggested that a person cannot have carnal intercourse against the nature with the other person. The act of sex between two adults of the same sex was considered to be against the order of nature for a long time as heterosexuality has be the mandated norm in the society by way of customs, beliefs and traditions.

The LGBT community suffered a great lot due to this provision. They were denied the basic rights due to their gender identity and sexual orientation. The ground that Suresh Kaushal judgment took while overruling the Naz foundation case was that LGBT community is a small fraction in the country and their interest cannot be given priority over the interest of society at large. However, this contention was struck down in the Navtej Johar case where the court held the constitution was for each individual present in the country irrespective of them being from a minority or majority group.

The judgment has upheld the constitutional morality and also shown that the Indian society has started shifting from an archaic society to a pragmatic one. The judgment was primarily based on the desired goals of the fundamental rights rather than on societal perceptions. The court in the judgement has directed the government to take measures towards upholding the interest of the LGBT community but as such no steps have been taken. The discrimination against the LGBT community still exists as there is no proper legislation to address the issue.

8. IMPORTANT CASES REFERRED

- *Suresh Kumar Koushal v. Naz Foundation (2014) 1 SCC 1*
- *Naz Foundation v. State (NCT of Delhi) (2009) 111 DRJ 1*

- *National Legal Services Authority v. Union of India (2014) 5 SCC 438*
- *K.S. Puttaswamy v. Union of India, 2017 10 SCC 1*
- *Fazal Rab Choudhary v. State of Bihar (1982) 3 SCC 9*
- *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat (2005) 8 SCC 534*
- *Common Cause v. Union of India (2018) 5 SCC 1*
- *Manoj Narula v. Union of India (2014) 9 SCC 1*

CASE NO. 3

INDEPENDENT THOUGHT

V.

UNION OF INDIA AND ANR.

((2017) 10 SCC 800)

MARITAL RAPE OF A GIRL CHILD BETWEEN THE AGE OF 15 TO 18 YEARS.

ABSTRACT

The case is a landmark one where a writ petition was filed by a registered society to bring the court's attention to the conflicting provision in the Indian Penal Code, 1860 with other laws in benefit of the girl child. Exception 2 to Section 375 provides that if the sexual intercourse is done a man with his wife who is above 15 years but below 18 years and it is without her consent, it won't come under the purview of rape. This distinction between the girl child between the ages of 15 and 18 years is arbitrary in nature forming no reasonable nexus. It stems from discriminatory rationale between the girl children violating the basic principle of equality before the law as is enshrined in the Constitution through its Article 14. Furthermore, several acts for the benefit of the girl child, like Protection of Children from Sexual Offences Act (POCSO), Prevention of Child Marriage Act (PCMA), and Juvenile Justice Act (JJ), were enacted in favour of the child who defines it below the age of 18 years. Furthermore, these came in through Article 15(3) where power is given to State to enact laws in favour of children as well as women. Thus, these are special laws who all through their provisions safeguard the rights of the child. Even under POCSO, a similar provision as regards to rape is found with the offence of penetrative sexual assault with the difference that the age there is 18 years. Thus, to remove the difficulty and the conflicting part of the Exception 2 of Section 375, the Supreme Court used the harmonious and purposive construction method to bring this provision in consonance with the other Acts and the similar provisions by reading it as 18 years instead of 15 years. Though, this will have prospective effect from the date of the judgement. Lastly, the court clarified strictly that this judgement is not in any way related to marital rape where the wife is 18 years or above and cannot, thus, be construed in that and is thereby limited.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Civil) No. 382 of 2013
Jurisdiction	:	Supreme Court of India
Case Filed On	:	November 7, 2013
Case Decided On	:	October 11, 2017
Judges	:	Justice Madan B. Lokur, Justice Deepak Gupta
Legal Provisions Involved	:	Indian Penal Code, Section 375 – Exception 2
Case Summary Prepared By	:	Arushi Anand Vivekananda Institute of Professional Studies, Delhi

2. BRIEF FACTS OF THE CASE

The case is filed by a society which is registered as per the laws and is working for child rights. They filed the writ petition before the Supreme Court of India. The opposing party is that of Union of India and National Commission for Women. There was also an intervener in the present case which is The Child Rights Trust which submitted in regard to the Exception 2 where it deals with the rights of the girl child and the adverse effect on them.

Independent Thought, petitioner works for the benefits of the children and in securing their rights so as to help them grasp a better future and thus, they put all their efforts on that behalf. They also work for ensuring the legal rights of the child and that their rights are not violated. They had pleaded about the inhumane treatment of the girl child by different provisions where their legal rights are violated and they are subjected to harassment and sexual violence by the perpetrator who is their husband and he cannot be punished for the same because of the unjust provision in the Exception 2 of Section 375 of the Indian Penal Code, 1860.

At first, the child marriages that are conducted in a large number in India and then because of the said provision related to the girl child who is not ready for the marriage and there is not yet full development of the female child whether physically or mentally as they are still under 18 years of age. They are not able to understand the situation and circumstances which they are put under and the violence that they are subjected to because of which, it has led to the increase in the death of the female child from such marriages and increase in suicide rates as a result. Consequently, the need for a relook on such a provision had become a necessity. Therefore, the present writ petition was filed under Article 32 of the Constitution of India before the Supreme

Court to remove this arbitrary and discriminatory effect from the Exception 2 of Section 375 of IPC, 1860.

3. ISSUES INVOLVED IN THE CASE

I. Whether non-consensual sexual intercourse with a wife who is below 18 years but above 15 years will be considered as rape under Exception 2, Section 375 of the IPC?

4. LEGAL ASPECTS INVOLVED IN THE CASE

The main legal provision in question was Exception 2 of Section 375 of the Indian Penal Code. It was looked into from all the perspectives of Article 14, 15 and 21 of the Constitution of India. Section 375 talks about rape and prescribes punishment for the same. It describes through its six clauses as to what all circumstances will constitute as rape if sexual intercourse takes places with the women in certain situation. Under its Sixth clause, the provision makes it clear that sexual intercourse with a woman who is under the age of 18 years will be considered as an offence of rape. This provision was amended in 2013 to 18 years from earlier 16 years of age by the Parliament after the *Nirbhaya* case and brought the changes through the Criminal Law (Amendment) Act, 2013. The important thing to know is that whether there is consent or not, as per the Sixth clause, it will be rape if the sexual intercourse takes place with a woman below the age of 18 years. Thus, this threshold was established by the Parliament.

Secondly, moving to the Exception 2 of Section 375, it lays down that when sexual intercourse takes place with a wife whether with her consent or without her consent, it will not be considered as rape if the wife is not below the age of 15 years. This means that the wife who is above the age of 15 years, for them it will be not be considered as rape if the sexual intercourse is without their consent. This includes girl child who is between the ages of 15 to 18 years. Now, this provision is in conflict with the above clause in the same Section.

Furthermore, Section 3 of the POCSO Act talks about penetrative sexual assault and Section 5 (n) says that it is done when the person is related to the child, i.e. through marriage. This offence is, then, punishable under Section 6 of the Act. It also defines child under Section 2 (d) as below 18 years. The provision of penetrative sexual assault is similar to that of Section 375 of IPC. Thus, a conflict arises here as well with Exception 2.

5. JUDGEMENT IN BRIEF

The judgment given by the Justices were of concurring nature, i.e., they both reached the same conclusion but through different reasoning. In regard the judgment, the court cited Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which India has acceded and signed respectively which the present provision goes against as contributing sexual abuse of the girl child.

Furthermore, Article 15 (3) talks about the power of the State to make special legislation for women and children. In consonance to that POCSO was brought by law-makers for the benefit of the child. There the provision is present which is called aggravated penetrative sexual assault offence which is similar to rape provision in IPC but is in direct conflict only in regard to the present issue. In POCSO, it is an offence while in IPC it is not. Furthermore, Section 42A of POCSO clearly states that the provisions of POCSO are in addition to any other law and if there is inconsistency, then this law will prevail over others.

Under the Child Marriage Restraint Act, 1939, the child is a person who is below 18 years of age. Then, the various provisions of Prevention of Child Marriage Act (PCMA), Protection of Children from Sexual Offences Act (POCSO) and Juvenile Justice Act (JJ) were looked into so as to arrive at a conclusion that the provision of the exception 2 is unfair and discriminatory. It is because it creates an artificial distinction between a minor girl who is above 15 years and one who is below 15 years. It is not based on any rational nexus and is therefore arbitrary in nature. The distinction as required under Article 14 of the Constitution should be clear and reasonable but such a distinction as under Exception 2 within a minor wife- one who is above 15 years and one who is below 15 years – doesn't establish any person but violates several rights. Thus, there is a clear violation of the equality principle as given under Article 14.

After that, the report from various committees was looked into to highlight the reason and affect the child marriage has on the mentality of the female child because there is no full development of the child and thus, the atrocities that then affect their growth and working and makes them dependent on others. The court also talked about how special law will prevail over the general law where POCSO is a special law working in favor of children enacted through Article 15 (3) while IPC is a general law.

Furthermore, the court talked about the right to bodily integrity of a woman which is now considered as a part of Article 21 through the extended definition of the right of personal

liberty. Thus, a woman has right over her body in regard to matters of reproduction, sexual activity, privacy, etc.

Thus, the court made the use of harmonious and purposive construction to bring the provision of POCSO and IPC in consonance by reading 15 years as 18 years in Exception 2 of Section 375 of IPC. Further, the judgment has prospective effect in regard to its new interpretation.

In the end, the apex clarified that it did not give views on the matter of marital rape in case of where the women are above 18 years of age (or major).

6. COMMENTARY

This case specifically focuses on the sexual intercourse between spouses where the wife is below the age of 18 years but above 15 years. This was brought into question because of the conflicting provisions in IPC. To understand properly, it necessary to look at the background of the provision and prevailing circumstances as well. The violence against the women and particularly the female child is increasing so much that they are forced into child marriages before attaining the age of majority as prescribed by law. It has a mental and physical effect on their health when huge responsibilities are put on her causing an adverse effect on her growth and development as an individual. It is against the human right of women. They have the right to lead a healthy life but they are given inhumane treatment and are subjected to violence in child marriages. With this comes another concept of bodily integrity and the right of the women associated with it. Through such marriages, these rights are taken away and they are subjected to sexual violence and harassments at a young age affecting them immensely.

Marital rape has become an increasingly important matter. The court has, in this particular case, refrained from addressing instances of marital rape in situations where the wife is 18 years or above. But it has made the provisions clear in regard to marital rape of a child or a person below 18 years. Since it has become a pertinent matter, the court who is paramount of justice should consider voicing their views in the matter so that a positive reform and change can be expected by influencing the law-makers for future enactments and amendments.

The right of a woman to their body and concerning their reproductive choices, sexual choices, privacy does not stop when they get married. It continues even after they are married. They are applicable to their domestic household as well. These choices stem from the right to life and liberty of an individual and cannot be denied. Thus, when a woman is married and a sexual activity takes place without her consent, it can also form part of snatching away her right of

choice towards her body. This, in fact, can even take the form of sexual harassment and rape within marriage by the husband to his wife. This thin line difference is what makes it necessary to define the term along with bringing about affirmative legislation or provisions in IPC itself to combat such issues faced by women. Even looking at different instances reported or unreported, it is seen that due to unawareness such situations are very much prevalent where women and girl child are not aware of marital rape. Thus, measures in that sense are necessary as well.

The court though gave a landmark judgement but what I think is that restricting its meaning to a particular and specific instance do harm by not extending to marital rape specifically. Benefits are definitely there which are by bringing the provision in consonance as this was but a wrong law in place violating the human rights of the girl child between the ages of 15 to 18 years.

7. IMPORTANT CASES REFERRED

- *Government of A.P. v. P.B. Vijayakumar, (1995) 4 SCC 520*
- *Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1*
- *State of Maharashtra v. Madhukar Narayan Mardikar, (1991) 1 SCC 57*
- *Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490*
- *State of Punjab v. Gurmit Singh, (1996) 2 SCC 384*
- *Satyawati Sharma v. Union of India, (2008) 5 SCC 287*
- *Collector of Customs v. Digvijaya Singhji Spinning & Weaving Mills, AIR 1961 SC 1549*
- *Pathumma & Ors. v. State of Kerala & Ors., (1978) 2 SCC 1*
- *Subramanian Swamy v. Director, CBI, (2014) 8 SCC 682*
- *Maneka Gandhi v. Union of India, (1978) 1 SCC 248*
- *E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3*

CASE NO. 4

NILABATI BEHERA (ALIAS LALIT BEHERA)

V.

STATE OF ORISSA AND OTHERS

(1993 2 SCC 746)

SUPREME COURT'S GUIDELINES FOR ARREST AND DETENTION

ABSTRACT

Torture in police detention centres has been a "common practice" or "legitimate norm" around the country, unchecked and undeterred. The right to life and liberty guaranteed by Article 21 is a priceless right that cannot be granted to convicts, under-trials, or other detainees unless in accordance with legal procedures. As a result, if the state apparatus violates the constitutional right of the prisoner granted under Article, the victim should be able to obtain relief under Article 32 of the Constitution. However, since there is no explicit clause in the constitution authorizing the courts to grant monetary penalties in the case of a breach of a fundamental right, the courts will be made ineffective in the event of a fundamental right violation. To address this pitiful situation, the Supreme Court held for the first time in *Smt. Nilabati Behera v. State of Orrisa* that restitution can be sought from the state in cases of human rights violations.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Crl.) No. 488 of 1988
Jurisdiction	:	Supreme Court of India
Case Decided On	:	March 24, 1993
Judges	:	Justice Jagdish Sharan Verma, Justice A.S. Anand, Justice N. Venkatachala
Legal Provisions Involved	:	Constitution of India, Article 21, 32
Case Summary Prepared By	:	Arushi Gupta, VIPS, GGSIPU, New Delhi

2. BRIEF FACTS OF THE CASE

In this case, Smt. Nilabati Behera sent a letter to the Supreme Court saying that her twenty-two-year-old son, Suman Behera, died in police custody after suffering several injuries. Suo moto action was taken by the court, and it was turned into a writ petition under Article 32 of the Indian Constitution. The plaintiff demanded damages for the violation of her son's constitutional right to life, which is protected by Article 21. Suman Behara was arrested by the Orissa police and held at a police outpost for an investigation into a robbery offense. His body was discovered by the train track the next day. The lacerations on his body suggested that he had been stabbed.

3. ISSUES INVOLVED IN THE CASE

I. Whether it is a case of custodial death as alleged by the petitioner?
II. If an order for the payment of money is of the form of compensation consequential upon the deprivation of a constitutional right, shall this Court may render it in the exercise of its authority under Article 32?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The counsel from the complainant side contended that the facts provided at the investigation by the learned District Judge was conflicting with the claims brought on account of the State by the Additional Solicitor General (Respondents). Moreover, there was no ground to dismiss the conclusions of a study submitted by District Judge Sundergarh, Orissa, which claimed unequivocally that Suman Behera died as a result of numerous injuries suffered during his detention at Police Outpost, Jeraikela.

Respondent

The counsel for the respondent contended that the State's responsibility was based on a shaky statistical basis. Suman Behera managed to run from police custody at around 3 a.m. on the night of December 1-2, 1987 from the Police Outpost Jeraikela, according to the respondents. They also said that during the search, he was unable to be arrested, and that his body was later discovered on the railway track. The injuries that contributed to his death, as per the respondents, may have been caused by a train running over him. As a result, the respondents

refuted the charge of custodial death and, as a direct consequence, their guilt for Suman Behera's accidental death.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The interpretation of the articles which form the pivotal of the case are Article 21 and Article 32 of the Constitution of India.

a. Article 21

Article 21 is one of the Fundamental rights enshrined in Part III of the Constitution of India. Article 21 states that *"No person shall be deprived of his life or personal liberty except according to a procedure established by law."*

b. Article 32

Article 32 is one of the Fundamental rights enshrined in Part III of the Constitution of India. Individuals have the right under Article 32 of the Indian Constitution to approach the Supreme Court for justice if they believe their rights have been "unduly robbed." As the "protector and guarantor of Fundamental Rights," the Supreme Court has the power to issue directives or instructions for the enforcement of any of the rights conferred by the Constitution. Following are the types of Writs as provided under Article 32 of the Constitution-:

- Habeas Corpus

  In this case, this writ is of relevance. "Where is the Body," says one of the most relevant writs for personal liberty. The primary goal of this writ is to secure redress from an individual's arbitrary imprisonment. Its aim is to prevent individuals from being affected by the regulatory structure, as well as to protect their freedom from coercive state intervention that violates their constitutional rights under Articles 19, 21, and 22 of the Constitution. In the event of wrongful arrest, this writ offers instant relief.
- Quo Warranto
- Certiorari
- Mandamus
- Prohibition

6. JUDGEMENT IN BRIEF

The court observed that there was no conclusive proof of a police search for Suman Behera or of his escape from detention. After the body was identified by railway workers, the police came far later to take care of it, creating concerns about its legitimacy. Besides this, a psychiatrist testified in court that the damage was caused by a blunt force, perhaps lathi blows. A train crash may not have caused any of the injuries found on his body. The court has made a distinction between the State's obligations under public law and those under private law.

A proceeding under Article 32 before the Supreme Court or another High Court is a recourse required under public law, and the concept of sovereign immunity does not apply in this situation. It is just a tort-based defense of private practice. It also claimed that expecting a person who is socio-economically deprived to seek ordinary civil litigation under private law would be deeply unfair.

It awarded the applicant Rs.1,50,000 in damages as well as a sum of Rs.10,000 to the Supreme Court Legal Aid Committee. The Supreme Court has directed the State of Orissa to file criminal charges against those responsible for Suman Behera's death.

7. COMMENTARY

It is worth noting that awarding compensation in a proceeding under Article 32 by the Supreme court or the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for violations of fundamental rights of which the principle of sovereign immunity does not apply, even if it may be available as a defense in private law in an action. This is an important distinction to acknowledge between the two remedies, as it also shows the grounds on which money is paid in such cases.

Aside from that, public law prosecutions have a distinct function from private law proceedings. The consolation of monetary compensation as exemplary damages in proceedings before the Supreme Court or the High Courts under Article 32 and Article 226 respectively of the Constitution for defined infringement of the inalienable right guaranteed under Article 21 of the Constitution is a recourse available in public law and is built on strict liability for violations of the citizens' guaranteed basic and inalienable rights. The aim of

public law is not only to civilize public power, but also to ensure citizens that they reside in a legal system that seeks to protect their interests and rights.

The followed policy is in order to compensate for violation of fundamental rights and liberty which have been guaranteed under Part III of the Constitution, “a claim in public law for compensation”, has been a recognized recourse for safeguarding and implementation of the said rights. This claim which is built upon the principle of strict liability established for the recourse for implementation of the guaranteed rights is altogether different the redress available under private law for damages.

There was no established formula for awarding liability in the case of custodial deaths prior to the verdict. In a number of cases, no or just a limited sum of compensation was awarded.

- In *Bhim Singh v. State of Jammu and Kashmir*, a member of the legislative assembly was taken into custody to prevent him from attending an assembly session, the court awarded a fee of 50,000 rupees but did not clarify how the number was measured.
- In *Saheli v. Commissioner of Police,* the Delhi Police worked with the landlord to evict two female tenants. They were beaten up, and one of the two females' nine-year-old son died as a result. A fee of just 10,000 rupees was awarded by the Supreme Court.
- The ruling in *Nilabati Behara v. State of Orissa* ensured that the state could no longer evade responsibility in public law and had to pay penalties when it violated one's civil rights and basic human rights.

8. IMPORTANT CASES REFERRED

- *Bhim Singh v. State of Jammu and Kashmir (AIR 1986 SC 494)*
- *Saheli v. Commissioner of Police (1990 AIR 513)*
- *Malkiat Singh v. State of U.P.(AIR 1999 SC 1522)*

CASE NO. 5

THE CHAIRMAN, RAILWAY BOARD & ORS.
V.
MRS. CHANDRIMA DAS & ORS.

(AIR 2000 SC 98)

GANG RAPE OF A BANGLADESHI NATIONAL IN INDIA.

ABSTRACT

The present case of *Chairman, Railway Board v. Chandrima Das*, is crucial when discussing Article 226 and Article 21 of the Indian Constitution. This case analysis briefly discusses the vital nuances of this case, highlighting the factual and legal matrix. The instant case clarifies the difference between Public and Private Law, the High Court's jurisdiction, the fundamental rights available to citizens and non-citizens, and the Universal Declaration of Human Rights. Further, an attempt has been made to delve into either sides' arguments and the supporting precedents used by the court in this case.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	(Arising out of SLP(C) No. 16439 of 1998)
Jurisdiction	:	Supreme Court of India
Case Filed On	:	February 27, 1998
Case Decided On	:	January 28, 2000
Judges	:	Justice R.P. Sethi, Justice S. Saghir Ahmad
Legal Provisions Involved	:	Constitution of India, Article 21, 32, 226
Case Summary Prepared By	:	Chetna Panwar Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

This case is an instance of assault under the law because the blamed were workers for the public rail route. The case incorporates a conversation of the apparatus of UN goals locally,

remembering the Affirmation for the End of Brutality Against Ladies and the All-inclusive Announcement of Common liberties. The Court infers that the casualty can recuperate under the law because of the infringement of her crucial rights, cherished inside the declarations and the Indian Constitution.[11]

Preceding this case, there was a condition of vulnerability about the ward of Article 226 and consequently the degree of principal privileges of non-residents in India. Before engaging inside the High Court, the matter was first managed inside the judicature of Calcutta, where Mrs. Chandrima Das guaranteed to pay for the casualty who was a Bangladeshi public. She additionally guaranteed a few different reliefs, including a heading to the respondents to destroy against social and hostile to crimes at Howrah end. At that point, the State High Court granted a compensation of Rs. 10 lakhs to the casualty since it was of the assessment that the assault was submitted at the structure having a place with Rail routes and was executed by the rail route representatives. The respondents at that point spoke to the High Court against the decision of judicature. Finally, the High Court maintained the counsel's perspective and said that Privilege to Live was likewise stretched out to the individuals who are not residents of India. The court additionally found the govt. to be vicariously chargeable for the offense.[12]

The present case is a petition under Article 226 of the Indian Constitution by Mrs. Chandrima Das who is an Advocate in Calcutta High Court. The petition is against the many executives of Railways and State of West Bengal for the victim Smt Hanuffa Khatoon, a Bangladeshi national who was gang raped by many employees of the Railways in Howrah Station.

Hanuffa Khatoon got wind of Calcutta and was said to go to women relax by a ticket inspector to affirm her billet ticket. Two men went to her, professing to be persuasive people of the rail line, and affirmed her ticket. From that point forward, one among those men came back again and advised her to go with a kid to a café for food. She went for supper and returned to the women's room once more. When two another male went to her and requested that she follow her to Yatri Niwas for resting there, she questioned before about them, yet she went with them in the wake of getting affirmation by woman orderlies. They took her to the room, which was reserved by Ashoke Singh's name, where effectively three male specialists were available. Hanuffa Khatoon speculated something wrong when Ashoke Singh

[11] Legal Information Institute, The Chairman, Railway Board & ORS v. Mrs. Chandrima Das & ORS, Cornell Law School, https://www.law.cornell.edu/women-and-justice/resource/the_chairman_railway_board_ors_v_mrs_chandrima_das_ors#
[12] Manupatra & JUSTICE Adda, Chairman, Railway Board v. Chandrima Das, Law Skills, https://www.lawskills.in/FreeRes/Cases/chairman-railway-board.pdf

constrained her into space. All the four men who were available inside the region fiercely assaulted Hanuffa Khatoon. When she could recuperate, she figured out how to escape from the space of Yatri Niwas and returned to the stage where again she met Siya Smash Singh and found him discourse Ashoke Singh.

Seeing her condition, he professed to help her and mentioned getting back to his home to rest for the night alongside his better half and kids and justified her to help to get the resulting train as she missed her train while safeguarding herself. He took Hanuffa Khatoon to a leased level of his Ashok Singh and assaulted her from that point. Hearing the voices from the level landowner of the structure protected her by calling Jorabagan Police.[13]

3. ISSUES INVOLVED IN THE CASE

I. Whether the Railways would be liable to pay compensation to Smt Hanuffa Khatoon who was a foreigner and not an Indian National?
II. Whether the Railways or the Union of India would be liable for the offence committed by individuals?
III. Whether the offence involved in the case holds any remedy in Public Law and does the petitioner has any locus standi in the case?

4. LEGAL ASPECTS INVOLVED IN THE CASE

The case mainly oversees Article 226 which gives the court controls, all through the spaces as to which it practices district, to issue to an individual or authority, recalling for appropriate cases, any Administration, inside those areas' headings, orders or writs, including writs inside the possibility of habeas corpus, mandamus, preclusions, hearing and certiorari, or any of them, for the usage of any of the rights gave by Part III and for the other explanation. Another game plan that has acknowledged a basic occupation inside the case is Article 21, which guarantees confirmation of life and private opportunity. It arranges that few out of every odd individual will be confiscated of his life or individual opportunity other than with respect to the procedure set up by law. The second could be an achievement case in loosening up this fundamental choice to all or any people in India and not simply the occupants.

[13] Aishwarya Lakhe, The Chairman, Railway Board & Others vs Mrs. Chandrima Das & Others, Lawlex. Org, https://lawlex.org/case-summary/the-chairman-railway-board-others-vs-mrs-chandrima-das-others/20378

Appellants

The first question is that the offense put together by someone concerned would not make the Rail course/the Association of India exposed against pay compensation to the setback of the offense. It is combat that since it ultimately was the individual exhibit of these individuals, potentially they would be summoned. In the occasion that they're viewed as obligated, they would be rebuked and should attempt to be slanted to pay fine or pay for current natural factors of this case, the Rail lines, or, furthermore, the Association of India would not be vicariously in danger.

It was in like manner tried by the learned bearing that Smt. Hanuffa Khatoon was an inaccessible public and, appropriately, no easing under the law may be surrendered to her as there was no encroachment of the principal rights available under the Constitution. It entirely was fought that the essential Rights, mostly Part III of the Constitution, are available just to inhabitants of this country and since Smt. Hanuffa Khatoon was a Bangladeshi public; she can't utter a word contrary to the encroachment of Basic Rights. The individual being referred to can't be permitted any assistance, therefore premise. Smt. Hanuffa Khatoon, who was not the inhabitant of this country yet came here as an occupant of Bangladesh, was, regardless, qualified for any or all the setup rights available to an inhabitant to this point as "Right to Life" was concerned.

Respondent

The struggle that Smt. Hanuffa Khatoon should have pushed toward ordinary court for hurts. Besides, the matter must not be considered in a very solicitation recorded under Article 226 of the Constitution, which cannot be seen where public functionaries are incorporated. Besides the matter relates to the encroachment of Crucial Rights or the necessity of public commitments, the fix would be available under the general populace Law, notwithstanding that a suit can be appealed to for hurts under Private Law. Inside the second case, it is not simply an issue of encroachment of a legal right of someone yet the encroachment of Basic Rights. Smt. Hanuffa Khatoon was a setback of attack.

She was equipped with balance and was in like manner to be treated and be qualified for the protection of her person as guaranteed under Article 21 of the Constitution. As a citizen of another country, she could not be presented to a treatment which was underneath balance, nor could she be presented to genuine mercilessness because of Govt. labourers who outraged her

unpretentiousness. The genuine available to her under Article 21 was consequently dismissed.

5. JUDGEMENT IN BRIEF

Hearing all the contentions from both sides, the Hon'ble Court said that running of railways could be an enterprise. Establishing Yatri Niwas at various Railway Stations to supply lodging and boarding facilities to passengers on payment of charges could be a part of the Union of India's endeavor, and this activity cannot be equated with the exercise of Sovereign power. The staffs of the Union of India, who are deputed to run the Railways and manage the establishment, including the Railway Stations and Yatri Niwas, are essential components of the government machinery that carries on the business activity. If any of such employees commit an act of tort, the appropriate authority which is the government who employed them can subject to other legal requirements be held vicariously liable in damages to the person wronged by those employees. Moreover, this case is addressed under law domain and not in an exceedingly suit instituted under Private Law domain against persons who, utilizing their official position, got an area within the Yatri Niwas booked in their name where the act complained of was committed.

Hence, the court dismissed the appeal, where it observed that the quantity of compensation should be revamped to the diplomatist for Bangladesh in India for payment to the victim, which shall be made within three months.

6. COMMENTARY

The learned counsel for the appellants believed that Ms. Hanuffa Khatoon was a remote national. So no relief may be granted to her under law as there was no violation of Fundamental Rights mentioned in Part III of the Indian Constitution. However, this argument was flawed on two grounds:

1. On the bottom of domestic jurisprudence supported Constitutional Provisions.
2. On the bottom of Human Rights Jurisprudence supported the Universal Declaration of Human Rights, 1948, which has the international recognition because the "Moral Code of Conduct" has been adopted by the final Assembly of the international organisation.

Article 2 read with Article 3 of the Charter, lays down that everybody has the proper to life, liberty, and security of person which it shouldn't entertain distinction of any kind, like race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the idea of the country's political, jurisdictional, or international status or territory to which someone belongs, whether it is independent, trust, non-self-governing, or under the other limitation of sovereignty. Moreover, Article 1 of the Declaration on the Elimination of Violence against Women notes violence against women. It describes it as an act of gender-based violence that leads to, or is probably going to end in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring publicly or in-camera life.

The International Covenants and Declarations as adopted by the international organization should be respected by all signatory States. Therefore, the meaning given to the above words in those Declarations and Covenants should help implement these rights. Our Constitution guarantees all the fundamental human rights that come into being within the Universal Declaration of Human Rights, 1948, to its citizens and other persons. The aim of Part III of the Indian Constitution containing the fundamental rights is to safeguard the fundamental human rights from the vicissitudes of political controversy and to put them beyond the reach of the political parties who, by their majority, may come to make the government at the Centre or within the State. The Fundamental Rights are available to any or all the "citizens" of the country but some of them are available to "persons"." The case also discusses the fundamental rights available to citizens further as non-citizens under Articles 14, 20, 21, 22, which align with Articles 3, 7, and 9 of the Universal Declaration of Human Rights, 1948. Various interpretations of "life" have been discussed during this case. The Court examined its purview by considering the meaning of the word interpreted by the Hon'ble Court from time to time.

In *Kharak Singh v. State of U.P.*[14] it was held that the term "life" indicates something more than mere animal existence. The inhibitions in Article 21 against its deprivation extend even to those faculties by which life is enjoyed. In *Bandhua Mukti Morcha v. UOI*[15] it was held that the correct to life under Article 21 means the correct to measure with dignity, free from

[14]Kharak Singh v. State of U.P. AIR 1963 SC 1295; State of Maharashtra v. Chandrabhan Tale, AIR 1983 SC 803

[15] Bandhua Mukti Morcha v. U.O.I., AIR 1984 SC 802; Maneka Gandhi v. U.O.I., AIR 1978 SC 597; Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni, AIR 1983 SC 109

exploitation. On this principle, even people who don't seem to be citizens of this country and are available here merely as tourists or in the other capacity are entitled to the protection of their lives in accordance with the Constitutional provisions. They even have a right to "Life" during this country. It has already been observed that in Bodhisatwa's case[16] it has been held that "rape" amounts to a violation of the elemental Right certain to a girl under Article 21 of the Constitution.

Thus, they even have the proper to measure goodbye as they are here, with human dignity. Even as the State is under an obligation to shield every citizen's lifetime during this country, the State is also under an obligation to shield the lifetime of the persons who do not seem to be citizens.

This case laid down that when public functionaries are involved and matter relates to the violation of fundamental rights or enforcement of Public duties, the matter would still comprise the ambit of law and not necessarily Private Law. It also clarified the extent of application of fundamental rights to non-citizens and how human rights are incorporated into the constitution. The case also discussed the term 'life' through various interpretations of the Apex Court and how 'rape' stands as a violation of Article 21.

7. IMPORTANT CASES REFERRED

- *Md. Soleman v. State of West Bengal and Another, AIR 1965 Cal 312*
- *Hans Muller of Nurenburg v. Superintendent Presidency Jail Calcutta, AIR 1955 SC 367*
- *Bodhisatwa v. Ms. Subdhra Chakroborty (1996) 1 SCC 490*
- *Anwar v. The State of J & K, AIR 1971 SC 337*
- *Nilabati Behera v. State of Orissa MANU/SC/0307/1993*
- *State of M.P. v. Shyam Sunder Trivedi MANU/SC/0722/1995*
- *People's Union for Civil Liberties v. Union of India AIR 1997 SC 1203*
- *Supreme Court Legal Aid Committee v. State of Bihar MANU/SC/0604/1991*
- *Jacob George v. State of Kerala MANU/SC/0684/1994*
- *PaschimBanga Khet Mazdoor Samity v. State of West Bengal AIR 1996 SC 2426*
- *Manju Bhatia v. N.D.M.C. MANU/SC/1235/1997*
- *The State of Rajasthan v. Mst. Vidhyawati & Anr. AIR 1962 SC 993*

[16] Bodhisatwa v. Ms. Subdhra Chakroborty (1996) 1 SCC 490

- *Kharak Singh v. State of U.P. AIR 1963 SC 1295*
- *State of Maharashtra v. Chandrabhan Tale, AIR 1983 SC 803*
- *Bandhua Mukti Morcha v. U.O.I., AIR 1984 SC 802*
- *Maneka Gandhi v. U.O.I., AIR 1978 SC 597*
- *Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni, AIR 1983 SC 109*

CASE NO. 6

ARUNA RAMCHANDRA SHANBAUG

V.

UNION OF INDIA AND ORS.

(2011 4 SCC 454)

LEGALITY OF EUTHANASIA.

ABSTRACT

Right to Life is a fundamental right provided by Article 21 of the Indian Constitution. However, a pertinent issue is whether the "Right to Die with Dignity" is also a Fundamental Right under the ambit of Article 21 of the Indian Constitution. Euthanasia has been one issue in this regard which has perplexed the courts not only in India but all over the world for a very long period of time. The given case is a writ petition filed in the Supreme Court under Article 32 of the Indian Constitution seeking permission to withdraw life support system of Aruna Ramchandra Shanbaug, who was in a permanent vegetative state. It was filed by Ms. Pinki Virani, in the capacity of the next friend of the petitioner. The Supreme Court could have rejected the petition on the grounds that since Right to Die does not fall under the ambit of Article 21, no fundamental right of the petitioner can be said to be violated however the Hon'ble Court took cognizance of the seriousness of the matter and its subsequent effect of deciding about the legality of euthanasia in public interest and accepted the petition. In the given case, the Supreme Court gave a detailed differentiation between brain dead, coma and permanently vegetative state and laid down the procedure to be followed for passive euthanasia while reiterating that active euthanasia is not permissible. The court also made a recommendation to repeal Section 309 of the Indian Penal Code.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Criminal) No. 115 of 2009
Jurisdiction	:	Supreme Court
Case Filed On	:	December 16, 2009
Case Decided On	:	March 7, 2011

Judges	:	Justice Markandey Katju, Justice Gyan Sudha Misra
Legal Provisions Involved	:	Constitution of India, Article 21, 32
Case Summary Prepared By	:	Deeksha Dhingra Symbiosis Law School, Pune

2. BRIEF FACTS OF THE CASE

Aruna Ramachandra Shanbaug was a Nurse by profession and worked in the King Edward Memorial (KEM) Hospital, Parel, Mumbai. On November 29, 1973, a sweeper who also worked in the hospital attacked Aruna by wrapping a dog chain around her neck and pulling her back with it with the intention of raping her but on finding that she was menstruating, he sodomized her. He twisted the chain around her neck in order to immobilize her during the act. Early morning, the next day, a cleaner found her on the floor of the hospital ward in an unconscious condition with blood all over. As a result of being strangled by the dog chain the supply of oxygen to the brain stopped and the brain got damaged. The hospital's neurologist diagnosed plantars' extensor, which means that the cortex or some other part of the brain had been damaged. She also had brain stem contusion injury with associated cervical cord injury. It is because of this incident that Aruna had been hospitalized in the KEM Hospital for her treatment.

Pinki Virani filed a petition in the Supreme Court under Article 32 of the constitution claiming that there is no possibility for her to revive again and get better as 36 years had passed since the incident and Aruna Ramachandra Shanbaug had approximately reached 60 years of age but there had been no improvement in her condition rather she had become as light as a feather, and her bones were so brittle that they could break even if her hand or leg were accidentally caught awkwardly under her own body. Her wrists are twisted in words Her teeth had decayed causing her immense pain. Therefore, Miss Pinki prayed that she should be allowed passive euthanasia.

To this petition the respondents, KEM Hospital and Bombay Municipal Corporation filed a counter petition leading to the current matter being heard in court.

3. ISSUES INVOLVED IN THE CASE

I. Whether withholding or withdrawal of life sustaining treatment be permissible or 'not unlawful' in case of a person in a permanently vegetative state?

II. Whether the wishes of a patient who had previously expressed a wish to not receive life sustaining treatments in case of futile care or a PVS be respected when the situation arises?

III. Whether the request of withdrawal of futile life sustaining treatment made by the family or next of kin of a patient who had previously not expressed a wish to discontinue life sustaining treatments in case of futile care or a PVS, be respected when the situation arises?

IV. Whether Miss Pinki Virani or the KEM Hospital staff should take decisions on her behalf?

4. ARGUMENTS OF THE PARTIES

Petitioner

Miss Pinki Virani, who had written a book about Aruna, filed this petition as the next friend of the petitioner claimed that Aruna Shanbaug was living in sub human conditions devoid of any human element and that she was a virtually dead person as she had no sense of awareness. Aruna could not see, hear, communicate or express herself in any way. She further stated that she couldn't even chew and there is no effort on her part as she was being administered mashed food. She pleaded that the Court directed the KEM Hospital staff to stop feeding Aruna and let her die peacefully as her condition has not improved in the last 36 years and there was not the slightest possibility of any improvement in her condition. She had approached the court to seek permission for passive Euthanasia.

Respondent

Dr. Amar Ramaji, Dean of KEM Hospital stated that Aruna normally accepted the food and responded by facial expressions. He further stated that she responded to commands intermittently by way of making sounds. He claimed that she made sounds when she had to excrete following which the nursing staff attended to her by leading her to the toilet. He further pointed that it was a landmark in medical history that Aruna had not developed any bedsore in the 36 years she had been admitted in the hospital.

He further argued that the KEM Hospital staff had a closer emotional bond with Aruna as they had been taking care of her for 36 years, he also stated that the Doctors, Nurses and staff of KEM, are determined to take care of her till her last breath and want her to see her natural death.

5. LEGAL ASPECTS INVOLVED IN THE CASE

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.

This case deals with whether Right to life includes Right to die

Section 306 of the Indian Penal Code

Abetment of suicide. —If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 309 of the Indian Penal Code

Attempt to commit suicide. —Whoever attempts to commit suicide and does any act towards the commission of such offence, shall he punished with simple imprisonment for a term which may extend to one year.

6. JUDGEMENT IN BRIEF

To resolve the disparities between the statements of the parties, the Supreme Court appointed a panel of three distinguished doctors to examine the mental and physical condition of Aruna and submit their findings to the court because the judgement needed to be based on medical facts and principles. The report concluded that Aruna Shanbaug was not brain dead but she was in a permanently vegetative state.

The Court relied on the following fundamental principles of medical ethics:

1. Patient Autonomy

Patient Autonomy refers to the right of the patient to self-determination, where the patient who is fully aware of his situation has a right to choose his treatment. To exercise this

autonomy, it is essential that the patient is competent to make decisions and choices after understanding the consequences.

In such a situation, where the patient does not consent to the treatment which would artificially prolong his life, he is exercising his right as in India, it is not a crime to voluntarily refuse lifesaving medical treatment and thus there is no question of him committing suicide and thus section 309 of IPC is not applicable. Further, when the doctor acts according to the wishes of his patient, there is no question of abetment of suicide as it is his professional duty to comply with the patient's wishes thus ruling out the possibility of the application of section 306 of the IPC.

2. Beneficence

If the patient is incompetent to make choices, then his wishes expressed in the form of a Living Will, or the wishes of the surrogates acting on his behalf are to be respected. The surrogate is expected to act in furtherance of the patient's best interest. It is expected that a surrogate acting in the patient's best interest takes a decision because it is best for the patient, and not under the influence of personal convictions, motives or other considerations. The question which needs to be answered by the surrogate is whether it is in the best interests of the patient that his life should be artificially prolonged by continuing the medical treatment or care.

Even if the surrogate feels that it is in the best interest of the patient to withdraw the futile life prolonging treatment, they should be allowed to withdraw it, and their actions should not be considered unlawful.

The given case deals with beneficence and the decision needs to be taken by Aruna's surrogate. The court recognized the Dean of the KEM Hospital on behalf of the staff of the hospital, as her surrogate because the hospital has been looking after her and have developed a family like relationship with her. The court held that the emotional bond that the hospital staff shares with Aruna is much closer than that shared by Miss Pinki Virani.

Therefore, the decision taken by KEM Hospital on behalf of Aruna in her best interest then that decision should be respected.

In the given case, Aruna Shanbaug was not given the permission for Passive Euthanasia. Further, the Court suggested that the parliament should consider the validity of section 309 of the IPC.

However, the court held that passive euthanasia should be permitted in certain situations. It further laid down a procedure to be followed for withdrawing the life support of the patient in a permanently vegetative state, till the time there is no statutory provision which lays down the procedure regarding the same.

It laid down that the decision of withdrawal of life support should be taken by the family/spouse or other close relatives and in the absence of them, like in the given case, it can also be taken by a person acting as a next friend or by the doctors who attend to the patient.

However, since the decision should be taken in the patient's best interest, the decision so taken needs to be approved by Court, because as Parens Patriae it will adopt the same standard which a reasonable and responsible parent would do because we cannot rule out the possibility of mischief being done by relatives or others for inheriting the property of the patient.

On the filing of such application, the Chief Justice of the High Court should straightaway constitute a two Judge Bench(minimum) to decide on the application. Before pronouncing the judgement, the Bench should seek the opinion of a committee of three reputed doctors preferably consisting of a neurologist, a psychiatrist, and a physician. The court should pass the judgement in the best interest of the patient keeping in mind the wish of the family and the report of the committee.

7. COMMENTARY

Active Euthanasia

It can be defined as a deliberate and direct overt act which leads to the death of a person, for e.g.: administering a lethal drug. Active Euthanasia is a crime as per Section 302 of the IPC(Murder) and Section 309 of the IPC which deals with abetment to suicide

Passive Euthanasia

It refers to the withdrawal of life support system essential for continuance of life of the patient. This judgement was a landmark judgement in this regard as it made passive euthanasia legal if it fulfilled certain conditions.

A doctor who gives a lethal injection to his patient which subsequently kills him commits an unlawful act and is guilty of murder, but a doctor who discontinues the life support which

also leads to the death of the patient, may not act unlawfully because when he switches off a life support machine, he does not commit an act but an omission, and that 'omission' is not a breach of duty by the doctor.

Euthanasia can either be 'voluntary' where it is carried out on the patient's request or 'non-voluntary' where a surrogate person takes the decision on his behalf because the person is not in a condition to make a meaningful choice for himself.

Further, coma, brain death and vegetative state are often confused to mean the same in lay man language. However, in medical terminology, these terms have specific meaning and significance.

Brain death

It refers to the most severe form of brain damage as the patient is completely unresponsive, has no reflex activity and cannot breathe on his own but the heart is still beating. This patient is alive only because of advanced life support. A person who is brain dead can be legally declared dead

Coma

These patients are unconscious and cannot be brought to consciousness even by application of a painful stimulus. They do not require any advanced life support to preserve life.

Vegetative State (VS)

Patients appear awake but are unaware of self and environment and have no interaction with others Their heart beat and breathing are normal, and do not require advanced life support to preserve life. They do not have a purposeful, voluntary response although they may have primitive reflexive responses to light, sound, touch or pain. They cannot communicate or understand. They are unaware of passing of urine or stools. They have sleep wake cycles. As the parts of the brain controlling the heart and breathing are intact, there is no threat to life.

Right to Die

Airedale NHS Trust v. Bland was the first time that the right to die was allowed through the withdrawal of life support systems including food and water in English history. This case is the landmark authority for the courts to decide whether a case is fit for euthanasia.

The Supreme Court in *Gian Kaur v. State of Punjab* held that both active euthanasia and assisted suicide are not lawful in India. It overruled the earlier decision given in *P. Rathinam*

v. Union of India. The Court held that the right to life under Article 21 of the Constitution does not include the right to die.

In the Aruna Shanbaug case, it was held that right to die is not provided under Article 21 of the Constitution and Section 309 states that attempt to commit suicide is a crime. However, the Court held that the right to life includes the right to live with human dignity, and in the case of a terminally ill person who is dying or incase a patient is in a permanent vegetative state he may be permitted to terminate it in certain circumstances and it is not a crime.

In 2018, In *Common Cause v. Union of India*, the Supreme Court recognized the right to die with dignity and legalized passive euthanasia and permit was given to withdraw the life support system of those who are terminally ill and are in life long coma. Along with this the Court also provided with the concept of "living will" which is a document that allows a person to make decisions in advance with regard to what course of treatment he wants in case he gets seriously ill in the future and becomes unable to take decisions.

8. IMPORTANT CASES REFERRED

- *Airedale N.H.S Trust v. Bland 1993 A.C. 789*
- *Cruzan v. Director, MDH 497 U.S. 261 (1990)*
- *P. Rathinam v. Union of India, 1994 3 SCC 394*
- *Smt. Gian Kaur v. State of Punjab 1996 AIR 946*
- *Charan Lal Sahu v. Union of India (1990) 1 SCC 613*

CASE NO. 7

INDIAN YOUNG LAWYERS ASSOCIATION & ORS.
V.
STATE OF KERALA & ORS.

(2019 11 SCC 1)

RESTRICTION OF WOMEN IN SABRIMALA TEMPLE IS UNCONSTITUTIONAL

ABSTRACT

This case relates to women's struggle for getting the entry in Sabarimala Shrine Temple located in the State of Kerala. Women have experienced a lot of struggle for the protection of their rights and freedom. The Ayyappa temple in Sabarimala region in Kerala has been controversial for provision of restricting women of menstruating age (10-15 years of age) to enter into Sabarimala Temple, Kerala. In the following case, there are many issues being raised for which it was argued by petitioners that the provisions related to the restriction of women entry in Temple are against the values of the Constitution of India, because it violates Article 14, 15, 17, 25, 26 of the Indian Constitution.

Later after the procedure of the case, the Supreme Court held that women of all age groups shall enter the Sabarimala Shrine Temple situated in Kerala. As everyone has a right to worship and it is the constitutional and fundamental right of every citizen of India, provided under Article 25 and 26 of the Indian Constitution.

There are various differences in Constitutional ideals and social reality in the society. There is a wide gap between provisions given in the Indian Constitution and the on-ground reality of society and individuals. In the following case, the Supreme Court has bridged the gap between both.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Writ Petition (Civil) No. 373 OF 2006
Jurisdiction	:	Supreme Court of India
Case Filed On	:	October 2006

Case Decided On	:	September 28, 2018
Judges	:	Justice Dipak Misra, Justice R.F. Nariman, Justice D. Y. Chandrachud , Justice A M Khanwilkar, Justice Indu Malhotra
Legal Provisions Involved	:	Constitution of India, Article 15, 25 and 26
Case Summary Prepared By	:	Kumar Yuvraj, Symbiosis Law School, Nagpur

2. BRIEF FACTS OF THE CASE

Sabrimala Temple, devoted to Lord Ayyappa, is a temple of great value and importance. The temple is situated over one of the eighteen mountains stood over the Western Ghats known as Sannidhanam. situated in the district of Pathanamthitta in Kerala.

The faithful believe that Lord Ayyappa's powers derive from his asceticism, in particular from his being celibate. Women have not been allowed to be a part of this pilgrimage due to their physiological features, considering them weak and unfit for the arduous journey.

Women are also considered to be impure while menstruating according to Hindu traditions and therefore the temple authorities have placed is a temple located at Sabarimala inside the Periyar Tiger Reserve in ‘Pathanamthitta’ district of Kerala putting restrictions on the entry of women between the ages 10 and 50 to preserve the temple's sanctity

Several women tried to enter the Temple but could not because of threats of physical assault against them.

A group of five women lawyers had moved the Apex Court challenging the decision of the Kerala High Court which upheld the centuries-old restriction.

3. ISSUES INVOLVED IN THE CASE

I. Whether the practice based on biological factors is exclusive only for the female gender amounts to discrimination'? Does this practice violate the core of Articles14, 15, and 17?
II. Whether the Sabrimala Temple has a denominational character?

III. Whether Rule 3 of Kerala Hindu Place of Public Worship rules allows a 'religious denomination' to ban the entry of women. Does these differences violate Article 14 and 15(3) of the Constitution of India by restricting entry on grounds of sex?

IV. Whether the practice constitutes an 'essential religious practice' under Article 25? Whether a religious institution can assert its claim to do so under the right to manage its own affairs in the matter of religion?

4. LEGAL ASPECTS INVOLVED IN THE CASE

The legal aspects involved in the case are as follows-

Article 15- It deals with rules for "prohibition on the ground of religion, race, caste, sex or even place of birth". This practice does involve violation of Article 15 as discrimination to enter the temple based on the grounds of one's 'sex'.

Article 25- It deals with the "freedom of conscience and free profession, propagation and practices of religion".

Article 26- It deals with "freedom to manage religious affairs".

The provisions under Kerala Hindu Place of Public Worship Act, 1965 which supports restriction to women's entry in the temple is illegal, as it violates Article 14, 15, 25 and 26 of Indian Constitution.

But the Respondent argued and stated that :

1. There is no violation of Article 15, 25 and 26 of the Indian Constitution as the restriction is only in respect of women of a particular age group and not women as a class. On the basis of the fact that this practice, of restriction to the entry of women is made for women as a class, then only it will violate the above-mentioned Articles of the Indian Constitution.
2. The provisions in Kerala Hindu Place of Public Worship Act, 1965 also support this restriction.

5. JUDGEMENT IN BRIEF

September 28, 2018 was the day when the Court delivered its verdict on the case by 4:1 division, which proved that the restriction of women in Sabarimala Temple is unconstitutional. It said that this restriction violated the fundamental rights of the women on equality, liberty and freedom of religion, Articles 14, 15, 19(1), 21 and 25(1) of the Indian

Constitution. It struck down clause 3(b) of the Kerala State Hindu Places of Public Worship Act as unconstitutional. Clause 3(b) allowed Hindu denominations to exclude women in various public places of worship, if this exclusion is based on the 'custom'.

The Court stated, "We are sure in saying that such practices is a threat for the rights of women to enter a temple and freely practice a religion".

"Devotion cannot be subjected to Gender Discrimination".

Hon'ble Chief Justice of India held in his Judgement that religion is a way of life, which is further linked, to the dignity of a person and patriarchal practices based on the exclusion of one's gender in favour of another should not be allowed to infringe upon the free fundamental freedom to practice and profess one's religion and faith.

6. COMMENTARY

The five-judge bench of the Supreme Court who decided upon the matter and gave the verdict reasoned varied things and had various opinions for the issue. Hon'ble Justice Indu Malhotra had an opposite opinion regarding the matter. Various arguments were brought before the Supreme Court from the petitioners as well the respondents. The petitioners contended that this restrictive practice by the temple authorities of not allowing women to enter the temple is clearly violate of their fundamental rights given by the Constitution of India as well discriminatory to the concerned.

The Constitution of India claims to right to freedom of religion for every individual and groups under Article 25 and Article 26 where every person is free to practice propagate and profess any religion of his/her choice. Moreover, Article 15 of the Constitution prohibits the state from discrimination against any citizen on the grounds of religion, race, caste or sex.

The five-judge bench of the Supreme Court gave their verdict on the majority of 4:1.

Chief Justice Dipak Mishra and Justice Khanwilkar held that one's devotion shall not be held on the basis of one's gender and exclusion on the grounds of biological, physiological ailments like menstruation, is unconstitutional and discriminatory. Both men and woman have the right to worship bestowed on them and the practice by the temple authorities was discriminatory and violate of the Indian Constitution.

Justice Chandrachud had views that any religious practice or custom that violated the dignity of women by denying her the entry just because she menstruates was completely unconstitutional. The judgment contained lines as “The stigma around menstruation has been built up around traditional beliefs in the impurity of menstruating women.

Hon’ble Justice Indu Malhotra, in her alone dissent, said that issues of deep religious sentiments should not be ordinarily be entertained by the Court. The Court shall not interrupt in this matter unless there is any resentful person from that section or even religion. The notion of rationality should not be seen in religious matters. She also held that shrine and the deity are protected by Article 25 of the Indian Constitution.

7. IMPORTANT CASES REFERRED

- *Deepak Sibal v. Punjab University (1989 AIR 903)*
- *Shayra Bano v. Union of India (2017) 9 SCC 1*
- *Anuj Garg v. Hotel Association (1989 2 SCC 145)*

CASE NO. 8

VISHAKHA & OTHERS

V.

STATE OF RAJASTHAN & OTHERS

((1997) 6 SCC 241)

ENFORCEMENT OF FUNDAMENTAL RIGHTS FOR WORKING WOMEN AT WORKPLACE.

ABSTRACT

It is a case dealing with the evil of a woman's sexual assault at workplace. In the history of sexual assault, it is a landmark judgment case that will determined by the Supreme Court. Sexual harassment means sexual favour or sexual movements from one individual to another that are primarily uninvited or unwelcomed. It makes the person who has done it feel embarrassed, offended and insulted. In several of the instances, it has been found that managerial superiors often sexually harass their subordinates in workplace. Sexual Harassment is often referred to as 'Eve-teasing' and can be defined by the following actions, such as passing indicative or usual remarks or jokes, uninvited touching, making sex appeals, sexually blunt pictures or text messages or emails, discrediting people because of sex. Sexual abuse, therefore, violates the fundamental right of women to gender equality, which is codified under Article 14 of the Indian Constitution, and under Article 21 of the Constitution of India, the fundamental right to life and to live a dignified life is also violated/infringed.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Crl) No. 666-70 of 1992
Jurisdiction	:	Supreme Court of India
Case Decided On	:	August 13,1997
Judges	:	Justice J.S. Verma, Justice Sujata V. Manohar, Justice B. N. Kirpal
Legal provisions Involved	:	Constitution of India, Article 14, 19 and 21
Case Summary Prepared By	:	Jahanvi Tuli, Kirit P. Mehta School of Law, NMIMS University, Mumbai

2. BRIEF FACTS OF THE CASE

In a programme launched by the State Government of Rajasthan seeking to curb the evil of child marriage, Bhanwari Devi was a social worker. In the midst of the protest to stop child marriage, Bhanwari Devi, one of the Ramakant Gujjar family, tried her best to stop the marriage.

The marriage, however, was fruitful in its completion, amid widespread opposition. Ramakant Gujjar and his five-man gang raped her in front of her husband in 1992 to take revenge on her. At first, the police department attempted to dissuade them from filing the case on one pretext or another, except for her determination; she filed a lawsuit against the accused.

However, they were subjected to extreme brutality by the female police attendants, even to the point that her lehenga was requested from her for proof and she was left with nothing but the blood of her husband-stained dhoti. In addition to their suffering, they were also denied their offer to spend the night at the police station. The trial court acquitted the accused, but she did not lose hope and all female social workers gave their support to see her resolve. All of them filed a written petition under the name 'Vishakha' before the Supreme Court of India. The apex court was invited to devise guidelines for combating workplace sexual abuse.

The Hon’ble Court did come up with such guidelines as Vishakha Guidelines which formed the basis of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

3. ISSUES INVOLVED IN THE CASE

I. Whether Sexual Harassment of woman at the workplace amounts to violation of Article 14, 19 & 21 of the Constitution of India?

4. ARGUMENTS INVOLVED IN THE CASE

Appellant

The 'Vishaka' party, comprising of various women's rights activists, NGOs, and other social activists, filed a written petition seeking the writ of mandamus. They claim that indecent acts of sexual abuse of women at work violate the fundamental rights enshrined in Articles 14, 15, 19(1)(g) and 21 of the Indian Constitution. The petitioners brought the Hon'ble Court's attention to the loophole that the law has with respect to providing women with a healthy working atmosphere.

They asked the Hon'ble Court to devise recommendations for the prevention of workplace sexual abuse.

Respondent

In this case, the learned Solicitor General, appearing on behalf of the respondents (with their consent), did something odd, i.e., assisted the petitioners. The respondent supported the Hon'ble Court in defining an appropriate strategy for curbing sexual abuse and in structuring the prevention guidelines. Fali S. Nariman, along with Ms. Naina Kapur and Ms. Meenakshi, the *amicus curiae* of the Hon'ble Court, provided the Hon'ble Court with assistance in dealing with the case.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Constitution of India

• Article 14 (the right to equality)
• Article 15 (the right to non-discrimination)
• Article 19(1)(g) (the right to practice one's profession)
• Article 21 (the right to life)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

In particular, the Court referred to India's ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which prohibits discrimination in the workplace and outlines specific state obligations to end it:

- Article 11(1)(a, f): The right to work and the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction
- Article 24: States parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention
- General Recommendation No. 19: On the elimination of violence against women.

Without domestic legislation to adequately address sexual harassment in the workplace, the Court undertook measures to enforce gender equality and non-discrimination in accordance with universal human rights norms and standards.

6. JUDGEMENT IN BRIEF

In Fundamental Rights enshrined in Article 14, 19 & 21, gender equality finds its place. Workplace sexual harassment is a blatant violation of gender equality, which in turn violates the female class's

constitutional rights. Such abuse also results in the liberty given pursuant to Article 19(1)(g). In nations across the globe, the security of women has become a basic minimum. In the absence of domestic legislation to curb bad, to the degree that it does not contravene any domestic law or does not breach the spirit of the Constitution, assistance may be given by International Conventions and Statues.

From Article 51(c) and 253 r/w of Entry 14 of the Union List of the Seventh Schedule of the Constitution, the Judiciary derived its authority. The court held that the remedy u/a 32 therefore attracts such infringement. Over and over again, the Indian Judiciary has reiterated that the Right to Life under Article 21 also requires the right to live with dignity. This aforementioned integrity might and should be safeguarded by sufficient guidelines. Framing some guidelines to fill the legislative void and curb the evil is of utmost importance.

The Apex Court found authority in filling the legislative gap by making law so as to maintain the Independence of Judiciary and its role envisaged under Beijing Statement of Principles and Independence of Judiciary in LAWASIA region which was signed by the Chief Justice of the Asia Pacific in 1995 as those representing the minimum standards necessary to be observed in maintain an independent and effective Judiciary.

7. COMMENTARY

For the protection of the constitutional rights referred to in Article 14, 19 & 21, the court in Vishakha was called upon. The nation has seen an improvement in gender equality in terms of jobs since 1991. Since 1991, more women have been working in institutions than in the period prior to 1991. This trend has also been a contributing factor in the increase in sexual assault cases and related offences. There was no legislation at the time to prohibit and prosecute the commission of such crimes, so most of the cases went unreported and thus unpunished.

This has become a black blot on the institution of Indian criminal justice. There were many serious violations of rights due to this lack of law & there was no redress for the victims. Even after several cases of a similar nature where there was sexual assault, the legislature was still silent on making any legislation in this regard. India succeeded in providing women with jobs in comparison with the liberal world in order to achieve gender equality, but it failed miserably to provide a safe atmosphere for such employment.

Therefore, in a class action brought by various NGOs and social activists, the apex court ultimately put an end to this silence. The court developed guidelines for the avoidance of such accidents without hesitation in violating its constitutional limits (only to read law). These guidelines are

known as guidelines for Vishakha. This was a welcome move by the SC in which the victims of such accidents were eventually granted a statute by which they could obtain redress.

This incident exposed the repercussions faced by a working woman and the immediate need for safety in the absence of statute by some other means. In order to deal with such events, the court therefore felt the need to find an alternative mechanism. In order to feel an environment of equality, these guidelines had the effect of protecting female rights in the job establishment. The court ruled that the denial of the right to life and liberty referred to in Article 21 is a violation of gender equality. In addition to the breach of Article 21, the court also found a gross violation of the terms of Article 14 & 15.

CASE NO. 9

MADHUMITA DAS

V.

UNIVERSITY OF CALCUTTA & ORS.

(2005 (1) CHN 313)

RIGHT TO EQUALITY IS A FUNDAMENTAL RIGHT.

ABSTRACT

This case mainly questions equality in terms of education, the petitioner is a student who passed the Senior School Certificate Examination from the Central Board of Secondary Education (CBSE) through Patrachar (correspondence) Vidyalaya and enrolled in LL.B course in a college recognized by the University of Calcutta without any conflict in her admission process. When the petitioner appeared for her Part I examination her admit card was not issued to her as her registration number was pending but she was allowed to write the exam. The petitioner's result was withheld by the university, when she appeared for her Part II examination admit card was issued and she also passed the examination, when she appeared for her Part III examination it still showed that her registration number was pending and her marksheet was not issued. The university assured her that the marksheet will be issued with Part IV examination but she did not receive her marksheet even after her Part IV examination. The petitioner filed a writ petition by praying direction upon the university to issue her registration number and marksheets of her examinations. The university claimed that her admission was illegal as the category of "Patrachar Vidyalaya" was not recognized by the university. This case revolves around the violation of Article 14 and Article 16 of the Indian Constitution.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition 18448 of 2003
Jurisdiction	:	Calcutta High Court
Case Filed On	:	September 26, 2003
Case Decided On	:	March 1, 2004

Judges	:	Justice Bhaskar Bhattacharya
Legal Provisions Involved	:	Constitution of India, Article 14, 16, 226
Case Summary Prepared By	:	Jothi Poorna S Bharath Institute of Law, Chennai

2. BRIEF FACTS OF THE CASE

- The petitioner passed Senior Secondary Examination from CBSE in the year 1992 as a student in "Patrachar Vidyalaya" category and 'no objection' migration certificate was provided by the CBSE in her joining any recognized college or institution or taking examination of any University or Board established by the law. In 1997, the petition joined Jogesh Chowdhury Law College recognized by the University of Calcutta and enrolled in five-year LLB course.
- The petitioner submitted all required documents to the college including her migration certificate for the purpose of registering her name in the University of Calcutta and the college authority sent all those documents to the University.
- When the petitioner appeared for Part I examination her admit card was not issued and her registration number was mentioned as 'Pending'. The college authority informed the petitioner that her marksheet was withheld as her registration was pending. The college authority allowed the petitioner to appear in the part II examination and issued admit card. The petitioner passed the examination as it can appear from the marksheet issued by the University. Thereafter the petitioner appeared for her Part III examination but still her registration number was pending, the petitioner asserts that even though she passed the previous examination marksheets was not issued by the University. The University assured her that the marksheets will be provided with the marksheet of Part IV examination but ultimately no such marksheet has been provided.
- The petitioner filed a writ petition prayed direction upon the University to issue marksheets of Part I, Part III and Part IV examination and the registration number.
- The University contended that before the admission of the petitioner in the year 1997, the college had published circulars in all leading newspapers debarring student of Patrachar category from taking admission in any course recognized by the University and so the petitioner admission was illegal as a result her register was not granted.

- The respondent further stated that the admit cards for Part III and Part IV were issued without their knowledge which gave a wrong impression that the petitioner had passed Part III examination though the result was withheld. The University stated that they were deceived by the wrong statements of the petitioner and allowed her to appear at the Part II, Part III and Part IV examination and by mistake released the marksheet of Part II examination.

3. ISSUES INVOLVED IN THE CASE

I. Whether the denial of admission to the students who passed Senior Secondary School from CBSE through Patrachar Vidyalaya is violative of Article 14 and 16 of the Constitution of India?

II. Whether the objection raised by the respondent on the grounds of fraud, delay and acquiescence is valid?

4. ARGUMENTS OF THE PARTIES

Petitioner

- The petitioner at the outset attacked the decision of the university to not recognize a student passed in the Patrachar category is a violation of Article 14 of the Indian Constitution. Patrachar category students also attend the same examination held for the other category students and the criteria passing such examination is same. Therefore, the petitioner contends that there is no such difference between the "Patrachar student" and the student from other categories.
- The petitioner claimed that they had enclosed all materials including her migration certificate at the time of admission and the college authority admitted the petitioner only after the consideration of all materials in conclusion the college cannot disqualify the petitioner on the grounds of lack of educational qualification.

Respondents

- The respondent contends that the petitioner application must be dismissed on the grounds of deliberate false statements made by the petitioner in her application. The respondent states that the petitioner falsely claimed that she passed her Part I and Part III examination when her result was not published. The respondent further contends

that by making such false statements the petitioner obtained her admit cards of Part II and Part IV examination.

- The respondent draws attention of the court to the rules of Bar Council of India which prescribes the qualification of a lawyer at the time of joining a law degree, the concerned person must pass the examination in 10+2 or 11+1 course of schooling recognized by the educational authority of Central or State Government or other equivalent qualification to 10+2 or 11+1 recognized by the Bar Council.
- In conclusion the respondent's states that the petitioner intentionally gained admission without requisite qualification by suppression of fact, so the petitioner is no entitled to the benefit of her own wrong.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Main legal aspects:

I. **Article 14** is a fundamental right guaranteed by the Indian Constitution. "Article 14 states that the State shall not deny equality before the law or the equal protection of the laws within the territory of India".

II. **Article 16** states that there shall be equal opportunity in matters relating to public employment that is "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state" and also " No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or any employment or office under the state".

Other legal aspect:

I. **Article 226** – remedy under this Article is given if a fundamental right under the Constitution of Indian is infringed but in some cases these remedies can be refused with certain conditions. However, if there is infraction of fundamental rights violation it is the duty of the High Court to enforce the fundamental right and in such situation remedies under Article 226 of the Constitution of India must be provided.

6. JUDGEMENT IN BRIEF

- The Court states that the petitioner in this case alleged violation of Article 14 and 16 of the Constitution of India. If the petitioner establishes such allegation the relief prayed for the allegation is obligatory upon the court to enforce the fundamental right, in case of delay no parallel right has accrued in favour of either party. As regards in the allegation of fraud the court states that mere wrong statement in the application cannot disentitle the petitioner form getting proper relief. The court overruled respondent allegation to enter into the main allegation.

- The Court held that there is no difference between the students of 'Patrachar Student' from the students of 'Private category' or the students of adult schools who are similarly placed with Patrachar students. The Court states that rules framed by Bar Council of India merely indicate that at the time of joining the course the concerned person should pass an examination in 10+2 or 11+1 course of schooling recognized by Central or State Government. The 'schooling' mentioned in this context does not mean the actual school but the course of education for 10+2 or 11+1 years.

- Thus, the Court held debarring students who passed in '**Patrachar Vidyalaya**' is violation of Article 14 and 16 of the Constitution of India. The Court further states that the petitioner is qualified to obtain admission in the law college and also qualified to appear in the examination. The Court directed the University to register the petitioner's name and to publish the results of the Part I, Part III and Part IV of the LLB examination within fortnight from the date of the Judgment.

7. COMMENTARY

This case sheds light on equality in terms of education and highlights how Patrachar Vidyalaya students are treated differently when compared to the students of other categories even though both have same curriculum and both appear for the same examination. The only difference between the students of Patrachar category is that they do not attend regular schooling as Ordinary students. That does not mean they are not qualified for higher education; equal opportunities should be provided to students of all categories. Patrachar students may have their own difficulties such as financial and travelling distance for not able to attend regular schooling but this should not be a reason to obstruct them from joining the

university they desire. In this case the university only debarred Patrachar Vidyalaya students from taking admission whereas the authority allowed other students to take admission who passed the selfsame examination of the Board. In my opinion, I support the Judgment of the Court for striking the decision which debars Partrachar student as it is a violation of basic fundamental rights.

"*It is necessary for the government to ensure that every category of students get equal opportunities and recognition in terms of education".*

CASE NO. 10

LAXMI

V.

UNION OF INDIA

(2014 4 SCC 427)

RELIEF FOR ACID ATTACK VICTIMS AND PROTECTION OF WOMEN FROM ACID ATTACKS.

ABSTRACT

The case is a landmark judgement of the Supreme Court and highlights gender justice. In a country like India, where crimes against women abound and widespread the actions of the Supreme Court. An acid attack involves the premeditated throwing of acid on a victim usually on her face. It can cause permanent damage, severe pain often accompanied by blindness in one or both eyes.

The petitioner, Laxmi brought a PIL against the Union of India in the matter of effective guidelines for compensation of acid attack victims and sale of acid throughout India even after the Criminal Amendment Act of 2013. It was only this SC judgement that led to the effective banning of the sale of acids throughout the country. It also led to the betterment in terms of compensation and care provided by the government. It worked on Model rules to regulate the sale of acid under the Poisons Act, 1919. The Supreme Court sent notices to all states to confirm which states have rules and regulations banning the sale of acids.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (C) No. 129 of 2006
Jurisdiction	:	Supreme Court of India
Case Decided On	:	April 10, 2015.
Legal Provisions Involved	:	Cr.PC 1973, Section 357 A Indian Penal Code 1860, 326-A, 326-B
Judges	:	Justice Madan B Lokur, Justice Uday Umesh Lalit

Case Summary Prepared By	:	Namah Bose Rajiv Gandhi National University of Law, Punjab

2. BRIEF FACTS OF CASE

Laxmi filed a writ petition in the Supreme Court, A PIL for the betterment of acid attack survivors. Laxmi herself a victim of a brutal acid attack when she was aged 15 years, showed courage and decided to take matters to the court to get the appropriate relief. Laxmi faces severe complications, emotional pain and damages which lasted all her life from 15 years of age. Union of India, the National Commission for Women and the Law Commission of India where the three respondents of the case.

1. Acid attacks were earlier considered as offences under 'grievous hurt'. It was the Criminal Amendment Act of 2013 that changed acid attacks to a separate offence. The most important fact that this verdict did was that the Supreme Court.
2. The need was noticed for an appropriate amendment in the Indian Penal Code, 1860 and Criminal Procedure Code for dealing with acid attacks.
3. The counsel for the petitioner represented that most states had no regulations and a ban on the sale of acid and acid was being sold freely.
4. The division bench of the Supreme Court comprising of Justice Madan B Lokur and Justice Uday Umesh Lalit. There were three judgements in this case.
5. In *Laxmi v Union of India* the minimum compensation of 3 Lakh rupees was to be provided to victims of acid attacks.
6. The petition also worked the rehabilitation of acid attack victims within its ambit.
7. It factored into it that the surgeries and treatment of acid attack are extremely expensive and needs to be taken care of.

3. ISSUES INVOLVED IN THE CASE

I. Whether there should be complete ban should be there on sale of acid and acid should be notified as a scheduled banned chemical and should not be available across the counter?

II. What the working of the criminal injustice board should look like?

III. What should be the method for Prosecution of acid throwers as well as the rehabilitation of acid attack victim which included treatment as well as compensation?

IV. Whether or not states have followed the procedure and given due compensation to victims?

4. LEGAL ASPECTS INVOLVED IN THE CASE

The landmark judgement involves several aspects of the Indian penal code and criminal procedure code. It's was a landmark decision on gender justice which involved article 14, 14, 21 and 32. The right to life of acid attack victims is comprised severely and, in such instances, it's the responsibility of the State to ensure there's no kind of lack in helping out victims. It was acknowledged in the narrow construction under the word life in Article 21, which also includes the right to bodily integrity.

It involved Section 357A under the Criminal Procedure Code, 1973 which included compensation to victims. In *Laxmi v. Union f India*, the court while dealing with section 357A of Cr. P.C discussed the quantum and manner of disbursal. Three lakh rupees is to be given as compensation to the victims of acid attacks. The first 1 lakh rupees within the first 15 days and then the next two law rupees as expeditiously as possible wishing the next two months.

It even made and notified the changes in IPC under 326 A and 326 B by which acid attacks constitute a separate offence. A legal issue before 2013 was that there was no specific

To regulate the sale of acids the supreme court made the necessary amendments. All the states characterized 'Acid' as a poison under the Poisons Act, 1919. A set of guidelines where issues by which ordinary people couldn't procure acid without following various guidelines. A photo identity along with specifying the reason and purpose of why the acid is being procured.

5. JUDGEMENT IN BRIEF

Supreme Court issued guidelines requesting that proper treatment and rehabilitation of victims of acid attack be taken care of. The meeting between the secretary of the Ministry of Home Affairs and the Secretary in the Ministry of Health and Family Welfare noted.

SC also directed the Member Secretary of State Legal Services Authorities to give adequate publicity to victim compensation scheme in states and union territories. Due to this guideline, several meetings took place in the presence of various secretaries and chief secretaries of states and states were asked to complete data.

After the data, it was seen that Delhi is the only Union Territory of India which had cases of acid attacks. In states, Uttar Pradesh, Madhya Pradesh and Gujarat led in terms of cases

Section 357A of the Criminal Procedure Code deals with compensation for victims of acid attack. It had been a while since this amendment had come about in 2009 but most states had not complied with the orders of the state. The supreme court issued directions to 2 Union Territories and 9 States. It also states that the states of Tripura, West Bengal, Odisha and Sikkim have fully complied with the guidelines.

It was even pointed out in this case that while many states worked out plans for compensation and the compensations in many states weren't notified. 326 A and 326 B were added to the Indian Penal Code to penalize and make acid attacks punishable and an individual offence. Acid was declared a 'poison' so that it's not easily available.

6. COMMENTARY

The case was filed by Laxmi an acid attack victim, who showed that none of the states is doing enough for the protection of acid attack victims. Acid attacks are used as weapons to commit violence against women. This acid is used as a tool to curb women's empowerment and to stop the growth and liberation of women. Acid attacks not just cause physical damages but they cause emotional issues for life for the victim. Laxmi was only 15 years old when a 32-years old man threw acid on her face because she rejected his marriage proposal. She filed a PIL for regulating and controlling the sale of acid. Acid was quite freely available over the counter until the Supreme Court curbed acid sales. It took Laxmi a lot of time to personally recover physically and mentally and on seeing the need to curb this disastrous menace she bought a PIL in the Supreme Court. The Supreme Court noticed the urgency and importance and understood the clarity in the three pleadings.

SC understood the need to make acid attacks a separate offence. It asked to amend the laws or make new laws to appropriately punish the wrongdoers of such a heinous crime. It wanted an acid attack as a specific offence. Before 2013 there was no particular provision that exclusively dealt with acid attacks. Now section 326 A and 326 B were inserted which deals

with acid attacks and imposed punishment for 10 years and may extend for life. Even Section 326 B of IPC also inserted to deal with an attempt to throw the acid and punishes the convict with imprisonment up to 5yeras which may extend up to 7 years.

SC also understood the need for rehabilitation and compensation for the victims of acid attacks which the government wasn't providing. The SC directed all States and UTs to have legislation's under section 357 A. But the problem that was noticed is that the schemes are not uniform. SC also asked all the hospitals to provide a certificate to victims of acid attacks.

This judgement was extremely needed because the suffering of acid attack victims needed to be ameliorated. The surgeries are extremely expensive and they needed compensations equivalent to the amount they need. The judgement was highly required and is a landmark judgement in terms of gender justice.

The availability of acid attacks and the low cost of acid had turned this into a menace. While acid attacks are not gender-specific and can happen against both man and woman but in India, it's gender-specific. Today because of the SC, acid can only be bought by showing an identity card and stating the purpose of purchase which has to them be compulsorily stored by the shopkeeper. Not just that the seller has to compulsorily submit the information of the sale to a local police station.

Today many cases cite the terms and judgements of *Laxmi v Union of India*. Even in neighbouring countries like Bangladesh and Pakistan acid attacks are used against women by spurned lovers. Acid attacks came down significantly in Bangladesh after the ban on the sale of acid.

7. IMPORTANT CASE REFERRED

- *Charan Lal Sahu vs Union of India (1990 AIR 1480)*

CASE NO. 11

T. M. A. PAI FOUNDATION & ORS.

V.

STATE OF KARNATAKA & ORS.

(AIR 2003 SC 355)

RIGHT OF MINORITIES TO ESTABLISH EDUCATIONAL INSTITUTIONS.

ABSTRACT

The following case deals with the scope of the right of minorities to establish and monitor educational institutions of their choice under Article 30(1)[1] along with Article 29(2)[2] of the Constitution of India. Even on this day it is unfortunate to see that minority issues are still given a back seat and so this case holds a special relevance to the cause of minority rights as it deals with the right of minorities to establish educational institutions. Passed by a bench of 11 judges, this judgement was unanimous and discussed the issue, among other things the reservation policy in the unaided minority and non-minority institutions. This is one of the most important cases which have discussed at length the right to education, under Article 21. The judgment dealt with rights and permissible restrictions under minority (aided and unaided) institutions that resonates with minority educational institutions. Albeit the inquiry with regards to what are the critical highlights to decide a foundation as a minority organization, regardless of whether the way that it was set up by or is managed by people having a place with a religious minority in assurance of its character, was left unanswered, the court presumed that right to administer isn't outright and directing measures can be forced. It was likewise inferred that an aided minority foundation has a right over conceding its minority understudies on premise of legitimacy alongside the way that Right of minorities incorporate right to decide the technique and strategy for affirmation and choice of understudies. In the event of unaided minority institutions, administrative proportions of control by the State ought to be negligible. Both aided and unaided minority institutions, the executives should advance a reasoning method for choice of selection of staff and for taking any disciplinary move.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (C) 317 of 1993
Jurisdiction	:	Supreme Court of India
Case Filed On	:	April 5, 1994
Case Decided On	:	October 31, 2002
Judges	:	Justice B N Kirpal, Justice G B Pattnaik, Justice V N Khare, Justice S Rajendra Babu, Justice S S M Quadri, Justice Ruma Pal, Justice Balakrishnan K G, Justice Reddi P V, Justice Variava S N, Justice Arijit Pasayat, Justice Ashok Bhan
Legal Provisions Involved	:	Constitution of India, Article 30(1)[1] Article 29(2)[2]
Case Summary Prepared By	:	Nilabhra Bhattacharya, Rajiv Gandhi National University of Law, Punjab.

2. BRIEF FACTS OF THE CASE

This is a fundamental case which decided on the ambit of the right of minorities to establish and administer educational institutions of their choice based on Article 30(1) along with 29(2) of the Constitution. There were two petitioners, Dr T.M.A Pai Foundation a legitimate trust under Trusts Act, and the other was Manipal Institute of Technology, an educational institution that was owned and administered by the 1st petitioner. Later the Government of Karnataka promulgated an ordinance prohibiting the collection of capitation fee at very high rates for entry to educational institutions.

A Writ Petition was presented objecting to the constitutional validity of this said ordinance and during its pendency the Act comes into force.

The plea of the petitioners is that, this Act is violative of Article 30 of the Constitution which focuses on the linguistic and religious minorities to administer and establish educational institutions of their choice. Since Dr. T M Pai, a Konkani speaking native, who was the heart and soul of the academy, and it was his objective to uplift and promote Konkani speaking people and since Konkanis' are a linguistic minority, the petitioners are entitled to the protection of Article 30 of the Constitution.

As for the validity of the Act, the practice of collecting Capitation fees was destructive of higher values and amounted to commercialization of education but since the Act has been enacted, its provisions are not violative of Article 30,19 and 14 of the Constitution.

3. ISSUES INVOLVED IN THE CASE

I. Whether the Petitioners are liable to be protected under Article 30 of the Constitution?
II. Whether the provisions of the Act are inconsistent or violative of Article 30 of the Constitution?

4. ARGUMENTS OF THE PARTIES

Appellant

Their plea is that this Act is violative of Article 30 of the Constitution, (which confers fundamental rights on the linguistic and religious minorities to establish educational institutions and administer them of their choice) since Konkani speaking people form a linguistic minority. Although the representation made to the Government and the recommendation made by the Minority Commission) the Government still proceeded to enforce Section 42(a) of the Act against Petitioners which is not enforceable against any minority institution.

Respondent

The plea of the State is that the 2nd Petitioner was not at all established by a minority and neither for the benefit of Konkani speaking people. It was only a registered deed of declaration of Trust made by the Manipal Institute of Technology Trust, where the assets of the 2nd Petitioner and administration along with the other institutions are vested on the 1st Petitioner. From the given facts it is evident that the institution was not established by a linguistic minority community and thus are not entitled to be protected under Article 30 of the Constitution.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Article 30(1) of the Constitution guarantees the right to the minorities saying that all minorities, whether non-secular or linguistic shall have the right to set up and administer educational establishments of their own choice.

Along with this Article, the other Articles that are involved in this case are Article 14,15, Article 29(2) and Article 19 of the Constitution of India.

6. JUDGEMENT IN BRIEF

The Court then examined the nature and extent of regulations that can be framed by the State while they grant recognition to private educational institutions. They first dealt with private unaided institutions and private aided institutions that are not administered by linguistic or religious minorities by examining the merit of Article 30 of the Constitution. Firstly, they realized that private education is one of the most rapid growing post-secondary education of this present century. The majority of opinion conveyed by 6 out of 11 Judges held that solitarily the State can decide the status of a strict or etymological minority as well as phonetic minorities, who have been put on a standard in Article 30, must be viewed as State-wise. In any case, the right under Article 30(1) can't be, for example, to abrogate the public interest or to keep the Government from outlining regulations for that benefit and any guideline outlined in the public interest should essentially apply to every instructive establishment, regardless of whether run by the larger part or the minority. Such a limit should essentially add something extra to Article 30. Government regulations can't annihilate the minority character of the foundation or make the right to build up and oversee a simple deception. Nonetheless, right under Article 30(1) isn't supreme or above different arrangements of the law and administrative measures can be forced for guaranteeing instructive norms and keeping up greatness thereof particularly in expert establishments. Regulations or conditions concerning, by and large, the government assistance of understudies and educators might be made relevant to give a legitimate scholastic climate, as such arrangements don't in any capacity meddle with the right of organization or the executives under Article 30(1). The court believes that they must continue to resist for the sake of democracy to try to stop the governmental domination of educational process, however they also clarified that state aid ought not to be confused with State control of academics and administration. It must also be notified that state has the privilege to endorse capabilities vital for admission, private independent universities reserve their preferred option to concede understudies, subject to a level headed and judicious strategy of choice and the consistence of conditions, assuming any, requiring confirmation of a little level of understudies having a place with more fragile segments of the general public by allowing them grants, if not allowed by the Government. Moreover, in setting up a sensible fee

structure, the component of exploitative isn't at this point acknowledged in Indian conditions. The fee structure should think about the need to produce assets to be used for the improvement and development of the instructive organization, the advancement of schooling in that establishment and to give offices important to the advantage of the understudies. Regardless, a private foundation will reserve the privilege to comprise its own overseeing body, for which capabilities might be endorsed by the state or the concerned college. It will, nonetheless, be offensive if the state holds the ability to designate explicit people on administering bodies.[17]

To conclude, Articles 29(2), 15(4) and 28(3) express certain constraints on the right in Article 30(1). There are additionally other inferred impediments on this right. The right ought to be perused dependent upon those suggested restrictions. Along these lines even in this position the rule that Article 29(2) applies to Article 30(1) has been perceived and maintained. This case additionally holds that sensible limitations can be put on the rights under Article 30(1) subject to the test set out hereinabove.

7. COMMENTARY

Since independence, India has always tried to help the minorities by strengthening the rules and laws that are aimed to protect and support them.

We understand that this case dealt with the right of minorities whether linguistic or communal to establish and administer educational institutions of their choice. The bench comprising of 11 judges decided on this case but also covered various other issues. The unit to decide whether a religious or a linguistic minority can establish an educational institution of their choice will be State-wise, both for State law as well as Central law. However, any regulation framed in the national interest, apply to all educational establishments irrespective of the fact that whether they are a majority or a minority, that is Article 30(1) cannot override the Government from framing regulations for them. The right cannot be absolute for certain aspects like that of welfare of students and teachers to create a better educational environment are in no way interfering with the right of administration or autonomy under Article 30(1). Albeit the right to oversee incorporates inside it a right to concede admission to students of their decision under Article 30(1), when such a minority organization is allowed the office of

[17]T.M.A.Pai Foundation & Ors v. State of Karnataka & Ors on 31 October, 2002, SCC Online Web Edition, https://www.scconline.com/Members/SearchResult.aspx, last accessed 2021.

getting State aid, Article 29(2) would apply, and essentially, one of the rights of administering of the minorities would be dissolved somewhat. However, if the minority instructive organization grants affirmation to its people having a place with the non-minority class to a sensible degree dependent on legitimacy, it won't be an infraction of Article 29(2). Lastly the Court ruled that both aided and unaided minority institutions are ought to develop a rational procedure for selection of teaching staff as well as for undertaking disciplinary action, but the State can always prescribe a minimum qualification or different conditions based on the merit of the person for being designated as a teacher or head of any educational foundation.[18]

[18]By S Vaidhyasubramaniam, Supreme Court delivers judgment 4.0, https://www.newindianexpress.com/magazine/voices/2020/jan/12/supreme-court-delivers-judgment-40-2088167.html, last accessed 29th March 2021.

CASE NO. 12

CHHATTISGARH STATE ELECTRICITY BOARD

V.

CHHATTISGARH HUMAN RIGHTS COMMISSION AND ORS.

(AIR 2018 CHH 53)

COMPENSATION FOR FORCEFUL ILLEGAL ACTIVITY.

ABSTRACT

The case is related to Human Rights Commission directing the petitioner to pay the compensation to respondents. Due to illegal and forceful installation of six electric poles and electric lines the respondents seek compensation from the Chhattisgarh Electricity Board. The installation of the electric poles and lines were made in an agricultural filed. The issue of the petition was regarding the jurisdiction of the Human Rights Commission. The writ petition was allowed to as the Human Rights Commission can make recommendations for granting compensation or making payment. However, the commission does not have authority to make an order directing to payment of compensation.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil WPC No. 2585 of 2008
Jurisdiction	:	High Court of Chhattisgarh
Case Filed On	:	2017
Case Decided On	:	November 7, 2017
Judges	:	Justice Sanjay K. Agrawal
Legal Provisions Involved	:	Code of Criminal Procedure 1973 (Cr.PC) - Section 173 Constitution of India - Article 226 Indian Telegraph Act 1885 - Section 16(c) Protection of Human Rights Act 1993 - Section 18 , Section 19(a), Section 2(d) , Section 21 , Section 3

		Right to Information Act 2005 - Section 20(2)
Case Summary Prepared By	:	Pooja Lakshmi, Bennett University, Greater Noida

2. BRIEF FACTS OF THE CASE

Under article 226 of the Constitution of India, Chhattisgarh State Electricity Board (company) filed a writ petition questioning the legality, correctness and the validity of the order passed by Chhattisgarh Human Rights Commission. In the order, the Commission directed the petitioner to an amount of 6,22,000/- as compensation to the respondent as the company has installed six electricity polls and electricity lines in the agricultural field of the respondent illegally.

The respondent, Mr. Jai Shankar Verma made a complain to the Chhattisgarh Human Rights Commission regarding the same. Mr. Jai Shankar Verma has 2.5 acres of the land at village Amleshwar, Tahsil Patan, District Durg. He is willing to use this land for vermiculture cultivation. The Chhattisgarh Electricity Board installed six electricity polls along with electricity line without the consent of Mr. Jai Shankar Verma on his land. Due to the installation, Mr. Jai Shankar Verma was deprived to undergo vermiculture cultivation that led to suffering huge loss in the said work. As this is a human right violation, the company is entitled to pay compensation under the section 18 of the Protection of Human Rights Act, 1993.

The Commission noticed the petitioner, i.e., Chhattisgarh Electricity Board to which the company replied that the work has been carried out under the provisions of the Electricity Act, 2003. The company also mentioned that the work of vermiculture cultivation is not affected on account of erection of electricity polls. therefore, Mr. Jai Shankar is not entitled for compensation. The Chhattisgarh Human Rights Commission through impugned order held that the petitioner Company has erected six electricity polls and electricity line in the field owned by respondent without his prior consent. That is, Mr. Jai Shankar is entitled for compensation to be quantified by the Collector, Durg and consequently. The Collector quantified the compensation as ' 6,22,000/- and the Commission directed the petitioner to make payment of ' 6,22,000/- to respondent as compensation on June 20, 2007. Dissatisfied with the said order, the company filed writ petition stating inter-alia that the Commission has

no jurisdiction and authority to grant compensation as It is only a recommendatory body. With this they considered impugned order liable to be set aside.

Other Respondents filed their return stating inter-alia that order has been passed by the Commission in accordance with the record available and power vested under the Protection of Human Rights Act 1993

3. ISSUES INVOLVED IN THE CASE

I. Whether Human Rights Commission have jurisdiction to issue direction to pay for compensation?
II. Whether impugned order is liable to be set aside?

4. ARGUMENTS OF THE PARTIES

- **Plaintiff**

  Mr. Sunil Otwani, learned counsel for the petitioner submitted that the Commission has no jurisdiction and authority to grant compensation. It can only make a recommendation under Section 19(a) of the Protection of Human Rights Act 1993 to the concerned authority or Government to make payment of compensation and damages to the complainant or to the victim or the members of his family as the Commission finds requisite.

- **Defendant**

  Mr. Arun Sao, learned Deputy Advocate General appearing for respondent supported the impugned order. on behalf of respondents, reply has been filed as no one entered into appearance.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- Code of Criminal Procedure 1973 (Cr.PC) - Section 173

  On the recommendation of the Human Rights Commission, if the Government decides to launch prosecution, the Government have to order for investigation by police which will culminate in a final report
- Constitution of India - Article 226

empowers the high courts to issue directions, orders or writs, including writs in the nature of prohibition, quo warranto, habeas corpus, mandamus, certiorari or any of them to any person or authority, including the government (in appropriate cases).

- Indian Telegraph Act 1885 - Section 16(c)

  Authority vested with the District Judge in the matters which are extended to laying down of electricity lines.

- Protection of Human Rights Act 1993 - Section 18

  Steps during and after inquiry - The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely

  a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority—

     ❖ to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;

     ❖ to initiate proceedings for prosecution or such other suitable action as the Commission may deem it against the concerned person or persons;

     ❖ to take such further action as it may think ft.";

  b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

  c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

  d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

  e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission."

- Protection of Human Rights Act 1993 - Section 19(a)
  The Commission may, either on its own motion or on receipt of a petition, seek a report from the Central Government or make a recommendation.
- Protection of Human Rights Act 1993 - Section 2(d)
  "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India".
- Protection of Human Rights Act 1993 - Section 21
  The State Human Rights Commission, Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this Chapter
- Protection of Human Rights Act 1993 - Section 3
  The Central Government shall constitute a body to be known as the National Human Rights Commission. National Human Rights Commission exercises the powers conferred upon, and to perform the functions assigned to, it under this Act.
- Right to Information Act 2005 - Section 20(2)
  A monetary penalty is imposed, the Information Commission can also recommend disciplinary action against the PIO under the applicable service rules. Recommendation must be seen in contradistinction to direction or mandate

6. JUDGEMENT IN BRIEF

As per the definition of recommendation, that after completion of an inquiry if the Commission finds that inquiry discloses the commission of violation of human rights may recommend to the concerned Government or Authority to make payment of compensation or damages to the complainant, but the Commission has no authority and jurisdiction to pass an order directing payment of compensation.

Under Section 18 of the Protection of Human Rights Act by the State Human Rights Commission, only a recommendation can be made, i.e., it is neither an order nor an adjudication. Such a recommendation made by the State Human Rights Commission is not binding on the parties to the proceeding, including the Government. But the Government has an obligation to consider the recommendation of the Commission and to act upon the same to take forward the objectives of the Human Rights Act, the International Covenants and Conventions in the back drop of fundamental rights guaranteed under the Indian Constitution. In the event of the Government tentatively deciding to accept the recommendation of the State, Human Rights Commission holding any public servant guilty of human rights violation, the Government shall furnish a copy of the report of the Commission to the public servant concerned calling upon him to make his explanation, if any, and then pass an appropriate order either accepting or rejecting the recommendation of the Commission. Until the final order is passed by the Government on the recommendation of the Commission, neither the complainant nor the respondent in the human rights cases can challenge the recommendation of the commission as it would be premature except in exceptional circumstances. On the recommendation of the Human Rights Commission, if the Government decides to launch prosecution, the Government have to order for investigation by police which will culminate in a final report under Section 173 of the Code of Criminal Procedure. On the recommendation of the Human Rights Commission, if the Government decides to pay compensation to the victims of human rights violation, the Government may do so. But, if the Government proposes to recover the said amount from the public servant concerned, it can do so only by initiating appropriate disciplinary proceeding against him under the relevant service rules, if it empowers the Government.

In view of the aforesaid principle of law laid down by the Supreme Court in precedents, if the facts of the present are examined, it is quite vivid that the Human Rights Commission is a recommendatory body and it only makes a recommendation to the concerned authority or Government for enforcement of its recommendation. It has no jurisdiction to pass an order directing payment of compensation. Therefore, the impugned order is vulnerable to the extent of directing payment of compensation.

Laying of electrical transmission lines by licensee/deemed licensee under the Act of 2003 is not required power and jurisdiction to grant compensation which lies with the District Magistrate. High Court could not have given this task to the District Collector, which is

contrary to the provisions of Section 16(c) of the Telegraph Act, 1885 which are extended to laying down of electricity lines. As per this provision, such an authority vested with the District Judge.

Thus, on the basis of above-stated analysis under Section 18 of the Act of 1993 the Human Rights Commission is only empowered to make a recommendation. It has no adjudicatory jurisdiction and the Government or its authority has an obligation to consider the recommendation of the Commission in accordance with law.

As a fallout and consequence, the impugned order passed by the Chhattisgarh Human Rights Commission to the extent of directing payment of compensation to the tune of ' 6,22,000/- to respondent is set aside and said order will be treated only as a recommendation of the Chhattisgarh Human Rights Commission. However, it will open to the petitioner to consider the said recommendation in accordance with law. The writ petition is allowed with No cost(s).

7. COMMENTARY

Human Rights consist of rights of human relating to their life, liberty, equality and dignity as against the rights with regard to their properties. Human rights are the basic, inherent, immutable and inalienable rights to which a person is entitled simply by virtue of his being born a human. They are such rights which are to be made available as a matter of right. The Constitution and legislations of a civilized country recognize them since they are so quintessentially part of every human being. Every democratic country committed to the rule of law are put into force mechanisms for their enforcement and protection. Right to property is human right as well as Constitutional right. The Human Right Commission has the right and responsibility to make recommendation and as the recommendation made by the Commission is for the welfare of the country, it is to be given high importance. However, it cannot give orders like the court. As human, we should consider the recommendation and try to act accordingly as the recommendation is made for the betterment of the society.

8. IMPORTANT CASES REFERRED

- *Raj Nath Chauhan v. Bani Kanta Das and others, (2010) 14 SCC 209).*
- *Indian Handcrafts Emporium vs. Union of India, (2003) 7 SCC 589*

- *Chairman Indore Vikas Pradhikaran v. Pune Industrial Coke & Chemical Ltd., (2007) 8 SCC 705*
- *N.C. Dhoundial v. Union of India and others, (2004) 2 SCC 579*
- *Manohar s/o. Manikrao Anchule v. State of Maharashtra and others., (2012) 13 SCC 14*
- *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and others, 1958 SC 538*
- *Chennai v. Tamil Nadu State Human Rights Commission, 2010 (5) CTC 589*
- *Power Grid Corporation of India Limited v. Century Textiles and Industries Limited and others, (2017) 5 SCC 143*

CASE NO. 13

OLGA TELLIS

V.

BOMBAY MUNICIPAL CORPORATION & ORS.

(1986 AIR 180)

STAY ON PAVEMENTS BY SLUM DWELLERS IN BOMBAY AGAINST THEIR EVICTION BY BOMBAY MUNICIPAL CORPORATION.

ABSTRACT

India has seen a large number of verifiable decisions that have advanced and made our Constitution of India an epitome of equity, balance and great inner voice. One of those decisions that widened the skylines of the significance of Fundamental Rights was *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors*, which set out as a worldview of the vote-based administration of the country. It sets out a terrific example for the rights to be taken into question and be administered reasonably. In this case the Right to Life according to Article 21 is given utmost importance and the derogations to the statutory provisions are further challenged in this case for justice and liberty. The judgement will in general prepare to widen the extent of the privilege to life and surrender the infraction irrationally.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition No. 4610-4612 and 5068-5079 of 1981
Jurisdiction	:	Supreme Court of India
Case Decided On	:	July 10,1985
Judges	:	Justice Chandrachud, Y.V.(CJ), Justice Fazalali, Justice Syed Murtaza, Justice Tulzapurkar, Justice V.D. Reddy, Justice O. Chinnappa, Justice Varadarajan A,
Legal Provisions Involved	:	Constitution of India - Article 21, 19 (1)(c), 19(1)(g), Bombay Municipal Corporation Act,1888- Section -314
Case Summary Prepared By	:	Raisha Bansal Ajeenkya D.Y Patil University, Pune

2. BRIEF FACTS OF THE CASE

In this case *Olga Tellis v. Municipal Corporation*, the State of Maharashtra in 1981 had decided to evict the mendicants of the State who were abode on the streets and pavements as well as domiciled in the slums of Mumbai. The then Chief Minister Mr. A. R. Antulay had announced that all mendicants be dislodged of their rights of living in the slums and on the streets and if they do not find a better dwelling they should be sent to their hometown. The inhabitants guaranteed such activity would abuse the privilege to life, since a home in the city permitted them to achieve a work and requested that sufficient resettlement be given if the expulsions continued. The Court declined to give the cures mentioned by the petitioners however, found that the privilege to hearing had been abused at the hour of the arranged eviction. The eviction was to continue under Section 314 of the Bombay Municipal Corporation Act 1888.

On finding out about the Chief Minister's declaration they recorded a writ petition in the High Court of Bombay for a request for order limiting the officials of the State Government and the Bombay Municipal Corporations from executing the mandate of the Chief Minister. The High Court of Bombay conceded an ad interim injunction to be in power until July 21, 1981. Respondents concurred that the huts won't be obliterated until October 15, 1981. In spite of understanding, on July 23, 1981, petitioners were clustered into State Transport buses for being ousted out of Bombay. The respondent's activity was argued by the petitioner in light of the fact that it is violative of Article 19 and 21 of the Constitution. They likewise requested an affirmation that Section 312, 313 and 314 of the Bombay Municipal Corporation Act 1888 is violative of Articles 14, 19 and 21 of the Constitution.

3. ISSUES INVOLVED IN THE CASE

I. Whether ousting of slum inhabitants and encroachment of their entitlement to vocation can be viewed as infringement under Article 21 of the Constitution?
II. Whether activity taken by the State Government just as Bombay Municipal Corporation is discrediting with the arrangements contained in Article 19 and Article 21 of the Constitution of India?
III. Regardless of whether Section 314 of Bombay Municipal Corporation Act, 1888 which endorses the strategy for expulsion with no earlier notification, is preposterous and discretionary?
IV. Whether the mendicants are "trespassers" under the Indian Penal Code (IPC)?
V. Whether there is a valid estoppel for the right of the petitioners?

4. ARGUMENTS FROM THE PARTIES

- The petitioners contended that it is their right to life to and they cannot be evicted from the pavements or slums. They stay there because of the means of their livelihood without which they cannot survive hence, livelihood amounts to a life which according to Article 21 is deprived and unconstitutional. The petitioners further emulated that Article 19(1)(e) gives them the right to reside anywhere in the territory and 19(1)(g) which safeguards their interest of carrying forward any occupation as deemed fit by them. The petitioners demanded the scope of these articles be kept in check and reviewed as it is immoral to evict someone off their livelihood. The process of dislodging these inhabitants by the Bombay Municipal Corporation section 314 was said to be erstwhile and redundant not having the concept of slums during the making the of the act rendering it immoral and unreasonable for the present situation and also not pedantry as the provision requires no need of serving a 'notice' before the destruction. It was further asserted by the petitioners that it is unconstitutional to characterize the slum dwellers as 'trespassers' for them using the financial resources provided by the State for the paucity of financial resources cannot be blamed on these dwellers and their livelihood and lives run through the economic resources of the pavements and slums only.

- The defence counsel expressed that the pavement inhabitants had admitted to the High Court through an undertaking that they didn't guarantee any essential option to introduce lodges on walkways or public streets and they would not forestall their destruction after the original date of October, 15, 1981. They further contended whether through the principal of natural justice who should be given the right to be heard the intruders who encroach public property or are they people who commit crime. The respondents further emulated that Bombay Municipal Corporation is contrived with due care and it is not in transgression to the Indian Constitution. The respondents also held that the provisions 312, 313, and 314 of the Bombay Municipal Corporation Act, 1888 are very much applicable and enforceable. The defence counsel also went on to say that the right presented by Article 19(1)(e) of the Constitution to dwell and get comfortable in any part of India cannot be perused to give a permit to infringe and intrude upon public property alongside the commissioner was well acting within his powers bestowed to him by provision 289(1) of the Act. As far as Article 21 is concerned, no deprivation of life, either straightforwardly or in a roundabout way, is associated with the ousting of the slum occupants from public spots. The Municipal Corporation is under a commitment under section 314 of the B.M.C. Act to eliminate obstructions on, public roads

and other public spots. The Corporation doesn't have the ability to allow any individual to possess a pavement or a public block on a perpetual or semi lasting basis. The mendicants have not just abused the arrangements of the B.M.C. Act, yet they have repudiated sections 111 and 115 of the Bombay Police Act moreover. These sections keep an individual from blocking some other individual in the last's utilization of a road or public spot or from resorting to a nuisance. Proviso 117 of the Police Act recommends discipline for the infringement of these Sections.

5. LEGAL ASPECTS IN THE CASE

- **Article 14:** The Article 14 of the Constitution expresses that each individual ought to be given correspondence under the watchful eye of law and equivalent assurance of law with no separation on the ground of religion, sex, standing, race and spot of birth.
- **Article 19(1)(e) and 19(1)(g):** Article 19 gives insurance to specific privileges of the individuals. Article 19(1)(e) gives the option to live and get comfortable in any part of India and Article 19(1)(g) gives opportunity to rehearse any calling, occupation, exchange and business.
- **Article 21:** Article 21 accommodates the privilege to life and business, and it cannot be removed with any methodology set up by law.
- **Article 441 of IPC:** Whoever goes into or upon property in the ownership of another with goal to carry out an offense or to threaten, affront or disturb any individual possessing such property, or having legally gone into or upon such property, unlawfully stays there with plan in this manner to scare, affront or bother any such individual, or with purpose to perpetrate an offense, is said to perpetrate "criminal trespass".
- **Section 312, 313 and 314 of Bombay Municipal Corporation Act, 1888**
- **312 (a)** – Without the consent of the magistrate no individual ought to be permitted to raise or set up any divider, fence, rail, post, step, stall or other structure or installation in or upon any road or upon over any open channel, channel, well or tank in any road and structure a block, infringement and projection there.
- **313(1) -** this section discusses the restriction of introducing or keeping certain things on the road with no authorization.
- **313A-** discussions about the prerequisite of a permit available to be purchased in Public Places.

- **314-** It talks about the force given to the official to eliminate any anything which is raised, saved and sold in repudiation of section 312 or 313A with no earlier notification.

6. JUGDEMENT IN BRIEF

The court expounded that the petition is viable under Article 32 and The Supreme Court also said that on the grounds that the applicants surrendered in the High Court of Bombay that they didn't guarantee any key rights to set up the pavements on public streets, they are not halted from stating their grievance that the huts built by them on the pavements cannot be destroyed. The Court additionally said that it is unimaginable to expect to acknowledge this dispute. It said that the Constitution of India is the preeminent authority in the nation. There can be no estoppel against the Constitution. It is a vital rule that everyone must follow. Accordingly, the court concluded that regardless of whether the people said that they would not like to authorize their fundamental right to build hutments on pavements still they are qualified to state any such activity with respect to the public authority is infringing upon the fundamental rights. The Court said that the petitioner's case which said that privilege to livelihood ought to be included in the right to life since, in such a case that they are ousted from their slum dwellings and pavement abodes they will be denied of their methods for work which would commensurate to their hardship of the right to life and thus it would be unconstitutional and stands valid and Article 21 incorporates the privilege to livelihood.

The Court said with the instance of Olga Tellis they were of the opinion that the strategy recommended by the Section 314 of the Bombay Municipal Corporation Act, 1888 the eviction of hutments on the trails or pavements over which the general population has the option to entry or access cannot be viewed as absurd, unjustifiable, out of line. The Court additionally said that the pavements and footpaths are public properties which are expected to serve the accommodation of the overall population. Hence the court held that no individual has the right to encroach any spot saved or left for the public purpose and that the arrangement contained in Section 314 of the Bombay Municipal Corporation Act is not absurd and reasonable. The Court investigating these conditions requested that the tenants be dislodged for a time of one month. The state was likewise coordinated to give substitute accommodation to specific inhabitants to censored residents of 1976. 20 years old slums should not be perished unless required for a viable public purpose and adequate resettlement shall be offered. Resettlement shall be the crux of every endeavour. This was not a condition precedent for ousting and was only to offer impact to certain previous affirmations by the government.

Article 39 (a) of the Constitution, which is a core value of State policy, expresses that the State should give uncommon consideration to its arrangement to guarantee that residents, both male and female, have a similar right to a livelihood.

Article 41, which comprises another core value, specifies that the State must, inside the restrictions of its monetary limit and its development capacity, viably ensure the option to work in case of joblessness and inappropriate ambitions. Article 37 states that the standards of the Directive, in spite of the fact that they cannot be applied by any Court, are fundamental in the governance of company.

The standards set out in Articles 39 (a) and 41 should be considered as similarly crucial for comprehension and deciphering the importance and substance of principal rights. In the event that the State was obliged to furnish residents with satisfactory methods for means and the option to work, it would be very blameless to avoid the privilege to resource from the substance of the privilege to life.

The State cannot, by certain activity, be obliged to give sufficient methods for resource or work for residents. In any case, any individual denied of his entitlement to a method for resource, besides as per the reasonable and just system set up by law, may challenge deprivation as an infringement of the right to life conferred by Article 21.

In summing up the instance of the petitioners, the primary contention was that the privilege to life ensured by Article 21 incorporates the privilege to a livelihood and that they will be denied of their vocation on the off chance that they are ousted from their slums and their walkways its removal would add up to a hardship of life and, in this manner, is unlawful.

The Court accepted that the factual accuracy that if the applicants are ousted from their homes, they will be denied of their subsistence. For this situation, the inquiry the Court considered is whether the privilege to life incorporates the privilege to a method of livelihood. The Court has just one response to this inquiry specifically that this is the situation. The privilege of life presented by Article 21 is tremendous and sweeping.

This doesn't just imply that life cannot be smothered or disposed of, for instance, by forcing and executing capital punishment, besides as per the strategy set up by law. This is just a single part of the privilege to life. The privilege to subsistence is a similarly significant part of this right on the grounds that nobody can live without the means to live, that is, the methods for means. On the off chance that the privilege to resource is not treated as a feature of the constitutional right to life, the most effortless approach to deny an individual of their entitlement to life is to deny them of their methods for means to the point of repealing it. Such hardship would not just strip life of its effective

substance and significance, however it would make life difficult to experience. But then, such hardship ought not to be as per the methodology set up by law, if the privilege to resource is not viewed as a feature of the privilege to life. That, which just makes it conceivable to live, leaving aside what makes life tenable, ought to be considered as a basic part of the privilege to life.

Deny an individual of his entitlement to make money and have denied him of his life. That clarifies the monstrous relocation of the provincial populace to the enormous urban areas. They emigrate in light of the fact that they have no methods for resource in the towns. The main thrust that made individuals pull out from their homes in towns battling for endurance that is the battle forever.

So faultless is the proof of the connection among life and livelihood. They need to eat to live: just a small bunch can stand to live to eat. How would they be able to respond, in particular eat, just on the off chance that they have the methods for means? That is the case where Douglas J. said in Baksey that the option to work is the most valuable freedom since it maintains and permits a man to live and the right to life is a valuable freedom.

"Life," as Field, J. seen in *Munn v. Illinois*, implies more than mere animal existence and restraint against the hardship of life that reaches out to every one of those boundaries and resources by which life is enjoyed.

7. COMMENTARY

Article 21 is supposed to be the core of the Constitution, the most natural and reformist arrangement in our living constitution and furthermore the establishment of our laws. Article 21, gives an individual an option to live and individual freedom. Thus, the ambit of this article is extremely wide and far reaching. The Supreme Court in other milestone decisions has attempted to characterize the ambits of this article. In *Kharak Singh v. Province of Uttar Pradesh*, the apex court set out that the term 'life' alludes to more than mere animal existence. In *Sunil Batra v. Delhi Administration*, it was repeated by the Supreme Court that the option to live incorporates the option to carry on with a solid life alongside getting a charge out of the multitude of offices of a human body. In the renowned identification case, *Maneka Gandhi v. Association of India*, the Supreme Court gave another dimension to this article saying that right to life additionally incorporates an option to experience with gravitas.

For this case, too the Supreme Court broadened its understanding of Article 21 and said that the privilege to livelihood is likewise a part of the privilege to life Justice Chandrachud in his judgment expressed that a similarly significant feature of right to life is the privilege to vocation on the grounds

that no individual can live without the means for living, that is, the means of livelihood. On the off chance that the privilege to livelihood is not treated as a part of the established right to life, the simplest method of denying an individual of his entitlement to life is to deny him of his methods for work to the point of revocation. The court gave its avocation to this assertion by breaking down the experimental information which indicated that a large portion of the tenants picked a street or slum in the region of their work environment and for them to lose these dwellings was to lose their employment. The choice of the court additionally centered around the idea of the welfare state and dependence however, not explicitly yet impliedly was put on the Directive Principles of the State Policies under the constitution.

Olga Tellis brought the idea of Benthamite reasoning of Hedonist Utilitarianism. The rule of utility by Bentham expressed that, out of different prospects in a given case, one should pick that alternative that gives the best satisfaction to the best number of individuals. The Bombay Municipal Corporation Act, 1888 set some hard boundaries identifying with the slum dwellers under section 312-314. It expressed numerous restrictions on the lodging and deposition of different things on the pavements by the inhabitants. Justice Chandrachud while deciphering this case altogether followed the Principle of Utility and held that the end point of the legislator ought to be fruitful to the majority and the overall utility should be the guiding law. An endeavour was made by the Apex Court of the nation to change the defective parts of significant laws. The Supreme Court attempted to adjust between the bliss and the utility of the pavement occupants with the point and object of the specific enactment that reached the resolution that justice should be done simply by giving the redressal to poor people and penniless pavement dwellers.

8. IMPORTANT CASES REFERRED

- *Kharak Singh v. The State of U.P. [1964] 1 S.C.R. 332*
- *Sunil Batra, II v. Delhi Administration, [1980] 2 S.C.R. 557*
- *Maneka Gandhi v. Union of India, [1978] 2 S.C.R. 621*
- *Douglas J in Baksey v. Board of Regents, 347 M.D. 442 (1954)*
- *Munn v. Illinois, (1877) 94 U.S. 113*

CASE NO. 14

D. K. BASU

V.

STATE OF WEST BENGAL

(AIR 1997 SC 610)

THE RIGHT TO LIFE OF A CITIZEN CANNOT BE PUT IN ABEYANCE ON HIS ARREST.

ABSTRACT

The present case arises out of the Criminal Writ Petition Number 539 of 1986. A letter was addressed by D. K. Basu, who is the Executive Chairman, Legal Aid Services, West Bengal to the Chief Justice of India. The letter was related to the violence in the police custody and the crime was against the basic human rights and hence, it was requested to treat the letter under the Public Interest Litigation. The Hon'ble court looked into the matter and treated the letter under the Public Interest Litigation category. The Hon'ble Court issued a number of guidelines in the interest of natural justice. This judgment is a classic example of judicial activism. Through this judgment the Hon'ble court has served the justice in the interest of Society.

1. PRIMARY DETAILS OF THE CASE

Case No	:	W. P. (C) 539 of 1986
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1986
Case Decided On	:	December 18, 1996
Judges	:	Justice Kuldip Singh, Justice A S Anand
Legal Provisions Involved	:	Constitution of India (Article 20 (3), 21, 22 (1)) , Indian Evidence Act (Section 114- B) Code of Criminal Procedure (Section 41, 46, 49, 50, 56, 53, 54, 167, 176) Indian Penal Code (Section 220, 330, 331)

Case Summary Prepared By	:	Raju Kumar Chanakya National Law University, Patna

2. BRIEF FACTS OF THE CASE

The present case arises by the letter submitted by D. K. Basu, who is the Executive Chairman, Legal Aid Services, West Bengal. He submitted the letter to the Chief Justice of India to bring his noble attention towards certain news clip published in the Telegraph on July 20, 21, 22, 1986 and Indian Express on August 17, 1986 regarding deaths in police lock-ups and custody. It was also stated in the letter that efforts are often made to hush up the matter of lock-up deaths and thus the crime goes unpunished and "flourishes". Furthermore, it was also requested in the letter that it along with the news items be treated as a writ petition under "public interest litigation" category. The letter was pertaining to very important matter, and hence it was given importance and the letter was treated under the category of Public Interest Litigation and the court issued a notice on February 9, 1987 to the respondents.

While the writ petition was still under consideration a new letter was addressed by Shri Ashok Kumar Johri on dated July 29, 1987 to the Hon'ble CJI towards the incident of death of one Mahesh Bihari of Pilkhana, Aligarh in police custody was received. This letter was also treated as a writ petition and it was directed that it should be listed along with the writ petition.

3. ISSUES INVOLVED IN THE CASE

I. Whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Article 21 and 22 of the Constitution of India or not?
II. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him?
III. Can the right to life of a citizen be put in abeyance on his arrest?
IV. How do we check the abuse of police power?
V. Whether the sovereign immunity is available in the case of violation of Fundamental Right or the basic human rights?

4. ARGUMENTS OF THE PARTIES

- The leaned council on the behalf of respondent argued that the police was no hushing up any matter of lock-up death and that where ever police personnel were found to be responsible for such death, action was being initiated against them.
- The respondents characterized the writ petition as misconceived, misleading and untenable in law and that "everything was well" within their respective States.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Constitution of India

- Article 21 provides "no person shall be deprived of his life or personal liberty expect according to procedure established by law".
- Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and the shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate.
- Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against and unjustified assault by the State, In tune with the constitutional guarantee a number statutory provisions also seek to project personal liberty, dignity and basic human rights of the citizens.

Indian Evidence Act

- The Law Commission recommended in its 113th Report that in prosecution of a Police officer for an alleged Offence of having caused bodily injury to a person, if there was evidence that the injury was caused during the period when the person was in the custody of the police, the Court may presume that the injury was caused by the police officer having the custody of the person during that period. The Commission further recommended that the court, while considering the question of presumption, should have regard to all relevant circumstances including the period of custody statement

made by the victim, medical evidence and the evidence with the Magistrate may have recorded.

Indian Penal Code

- Section 220 provides for punishment to an officer or authority who detains or keeps a person in confinement with a corrupt or malicious motive.
- Section 330 and 331 provide for punishment of those who inflict injury of grievous hurt on a person to extort confession or information in regard to commission of an offence.

Code of Criminal Procedure

- Section 41, Cr. P.C. confers powers on any police officer to arrest a person under the circumstances Specified therein without any order or a warrant of arrest from a Magistrate.
- Section 46 provides the method and manner of arrest. Under this Section no formality is necessary while arresting a person.
- Under Section 49, the police is not permitted to use more restraint than is necessary to permitted to use more restraint than is necessary to prevent the escape of the person.
- Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence.
- Section 56 contains a mandatory provision requiring the police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 echoes Clause (2) of Article 22 of the Constitution of India. There are some other provisions also like Section 53, 54 and 167 which are aimed at affording procedural safeguards to a person arrested by the police. Whenever a person dies in custody of the police, Section 176 requires the Magistrate to hold and enquiry into the cause of death.

6. JUDGEMENT IN BRIEF

The Hon'ble Court observed that whenever the rights of human being are being violated it is the sacred duty of the court to protect their rights as they are the protector of the fundamental and the basic human rights of the citizens. The court observed that the custodial violence, which includes torture and death in the lock ups, is a strike on the Rule of Law. Violence in custody is a great matter of concern. It is committed by those people who are supposed to be the protectors of the citizens. Furthermore, the court also observed that it is committed under the shield of uniform and authority in the four walls of a police station or lockup, where the victim is totally helpless.

The Court observed that the word "Torture" has not been defined in the Constitution or in other penal laws. The court stated that "*'Torture' of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. The word torture today has become synonymous with the darker side of the human civilization*."

By Quoting Article 21 of the Indian constitution the Hon'ble court observed that the "Fundamental rights occupy a place of pride in the Indian Constitution." The court observed that the personal liberty is a sacred and cherished right under the Constitution of India. The word "Life or personal liberty" includes the right to live with human dignity and it also includes in itself a guarantee against torture and assault by the state or its functionaries.

This court in the judgment of *Joginder Kumar V. State*[1] observed that the No arrest can be made just because it is lawful. The court opined that the power of arrest is one thing and the justification for the exercise of it is quite another. The court further observed that the denying of a person's liberty is a serious matter.

The court opined that the custodial death is perhaps one of the worst crimes in a civilized society governed by the Rule of Law. No civilized society can permit to do so. Furthermore, the court also observed that the any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution.

The court goes to such an extent that he observed in harsh word that the Custodial death is not generally shown in the records of the lock-up and every effort is made in order to dispose of the body or to make out such a case that the arrested person died after he was released. The court also observed that when the crime goes unpunished, the criminals are encouraged and the society suffers. The victim of crime or his kith and kin become frustrated and contempt for

law develops.

For the first issue involved that, whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the Constitution of India or Not? The Hon'ble court has remarked that the mere punishment of the offender can't give solace to the family. The court observed that the infringement of the indefeasible right to life of the citizen is, therefore, a useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread winner of the family.

The Hon'ble Court cited the judgment of *Maharaj v. Attorney General of Trinidad and Tobago*[2], and remarked that the

"Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer".

Furthermore, the court observed that the emphasis has to be on the compensatory and not on the punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender.

For the Second and Third issue raised that Does a citizen shed off his fundamental right to life, the moment a policeman arrests him and Can the right to life of a citizen be put in abeyance on his arrest? The Hon'ble Court remarked in the Negative and states that The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

The court cited the judgment of *Neelabati Bahera v. State of Orissa*[3], and observed that the prisoners and detenues are not denuded of their fundamental rights under Article 21 and it is only such restrictions as are permitted by law, which can be imposed on the enjoyment of the fundamental rights of the arrestees and detenues.

Furthermore, the Hon'ble court while answering the issue raised on 'How do we check the

abuse of police power', the Hon'ble court observed that the Transparency of action and accountability are two possible safeguards which this Court must insist upon.

Furthermore, the court also remarked that the force needs to be infused with basic human values and made sensitive to the constitutional ethos. The court remarked that the efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third degree methods during interrogation.

Moreover, the Hon'ble court while answering on the point that 'whether the sovereign immunity is available in the case of violation of Fundamental right or the basic human rights', the court remarked view that the defence of sovereign immunity is not available to the State for the tortuous acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India.

Moreover, the court issued the following guidelines which must be followed in all cases of arrest or detention.

1. Police arresting and interrogating suspects should wear "accurate, visible and clear" identification and name tags, and details of interrogating police officers should be recorded in a register.
2. A memo of arrest must be prepared at the time of arrest. This should: Have the time and date of arrest, be attested by at least one witness who may either be a family member of the person arrested or a respectable person of the locality where the arrest was made and be counter-signed by the person arrested.
3. The person arrested, detained or being interrogated has a right to have a relative, friend or well-wisher informed as soon as practicable, of the arrest and the place of detention or custody. If the person to be informed has signed the arrest memo as a witness this is not required.
4. Where the friend or relative of the person arrested lives outside the district, the time and place of arrest and venue of custody must be notified by police within 8 to 12 hours after arrest
5. The person arrested should be told of the right to have someone informed of the arrest, as soon as the arrest or detention is made.

6. An entry must be made in the diary at the place of detention about the arrest, the name of the person informed and the name and particulars of the police officers in whose custody the person arrested is.
7. The person being arrested can request a physical examination at the time of arrest. Minor and major injuries if any should be recorded. The "Inspection Memo" should be signed by the person arrested as well as the arresting police officer. A copy of this memo must be given to the person arrested.
8. The person arrested must have a medical examination by a qualified doctor every 48 hours during detention. This should be done by a doctor who is on the panel, which must be constituted by the Director of Health Services of every State.
9. Copies of all documents including the arrest memo have to be sent to the Area Magistrate (ilaqa Magistrate) for his record.
10. The person arrested has a right to meet a lawyer during the interrogation, although not for the whole time.
11. There should be a police control room in every District and State headquarters where information regarding the arrest and the place of custody of the person arrested must be sent by the arresting officer. This must be done within 12 hours of the arrest.

The Hon'ble court has observed that the failure to comply with the guidelines will be punished for contempt of court and the proceedings for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

7. COMMENTARY

As rightly observed in the Bhagwad Geeta, "*Hate the crime not the criminals*". This case goes with the principle and teaches, what is Humanity? This judgment has been given in the interest of the Natural justice and it protects the interest of the Prisoners. Just because a person has committed any offence or because it is the custody of the police, it doesn't mean that the person has lost his basic dignity. Although this judgment has been pronounced by the Hon'ble Court for the protection of Human Rights still it has not been implanted properly. The National Crime Record Bureau (NCRB) report speaks something else. During the year 2017-2019, As many as 255 People died in Police Custody. Whereas, merely 3 Police Officers were

Subject to conviction during this period. The report clarifies that the rule of the Judgment is not being implemented properly.

8. IMPORTANT CASES REFERRED

- *D.K. Basu v. State of West Bengal, Writ Petition (Crl) No. 539 of 1986*
- *Joginder Kumar v. State, 1994 CriLJ 1981*
- *Maharaj v. Attorney General of Trinidad and Tobago (1978) 2 ALL E.R. 670.*
- *Neelabati Bahera v. State of Orissa, 1993 CriLJ 2899*

CASE NO. 15

NATIONAL HUMAN RIGHTS COMMISSION

V.

STATE OF ARUNACHAL PRADESH

(1996) 1 SCC 742

CHAKMA REFUGEES CASE.

ABSTRACT

The following is a Case Summary of the infamous case of the *National Human Rights Commission v. State of Arunachal Pradesh and Another*, commonly known as the Chakma Refugees Case. The case has been preferred by the National Human Rights Commission, a statutory authority established by the virtue of Section 3 of the Protection of Human Rights Act, 1993. The petitioner brought this action before the Hon'ble Supreme Court of India as a Public Interest Litigation, under Article 32 of the Constitution of India which gives anyone the right to move to court in case of violation of their fundamental rights envisaged under Part III of the Constitution of India. The petitioner has also been empowered to approach Supreme Court under Section 18(b) of the Protection of Human Rights Act, 1993 which empowers it to approach Constitutional courts, namely concerned High Courts and Supreme courts for the issue of directions, writs in case of violation of human rights. In this case, the National Human Rights Commission, hereby, known as 'NHRC', brought the action to ensure that people from Chakma/Hajong tribes are protected by the state of Arunachal Pradesh against persecution from the local citizens domiciled in the state of Arunachal Pradesh. The petitioner exercises its powers and rights to protect the rights of the minority who migrated to the state in the 1960s. The case is an authoritative precedent for enforcement of Article 21 of the Constitution of India, which grants the Right to Life and Liberty to everyone- Citizen or Non-Citizen.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition No. 720 of 1995
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1995

Case Decided On	:	January 9, 1996
Judges	:	Justice A.M. Ahmadi C.J., Justice S.C. Sen
Legal Provisions Involved	:	Constitution of India – Article 21, 32 Protection of Human Rights Act, 1993- Section 3, 17, 18 Citizenship Act, 1955- Section 5 Citizenship Rules, 1956- Rule 7 to 12
Case Summary Prepared By	:	Rishi Raj Symbiosis Law School, Noida

2. BRIEF FACTS OF THE CASE

This case was brought before the Supreme Court of India in the form of a Public Interest Litigation (PIL) under Article 32 of the Constitution of India read with Section 18(b) of the Protection of Human Rights Act, 1993 by the National Human Rights Commission.

The petitioner brought this action under Article 32 of the Constitution of India read with Section 18(b) of the Protection of Human Rights Act, 1993 by the National Human Rights Commission.

In the year 1964, a large number of Chakma's took refuge in Assam and NEFA (Now Arunachal Pradesh), coming from erstwhile East Pakistan (Now Bangladesh) due to the construction of the Kaptai Hydel Power Project.

The issue of granting citizenship to the migrated Chakma's was time and again being taken and addressed by the Ministry of Home Affairs and various groups of Chakma's had also made representations for grant of the same to them. However, in the meanwhile, the relations between Chakma's and locals were growing adverse and Chakma's complained that the later was trying to expel them from the state.

In the year 1994, the People's Union for Civil Liberties, hereinafter PUCL, an NGO and Civil Society Organization, brought the issue before the petitioner NHRC. The commission taking cognizance of the same sent letters to the Chief Secretary of State of Arunachal Pradesh and Home Secretary, Government of India making enquiries into the issue as per its powers under Section 17 of the Protection of Human Rights Act, 1993. In the span of few days, the Committee of Citizenship Rights for Chakma's hereinafter "the CCRC" filed a complaint before NHRC along with a press report in the newspaper "The Guardian" which stated that All Arunachal Pradesh Students' Union (AAPSU) has issued quit notices against the

Chakma's and have threatened them to leave the state by September 30, 1995 and further proclaimed to use force if their demands were not adhered by the Chakma's. Seeing the situation, the NHRC issued notices to the State of Arunachal Pradesh and the Union of India. The home Ministry replied to the Commission assuring its stand of granting citizenship to Chakma's and had deployed Central Reserve Forces to protect the endangered Chakma's from the AAPSU and had also directed the State administration to aid the forces and protect Chakma's.

On October 12, 1995, the CCRC sent urgent petitions to NHRC alleging immediate and imminent threats to Chakma's and on further investigation, NHRC came to the conclusion that State's officers were acting in the coordination of the AAPSU.

Hence, the National Human Rights Commission brought the present action before the Hon'ble Supreme Court of India.

3. ISSUES INVOLVED IN THE CASE

I. Whether the State of Arunachal Pradesh and the Union of India has made adequate efforts for the protection of Chakma's?
II. Whether Chakma's are entitled to rights under Part III of the Constitution of India?
III. Whether the Union of India has taken steps to provide Chakma's with citizenship?

4. ARGUMENTS OF THE PARTIES

The state of Arunachal Pradesh made the following submissions before the Hon'ble Court-

- The respondent states that the State of Arunachal Pradesh has been granted special status under Constitution which is Part X based on its ethnicity. Thus, the settlement of Chakma's would disturb the ethnic balance and destroy the cultural identity of the state.
- The State also argued that the state has been placed under a financial burden to maintain and upkeep Chakma's which amounts to Rs. 100 crore and has received no assistance from the centre.
- The respondent submits that the state has taken adequate steps in regards to the protection of the Chakma's.
- The State has also submitted that as per the precedent of *State of Arunachal Pradesh v. Khudiram Chakma (1993 SCR (3) 401)* the Chakma's are foreigners and hence are

not entitled to any rights envisaged under Part III except Article 21 they can be asked by authorities to move anytime and even quit the state.

- The State also contended that the Union of India did not send Paramilitary forces on its own accord and responded only to State's request for assistance.
- The state also claims that no applications for citizenship are withheld by the District Collector and the state.

The respondent Union of India made the following submissions before the court-

- Chakma's who were born in India prior to the amendment made in 1987 have legitimate rights to citizenship.
- The first respondent i.e., the State of Arunachal Pradesh has been putting impediments in the procedure of reservation by not forwarding the application submitted by Chakma's as per Rule 9 of the Citizenship Rules, 1955.
- The Union further contended that it is keen to provide Chakma's with citizenship.
- The Union has directed the state to provide security to Chakma's and has also provided the state with Central Paramilitary forces for areas in which there is a danger or threat to Chakma's.
- The union has also favoured for a dialogue between State Government, The Chakma's and AAPSU and other concerned parties to reach an amicable settlement for grant of citizenship as well as also look forward to grievances of citizens of the state.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal aspects in this case involved are as follows-

1) Constitution of India, 1950
    - Article 14, Constitution of India- Right to equality before the law and equal protection of the law
    - Article 21, Constitution of India- Right to life and Personal Liberty
    - Article 32, Constitution of India- Right to Constitutional remedies i.e. Right to approach the Supreme court of India in case of violation of any of the fundamental rights mentioned under Part III of the Constitution of India. This article is itself a fundamental right as held in the case of *Kavalappara Kottarathil Kochunnimoopil Nayar v. The State of Madras and Others (1959 SCR Supl. (2) 316).*

2) Protection of Human Rights Act, 1993
    - Section 3- Constitution and formation of a National Human Rights Commission
    - Section 17- Power to make inquiries and seek reports from state and central government against any complaints filed before it.
    - Section 18- Pertains to steps to be followed during and after the inquiry with Section 18(b) empowering the commission to approach appropriate High Courts or Supreme Court for the issue of writs/directions in the complaint.
3) Citizenship Act, 1955
    - Section 5- Confers power on Central Government to grant citizenship on registration by the applicant after he fulfils the eligibility criteria.
4) Citizenship Rules, 1956
    - Rule 9- District Collector has to submit all applications made before it under Section 5 of the Citizenship Act along with a report before the State Government or administration of Union territory within 120 days of receipt of application and the concerned state government or Union territory administration will submit it to the central government within 60 days.

6. JUDGEMENT IN BRIEF

The Hon'ble Supreme Court of India made the following pronouncements in the case-

- The court rejected the contention of the State of Arunachal Pradesh and agreed that a threat existed to the life and liberty of the Chakma's which was to be protected under Article 21 of the Constitution of India.
- The court further stated that the State of A.P. has misinterpreted the *Khudiram Case* and the facts the said case is different from that of the issue at hand.
- The court stressed the fact that the country is governed by Rule of law and the constitution bestows Article 21 which is the Right to Life and Personal Liberty and Article 14 which is the Right to equality before the law and equal protection of laws on everyone. The state is bound to protect every human being and it cannot permit or support small groups like AAPSU to threaten Chakma's to leave the state. If the State fails to do so, it is violating its statutory and constitutional duty.
- The court issued the writ of Mandamus to both respondents and issued the following guidelines-

i) The State of Arunachal Pradesh will ensure the life and liberty of every Chakma residing in the state.
ii) The state will protect them from any forceful eviction or attempt to drive them out of the state.
iii) The state shall seek assistance from the Union Government if it needs additional forces to subvert the threat.
iv) The Chakma's will not be evicted from their homes except in accordance with the law.
v) The State of Arunachal Pradesh will cater to the declaration by AAPSU and other groups in accordance with the law.
vi) The district collector will enter the applications made under Section 5 of the Citizenship Act in the register and forward the applications submitted to it for citizenship to the central government for its consideration as per the law.
vii) No Chakma will be evicted until the application is pending and no decision has been taken by the competent authority on the pending application.
viii) The state of Arunachal Pradesh will pay Rs. 10,000 to NHRC which is the cost petition within 6 weeks at the NHRC Delhi office.

7. COMMENTARY

Human Rights have been best defined, by the Office of High Commissioner, United Nations Human Rights which states that- "Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, colour, religion, language, or any other status. They range from the most fundamental - the right to life - to those that make life worth living, such as the rights to food, education, work, health, and liberty." Human Rights are inalienable rights and are derived from the person's birth on this planet. Every state must work to the best of its ability to uphold these rights and help people have these basic rights. Furthermore, the state must protect the citizens from infringement of such rights. State's must abstain from their political aspirations and act as a guardian.

In the present case, the state of Arunachal Pradesh has the same duty as mentioned above. Article 14 and Article 21 are the Constitutional images of Human Rights as envisaged In the Constitution of India. These rights are present to everyone as held in the case of *Louis De Raedt v. Union of India.* The State of Arunachal should have taken adequate steps on its own

without the accord of the Hon'ble Supreme Court. The State is in the position of a guardian and must use its powers to protect everyone- citizen or non-citizen. This duty has been placed on the state as guardian by the case of *Charanlal Sahu v. Union of India.* Furthermore, as per provisions of Article 355 of the Constitution, the Union has a duty upon itself to oversee that state works in accordance with the Constitution and its provisions. The Union of India should have utilised this duty and if necessary, issue guidelines or directives under Article 256 for the sake of the protection of Chakma's. As per facts, Chakma's have been part of the state for 3 decades and were settled there after dialogue with erstwhile NEFA state. Hence, it is the state's duty to protect them. Furthermore, the state's executive machinery i.e., the collector must follow his duty and forward the applications of citizenship without any prejudice or delay.

The Union of India is under a rule of law and a small group's announcement to oust the minority must be tackled in accordance with law or else can lead to anarchy and rebellion.

8. IMPORTANT CASES REFERRED

- *Charanlal Sahu v. Union of India* (1989 SCR Supl. (2) 597)
- *Kavalappara Kottarathil Kochunnimoopil Nayar v. The State of Madras and Others (1959 SCR Supl. (2) 316).*
- *Louis De Raedt v. Union of India* (1991) 3 SCC 554
- *State of Arunachal Pradesh v. Khudiram Chakma* 1994 Supp (1) SCC 615

CASE NO. 16

ANURADHA BHASIN

V.

UNION OF INDIA

((2020) 3 SCC 637)

RESTRICTION ON INTERNET AND FUNDAMENTAL RIGHTS.

ABSTRACT

The case to be discussed in the following note is *Anuradha Bhasin v. Union of India*. The Apex Court, herein, deliberates upon the issue whether access to internet is a fundamental and human right or not. It deliberates with right to freedom of speech and expression under Article 19 of the Constitution in the light of information technology, internet, computer and cyber laws. The case deals with the power of government to restrict/shut down internet in the light of defence and national security along with blocking, interception, tapping of internet, communications, forensic use of mobile phones, satellite phone or GPS data.

The internet shutdowns and restrictions on movement imposed in the state of Jammu and Kashmir on August 4, 2019 with regard to public emergency and establishing public order were challenged under Article 32. Moreover, the constitutionality of Temporary Suspension of Telecom Services (Public emergency or Public Safety) Rules, 2017 (hereinafter referred to as '2017' Rules) was challenged as they were constantly used by the State to restrict telecom services including internet access which is the need of the hour. The court held that while passing orders under Section 5(2) of Telegraph Act, 1885 (hereinafter referred to as '1885' Act) or said 2017 Rules, the procedural safeguards, both contractual and statutory, must be mandatorily followed. Such orders must satisfy the tests of necessity and proportionality. The degree and scope of orders of suspension must be proportionate to the situation that the government is trying to combat.

Indefinite suspension and unregulated restrictions on access to internet services would be invalid and illegal. The court, moreover, opined that the government is empowered to impose internet shutdown in the light of national security, however, such orders imposing restrictions

on access to internet services must be published in public and subject to judicial review. However, being mindful of theory of separation of power, did not itself light the internet shutdown, but directed the government review committee to review the orders imposing restrictions and suspension in the light of judgement and lift the ones which are unnecessary, disproportionate or not having temporal limit.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Civil) No. 1031 of 2019
Jurisdiction	:	Supreme Court of India
Case Filed On	:	2019
Case Decided On	:	January 10, 2020
Judges	:	Justice N.V. Ramana, Justice R. Subhash Reddy and Justice B.R. Gavai
Legal Provisions Involved	:	Constitution of India, Article 19 (1) (a) and 19 (1) (g) Code of Criminal Procedure, 1973, Section 144 Information Technology Act, 2000 Information Technology (Procedures and Safeguards for Blocking for Access of Information by Public) Rules, 2009 The Telegraph Act, 1885 The Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.
Case Summary Prepared By	:	Ritika Kanwar Institute of Law, Nirma University, Ahmedabad

2. BRIEF FACTS OF THE CASE

The Constitution (Application to Jammu and Kashmir) Order, 2019 abrogated the special status enjoyed by the state of Jammu and Kashmir since 1954 making it acquiescent to the constitution provisions. Owing to prevailing circumstances, the District Magistrate, on August 4, 2019, passed an order restricting freedom of movement, public assembly and gathering under Section 144 of the Code of Criminal Procedure, 1973 (hereinafter referred to as '1973 Code') apprehending breach of peace and public tranquility.

Moreover, internet shutdown was imposed which resulted in restrictions on online communications, mobile phone networks and landline connectivity along with internet

services. Accordingly, the liberty of journalists to travel and publish was also curtailed. The legality and validity of the said restrictions on movement along with undefined internet shutdown were challenged under Article 32 in the light of Article 19 of the Constitution.

3. ISSUES INVOLVED IN THE CASE

I. Whether right to access internet is integral part of fundamental rights under Part III of the constitution?

II. Whether undefined and unregulated internet shutdowns and similar disproportionate restrictions violated the freedom of press of the petitioner?

III. Whether Article 19(1)(a) and Article 19(1)(g) of the Constitution are inclusive of freedom of speech and expression over internet and freedom to practice any profession or to carry out any occupation, trade or business over the internet?

IV. Whether the government action of imposing restrictions on the access to internet, ignoring the legal and procedural safeguards, is valid?

V. Whether the order imposing restrictions on movement under Section 144 of the 1973 is valid? Whether government can claim exemption from producing all orders passed under the said section of the code?

4. ARGUMENTS OF THE PARTIES

- It was argued that these restrictions caused major difficulties even to regular and law-abiding masses. It was further argued that the movement restrictions and internet shutdown imposed in the name of 'protecting law and order' were not necessary, reasonable and proportionate as public order, being distinct to law and order, was not at risk at the time of passing of the orders.
- Moreover, it was argued that empowering state with carte blanche to impose restrictions on fundamental rights in the light of national security would lead to limitless and broad authority with state. This is evident with the fact that the restrictions which were supposedly temporary, lasted way beyond the reasonable time frame causing major problems to the populace.
- It was also argued that the internet shutdown and movement restrictions were not necessary, reasonable and proportionate to the prevalent circumstances. They must be backed by objective reasons and not mere conjectures. Moreover, it has further argued

that such official orders must be produced and published by the state and the same must be subjected to judicial review.

- The state of 'internal disturbance' or 'external aggression' or 'public emergency', as required by law under Article 356 of the Constitution, was not prevalent at the time of imposing restrictions. It was argued that the restrictions must have a specified ambit and determinate scope targeting only peace disturbing elements and cannot be broadly applicable to general masses.
- While imposing restrictions on fundamental and human rights of citizens regarding freedom of speech and expression or freedom to carry on trade or occupation, the state must fulfil the criteria of proportionality by imposing less restrictive measures balancing the public safety and national interest with protection and exercise of fundamental rights.
- It was argued that the 2017 Rules were not adhered to while imposing restrictions through a blanket order, indicative of non-application of mind, as there was no Review Committee constituted to look into the legality of suspension. Moreover, restrictions of internet speed in the name of national security hampered the right to health, education, trade or occupation and free expression during the virtual shift of the nation owing to Covid-19 times.

5. LEGAL ASPECTS INVOLVED IN THE CASE

1. Article 19(1)(a) and 19(1)(g) of the Constitution of India
2. Section 144 of the Code of Criminal Procedure, 1973
3. Information Technology Act, 2000 (2000 Act)
4. Information Technology (Procedures and Safeguards for Blocking for Access of Information by Public) Rules, 2009 (2009 Rules)
5. The Telegraph Act, 1885
6. The Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017

The fundamental right of free speech and expression along with freedom to carry of trade or occupation is not absolute and is subjected to reasonable restrictions. The rights, therein, must be curbed in the light of doctrine of proportionality. The procedural safeguards and mechanism for imposing restrictions on access to internet are provided under 2000 Act, 1885

Act and 1973 Code. Section 69 of 2002 Act read with 2009 Rules provides for blocking of access to certain websites but not restrict access to internet as a whole.

Although prior to 2017, the orders imposing restrictions on access to internet were passed under Section 144 of 1973 Code, but, post-2017 the orders are being passed in accordance with 2017 Rules which had been passed under Section 7 of 1885 Act. 2017 Rules provides for a reasoned order along with establishment of a Review Committee. The orders under the said rules ought to be forwarded to the said review committee within one working day. The Review Committee would then periodically review them and record its findings, i.e., whether the orders issued are in consonance with Section 5 (2) of 1885 Act.

The imposition of orders under scrutiny is subjected to reasonable satisfaction of concerned state authorities regarding prevalence of 'public emergency' which can be understood as public safety or national interest. The orders issued should be notified through a suitable mechanism and made available to general masses as they affect their lives, liberty and property. Moreover, that should be temporary in nature and be subjected to judicial scrutiny.

6. JUDGEMENT IN BRIEF

- Taking into consideration the aforesaid submissions, the apex court opined that the fundamental rights must be balanced with the national security. Moreover, it stated that there must be temporal and territorial limitations of the restrictions, i.e., there scope, extent and ambit must be defined.

- On the argument relating to non-application of mind, the Apex Court directed the government to establish a Special Review Committee to scrutinize all the orders passed under Rule 2 (2) of the 2017 Rules within 7 days and look into their compliance with Section 5 (2) of 1885 Act. 2017 Rules serve as adequately commensurate substantive and procedural safeguard against unreasonable and arbitrary exercise of authority by the state.

- In response to submission regarding restrictions on internet speed, the apex court stated that the same has been imposed in to order to 'avoid misuse of data by terrorist and their supporters' and 'curb the flow of information'. The court, moreover, stated that the right to speech and expression and to carry on any trade or occupation using

internet media is constitutionally protected under Article 19, without deliberating upon access to internet as a fundamental right.

- Apart from stating the internet access must be curtailed reasonably, the apex court directed the orders imposing restrictions to be notified and published as they are affecting lives and liberty of the general populace. The orders must be backed by sufficient reasoning by the competent authority and must not be arbitrary. The orders of suspension must highlight the necessity and unavoidable circumstances prevalent in the area at that time. They must fulfil the procedural requirements and be in consonance with the Rule 2 (2) of 2017 Rules.

- The court went on to state that such orders must be proportionate and temporary in nature. The state must resort to least restrictive and intrusive measure while curtailing the fundamental and human rights of the citizens. Moreover, the court stated that the orders under Section 144 of the 1973 Code must state material facts allowing judicial review. The powers under said section are remedial as well as preventive in nature and repetitive usage of the same would result in abuse of power. It must be exercised on the ground of public emergency but at the same time must not suppress the expression of opinions.

7. COMMENTARY

The case is of paramount importance considering the fact that it revolves around affirming the protection of fundamental rights under the Article 19 of the constitution being extended to freedom of speech and expression and the freedom to practice any profession online. Moreover, the said case traces its positive significance from the reiteration of tests of necessity, reasonableness and proportionality. The apex court clearly states that the state is empowered to order movement restrictions and internet shutdown only after establishing necessity and imposing temporal limit. The said action must be proportionate and commensurate to the prevailing circumstances, i.e., the situation the government is trying to combat.

The said case is of massive importance because it conveyed the right message that the judiciary would not tolerate the apathy shown by the concerned public authorities towards the general populace and made sure that their basic fundamental and human rights are not

hampered beyond the specified limit in the name of national security. However, it must be noticed that the court has not affirmed right to access to internet as a fundamental right, instead, merely observed that right of expression and carry-on trade etc. online would be within the ambit of constitutional protection as a fundamental right under Article 19.

Another conclusion that can be drawn through the case is that the restrictions imposed under Section 144 of the 1973 Code could not overpower the legitimate expression or suppress the reasonable right to speech and are subjected to judicial scrutiny. The state has to comply with the procedural rules and establish a Review Committee to review the restrictions and lift them up when are not necessary. Moreover, the positive aspect is that the court emphasized on the veil of secrecy to be removed from such official orders. The mandate to issue reasoned orders along with publication and to make them subject to judicial scrutiny would reduce the chances of arbitrary shutdowns so as to protect the other basic fundamental rights of citizens such as right to health, right to education. The same has been stated in lauded Kerala High Court Judgement, i.e., the right to access to internet is a subset of right to education and right to privacy under Article 21 of the constitution.

8. IMPORTANT CASES REFERRED

- *Ram Jethmalani v. Union of India, (2011) 8 SCC 1.*
- *Indian Express v. Union of India, (1985) 1 SCC 641.*
- *Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana, (1988) 3 SCC 410.*
- *Modern Dental College & Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353.*
- *Hukam Chand Shyam Lal v. Union of India, (1976) 2 SCC 128.*
- *Maneka Gandhi v. Union of India, (1978) 1 SCC 248.*
- *KS Puttaswamy v. Union of India, (2017) 10 SCC 1.*
- *Channing Arnold v. The Emperor, (1914) 16 Bom LR 544.*
- *Babulal Parate v. State of Maharashtra, AIR 1961 SC 884.*
- *PUCL v. Union of India, (1997) 1 SCC 301.*
- *Gaurav Sureshbhai Vyas v. State of Gujarat, 2015 SCC OnLine Guj 6491.*

CASE NO. 17

P RATHINAM

V.

UNION OF INDIA

(1994 AIR 1844)

CASE ON "WHETHER AN INDIVIDUAL HAS A RIGHT TO DIE, AS THEY HAVE A RIGHT TO LIVE".

ABSTRACT

"Death is our friend, the trust of friends. He delivers us from agony. I do not want to die of a creeping paralysis of my faculties– a defeated man" – Mahatma Gandhi

P. Rathinam and Nagbhushan Patnaik had filed petitions. The case transport into light that "whether an individual has a right to die, as they have a right to live". The case twist around two petitions filed simultaneously by P. Rathinam (Petitioner 1) and Nagbhushan Patnaik (Petitioner 2). According to their respective application, Section 309 of the Indian Penal Code, 1860, was contradictory to Article 21 and Article 14 of the Indian Constitution. P. *Rathinam v. UOI* was the first case that the Supreme Court of India decided in appreciation of Section 309, IPC. The provision or preparation criminalized a pursuit to commit suicide. Suicide is customarily or publicly delineated as 'the action of killing oneself intentionally. This is the only section in the Indian Penal Code where punishment could be deal with for an unsuccessful act only and never for a successful one. In other words, suicide is not a crime. It solicits is. The arguments were heard by a two-judge bench of the Supreme Court.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Crl) No. 409 of 1986 Writ Petition (Crl) No. 419 of 1987
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1987

Case Decided On	:	April 26, 1994
Judges	:	Justice Hansaria B.L., Justice Sahai, R. M.
Legal Provisions Involved	:	Constitution of India, Articles 14, 21 Indian Penal Code,1860, Section 309
Case Summary Prepared By	:	Sakshi Agrawal Indore Institute of Law, Indore

2. BRIEF FACTS OF THE CASE

The case brought into light the question "whether an individual has a right to die, as they have a right to live". The case revolved around two petitions filed simultaneously by P. Rathinam (Petitioner 1) and Nagbhushan Patnaik (Petitioner 2). According to their respective petitions, Section 309 of the Indian Penal Code, 1860 was violative of Article 21 and Article 14 of the Indian Constitution. The petitioners had criticized the validity or legitimacy of Section 309 by arguing that the same was violative of Articles 14 and 21 of the Constitution, and the appeal or plea made was to affirm or claim the section void. The additional appeal was to repress the proceedings proposed against the petitioner (Nagbhushan) under Section 309, IPC. The arguments were heard by a two-judge bench of the Supreme Court and the final verdict was passed on April 26, 1994.

3. ISSUES INVOLVED IN THE CASE

The main issues are -

I. Whether Section 309 of the Indian Penal Code violates Articles 21 and 14 of the Constitution?

II. Whether Article 21 includes the right to die?

Some of the other important questions that the Court deliberate were-

- Is suicide immoral or depraved?
- Does suicide develop adverse sociological effects?
- Is suicide against public policy?
- Does the commission of suicide damage the monopolistic power of the State to take a life?

4. ARGUMENTS OF THE PARTIES

Appellant

The petitioners were represented by R. Venkataramani and Ranjan Dwivedi. The Petitioners argue or oppose that Section 309 was atrocious, bitter or ruthless and irrational as it punishes a person who is already depressed or afflicted, needs psychiatric counselling and has induced no harm to others. Solicit to commit suicide is not against morality, religion, public policy or society. To keep Section 309 unblemished would lead to the monopolistic right of the state to take life which may lead to "constitutional cannibalism".

The Petitioner further submitted the carbon of the second para of the General section of The Suicide Act, 1961, which states that "the rule of law whereby it is a crime for a person to commit suicide is hereby abrogated". Another document submitted was a xerox of the report of the Law Commission of India's 42nd report of 1971, which recommended the deletion of section 309.

Respondent

The basic Argument of Shri Sharma, who was the lead counsel for the Union of India, communicated that opposition to suicide for it was against public policy. Further, the following grounds were located down for opposition:

Suicide is an act against religion.

It is immoral.

It produces conflicting sociological effects.

It is against public policy.

It would embolden, assist or promote and abetting suicide.

It was contended that if a victim of suicide was the sole bread-earner of his family, then he will not be the only victim, for his family too will perish as a result of his deeds. An alive person is always of use to society, and at any given point, he may choose to make a difference in his life. This is only possible if he is alive, for which strong deterrents against suicide are in place.

5. LEGAL ASPECTS INVOLVED IN THE CASE

-**Section 309**, Indian Penal states that- "Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both."

-**Article 21** of the Constitution states that- "No person shall be deprived of his life or personal liberty except according to the procedure established by law."
-**Article 14** of the Constitution states that- "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Cases referred

It had been thrice that the courts witnessed a case of similar nature (right to die). There is one more case, *State v. Sanjay Kumar Bhatial*, which is of similar nature, which went unrecorded and shall be duly mentioned along with the other three cases.

I. State v. Sanjay Kumar Bhatia[19]

The case failed to question the constitutionality of Section 309 of the IPC directly. However, pondered upon it consequently as a result of managing the time of investigation below Section 368 of CrPC. it had been ascertained within the same case that in an exceedingly world that is globally acceptive the humanizing angle of a kill, the presence of Section 309 was problematic. it had been any ascertained whereas bearing on the treatment of Associate in Nursing suspect below Section 309 that "Instead of causation the young boy to the psychiatrical clinic it joyously sends him to mingle with criminals".

II. Maruti Shripati Dubal v. State of Maharashtra[20]

This case held that section 309 was unconstitutional as it violated Article 21 and Article 14 of the Constitution. The Bombay High Court made the comparison on the basis of the case *R.C Cooper v. Union of India*. As each fundamental right is interpreted in context to others, what is true of one fundamental right shall be true of others. This is held in para 10 of the judgment. Thus, if an individual has the exemption to accompany an association counting the freedom not to accompany any association, so shall he accept the right to die as he has the

[19]1986 10 DRJ 31
[20]1987, Cri Lj 743 (Bombay)

right to life. It was also terminating that Article 14 was violated by section 309 as no line could be starved to which acts constituted the pursuit of suicide. Furthermore, it was observed that "philosophers, moralists and sociologists were not agreed upon what constituted suicide. The want of plausible definitions or even guidelines made section 309 arbitrary as per the learned Judges".

III. Chenna Jagadeeswar v. State of Andhra Pradesh[21]

A clear dissent was expressed against the previous two judgements by stating that Section 309 does not violate Article 21 and Article 14. The court upheld the validity of Section 309 of the IPC. The court command that the difficulty of violation of Article 14 by Section 309 "may be taken care of by trade the sentence fittingly." As section 309 provides solely the utmost penalization that leaves it up to the court's discretion to work out the minimum penalization.

IV. Court on Own Motion v. Yogesh Sharma[22]

This case of the Delhi High Court was unpublicized, which finds allusion in an article by Shri B.B. Pande[23]. The court held Section 309 to be violative of Article 21 and pointed out the ineffectiveness of punishing a man who ever wanted to desertion from this world. The justice Sachar did not hold the section void but instead quashed all the 119 pending proceedings under the same in this judgement. It was said by him in this judgment that "dragging of the prosecution for years when the victim has had enough of misery, and the accused also belonged to a poorer section which added further insult to injury, would be an abuse of the process of the court".

6. JUDGEMENT IN BRIEF

The verdict was given on the April 26, 1994 by a two-judge bench comprising Justice R. M. Sahi and Justice B.L. Hansaria. The verdict was a fruit of the reflection or contemplation, which involved answering the following questions:

- Why is a particular act treated as a crime?

[21] 1988 CrLJ 549

[22] 1986 RLR 348

[23] Vol. VII (1), March 1987 at pp. 112-120

- How can crimes be prevented?
- Why is suicide committed?
- Who commits suicide? Secularization of suicide
- How should suicide-prone persons be dealt with?
- Is suicide a non-religious act?
- Has Article 21 any positive content, or is it only negative in its reach?
- Has a person reading in India a right to die?
- Why is a law enacted?
- Is suicide immoral?
- Does suicide produce adverse sociological effects?
- Is suicide against public policy?

The main argument of the Respondent was that suicide was against public policy and was immoral. The judges observed that "Morality has no defined contours, and it would be too hazardous to make a bold statement that the commission of suicide is per se an immoral act. If human beings can be treated inhumanly, as a very large segment of our population is, which is a significant measure may be due to wrongful acts of others, the charge of immorality cannot be, and in any case should not be, levied, if such human beings or likes of them, feel and think it would be better to end the wretched life instead of allowing further humiliation or torture"[24].

The bench also explicates that the fascinating down of Section 309 does not affect the legitimacy of Section 306 as they both are very distinct sections, neither of which depends on the other for existence. Section 306 deals with the abetment of suicide which shall remain to be a crime. The individual himself alone has the right to take his life and not with the help of another. The court held that Section 309 had to be struck down purely to humanize our laws and globalize them, that is, bring them inconsistency with other progressive countries' laws.
The final bench found Section 309 to be violative of Article 21 and, in its final judgement, stated:
"On the basis of what has been held and noted above, we state that Section 309 of the Indian Penal Code justify to be destroyed or eliminate from the statute book to civilize our penal laws. It is a cruel and irrational provision, and it may result in punishing a person again who

[24]Para 88 of P. Rathinam v. UOI (1994)

has suffered agony and would be undergoing ignominy because of his failure to commit suicide"[25].

7. COMMENTARY

"Crimes will be created or abolished with the passage of time"[26] Law and its advocated additionally as its interpreters cannot be rigid within the performance of their duties. There should always be enough area for the law to breathe and alter, for it to evolve with time, to suit the wants of the society. Moreover, a law must not ever be harsh. It should always aim to bring out the most effective in folks and deter them from the worst. A law that borders on the tendency to be retributive can solely bring a lot of damage than sensible. Section 309 failed to aim to reform the defendant. Instead, it further pushed him all the way down to a level from that he could or might not rise, within the words of Justice Iyer,

"If you are to punish or penalize a person retributively, you must injure him. If you are to reform him, you need to improve him. And men are not improved by injuries".

Finally, the conclusion could also be sought after within the words of the dramatist, "We should believe crime as a malady. Evil is going to be treated in charity rather than anger. The amendment is going to be straightforward and elegant. The cross shall replace the scaffold. The reason is on our facet, the feeling is on our facet, and the experiment is on our facet."

8. IMPORTANT CASES REFERRED

- *State v. Sanjay Kumar Bhatila, 1986 10 DRJ 31*
- *Maruti Shripati Dubal v. State of Maharashtra, (1986) 88 BOMLR 589*
- *Chenna Jagadeeswar v. State of Andhra Pradesh, 1988 CrLJ 549*
- *Court on own Motion v. Yogesh Sharma, 1986 RLR 348*

[25]para 109 of P. Rathinam v. UOI (1994)
[26] R.S. Cavan's Criminology (Edition II) at p.7

CASE NO. 18

RUDAL SAH

V.

STATE OF BIHAR AND ANOTHER

((1983) 4 SCC 141)

RIGHT TO COMPENSATION.

ABSTRACT

This case narrates the right to provide adequate relief if human rights is a disrupted. The man was kept in jail for 15 years, despite the acquittal which was illegally detained. He filed a petition under Article 32 embodied in the Constitution. By this Habeas Corpus petition, the petitioner asks for his release on the ground that his detention in the jail is unlawful. He also asked for certain ancillary reliefs like rehabilitation and reimbursements of expenses that he may incur for medical treatment and compensation for the illegal incarceration. Through this case, there was the interpretation of Article 32 carried out to seek that if the compensation is granted in anticipation of the encroachment of fundamental right. The right to compensation as a palliative for an illicit act done by the instrumentalities of the State.

In the eye of the liberal world, when any right is violated, the relief is provided to an individual in the case of his infringement. The right to receive compensation has resultant from the fundamental rights when the rights are violated. Certainly, it is inherent to them. For instance, an individual's right is over their body, entails that it is unreasonable and outlaw to attack or injure them without any rationalization. Though, the right is over one's body also includes the right to be provided with compensation in the event of any injury or attack being caused to an individual. Hence, Breach of human rights shall have two levels of rapid and effective impact: criminal – identifying and punishing the perpetrators; and civil – compensating the victims. A society without accountability that tries those who violate human rights and do not compensate its victims is a society that allows the abuse of the weak. It raises a vital question about "who will watch the authority? The abuse of power thru by them to the public in most inhuman and invaluable way, who would take the issue in their own hands to handle such power."

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Criminal) 1387 of 1982
Jurisdiction	:	Supreme Court of India
Case Filed On	:	November 22, 1982
Case Decided On	:	August 1, 1983
Judges	:	Justice Y.V. Chandrachud, C.J. Justice Ranganath Misra, Justice A.N. Sen
Legal Provisions Involved	:	Constitution of India, Article 21, 32
Case Summary Prepared By	:	Sakshi Mehta, Symbiosis Law School, Noida

2. BRIEF FACTS OF THE CASE

The former prevailing case is about the illegal detention for 15 years, leading to the Article 21 violation with establishing no grounds of his detention. The case was a form bringing a suit to recover appropriate damages from the State and its erring officials. The order of compensation passed by us is, as we said above, in the nature of a palliative. [27]

He moved to the Supreme Court to enforce his right to seek relief for the damages caused[28]. The parties that have been involved in the former suit is the petitioner Rudal Shah on behalf of his Advocate K. Hingorani, and the Respondent is the State of Bihar the advocate on behalf of State of Bihar is D. Goburdhan.

The petitioner filed a habeas corpus under Article 32 of the constitution seeking his release from the detention in jail on the grounds that his detention after his release by the session court on June 3, 1968, was illegal and sought the ancillary relief.[29]

In 1953, Rudal Shah (Petitioner) was arrested on the narrative of murdering his wife. On June 3, 1968, after serving his sentence, he was acquitted from the court of sessions, Muzaffarpur, Bihar. However, after 14 years of incarceration on October 16, 1982, he left the prison.

[27] Damodaram Sanjivayya, 'Right to Compensation - Compensation Definition Under The Indian Law' (iPleaders, 2018) <https://blog.ipleaders.in/compensation-definition-

[28]The judgment was delivered by C J Y.V. Chandrachud, Mrs. K. Hingoran, Mr. D. Goburdhan

[29] RAVI NAIR, ' How Fair is Compensation for Human Rights Violations in India?' (The Leaflet The Leaflet) < https://www.theleaflet.in/how-fair-is-compensation-for-human-rights-violations-in-india/#> accessed e.g. 11 January 11

Nonetheless, the court issued showed –cause notice to the State regarding ancillary relief. He sought to ask for the medical treatment at the expense of the state and ex-gratia payment for his rehabilitation.

Thru the time, the petition came up before the court on November 22, 1982. The petitioner was by now released from jail on October 16, 1982. For that reason, the relief regarding his release became infructuous. On the other hand, the jailor had put in order in the affidavit for the State in which he introduced few points that were included:

That the additional session judge, Muzaffarpur, had given an order stating that before further order from State Government and I.G, the petitioner should be detained in prison, even if acquitted.

Secondly, when the session court issued the order, it was found unsound. When the civilian surgeon examined him, he was later certified to be natural. On February 21, 1977, the Civil Surgeon Report was communicated to the Law Department and the petitioner was issued by a letter dated October 14, 1982 in accordance with the Law Office.

3. ISSUES INVOLVED IN THE CASE

I. Whether the Supreme Court has the jurisdiction to acknowledge the prayers for awarding the compensation in compliance with Article 32 of the Constitution.
II. In case of the violation of Fundamental Rights has taken place, will the Article 21 of the constitution envelop the right to compensation.
III. Whether keeping the person for 15 years with no suitable grounds being established violates fundamental rights.

4. LEGAL ASPECTS INVOLVED IN THE CASE

That Article 32 has been set down in the Constitution of India. Primarily, Article 32 talks about the entitled "Remedies for Enforcement of Rights Conferred", by the states in the case violation.

- Wherein, it accommodates the privileges for the right to move to Supreme Court by appropriate proceedings for the enforcement of the fundamental right's enumerated in the Constitution of India.

- Further down in article 32 (2) of the constitution it lays down that is The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part. It allowed to devise any methodology for the endorsement of a fundamental right, and it has the power to issue any procedure vital in a given case.

Further down, we have Article 21 of India's Constitution that is Sanctum Sanctorum of the Constitutional temple which laid about the right to personal life and liberty. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation.[30]

5. JUDGEMENT IN BRIEF

Although Article 32 of the Constitution cannot be used as a substitute for the enforceable of the rights and obligations which can be enforced efficaciously through the ordinary proceedings of courts, such as money claims, of money if such an order in the nature of compensation consequential upon the deprivation of a fundamental right.

The petitioner could be relegated to the ordinary remedy of a suit if his compensation claim was factually controversial, in the same that a civil court may or may not have upheld his claim. However, where the court has already found, as in the present case, that the petitioner's prolonged detention in prison after his acquittal was wholly unjustified and illegal, there can be no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate in the absence of evidence. The precise amount which would be decreed in his favour.

"In these circumstances, the refusal of the Supreme Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to the fundamental right to liberty which the state government has so grossly violated.[31] Article 21 would be denuded of its significant content if the Supreme Court's power were limited to passing order of release from illegal detention. The only effective method opens to the judiciary to prevent violation

[30] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005 s 15,16,17,18,19,22(20 (a),(b),(c),(d),(e)
[31] The Constitution of India, Art 21

of that right and secure due compliance with Article 21's mandate to mulct its violators in the payment of monetary compensation. The right to compensation thus corresponds to the unlawful actions of the State. The State must then rectify the damage to the rights of the petitioner incurred by the officer. Against these officers, it may have recourse.

In the present case, the concerned department of the Government of Bihar has not shown court say to the Supreme Court or displayed an awareness of its responsibilities by asking one of its senior officers to file an affidavit in order to explain the callousness which pervades this case. Moreover, the jailor's affidavit left much to be desired. It unveiled no data on the basis of which he was adjudged insane, the specific measures are taken to cure him of that affliction and whether it took 14 years to set it right his mental imbalance. There is nothing to show that the petitioner was found insane on the very date of his acquittal.

Furthermore, if he was insane on the date, he could not have been tried at all since an insane person cannot enter upon his defence. It is also unclear why the petitioner was not released for over five and a half years after the civil surgeon's report and why the law department took so many years in advising the petitioner's release. In those circumstances, the conclusion is that the petitioner was not released from the jail upon his acquittal and that he has wrongly reported being insane. Considering the great harm done to the petitioner by the government of Bihar as an interim measure, the State must pay the petitioner a further sum of Rs. 30,000.

In addition to the sum of Rs. 5000 already paid by it. However, this order will not preclude the petitioner from bringing a suit to recover appropriate damage from the State and its erring officials. The High Court of Patna should itself examine this matter and call for statistical data from the home department of the Government of Bihar on the question of unlawful detention in the state jails in order to be in a position to release prisoners who are in unlawful detention in the jails and to ask the state government to take steps for the rehabilitation by payment of adequate compensation wherever necessary**.**

6. COMMENTARY

This case has tried to replenish and stock up the lacuna in the right to compensation is a fundamental right; the Apex Court found a monetary way to uncover abuses of human rights. This case has portrayed that wherein the police and authorities become irresponsible, the plights of the people become deplorable. No doubt that the horizon of human rights is expanding. In neoteric times, the various police atrocities have been in the eye of court has

been seen and recognized. In a way, the frequency and freedom with which they trample on citizens' rights have been fear-provoking and upsetting.

"Under Section 357 of subsection (1) and sub-section (3), the court may, in the interest of the court, grant compensation to victims of crime at the time of the decision. Section 357 requires that the Cr.PC and the trial court and the appeals courts (with revisional powers exercised) shall only award compensation to victims of crime once the accused has been tried and found guilty.

Sub-section (1) of Section 357 of the Cr.PC empowers the court to award compensation to the victims of crime out of the fine in the following four cases, namely first, meeting proper expenses of prosecution; secondly, compensation to a person (or his heirs) for the loss or injury caused by the offence when he can recover compensation in a civil court;"[32]

In the case of *Sebastian M. Hongray v. Union of India*[33]: the Supreme Court issued a writ of habeas corpus for the production of two missing persons. When the army failed to produce the individuals, the court directed the State to pay Rs 100,000 to each family. The other case followed by it was *Bhim Singh, MLA v. State of J&K and Ors.*[34] wherein, The Supreme Court ordered the State of Jammu and Kashmir to give Rs. 50,000 for his illegal detention from September 10, 1985 to September 14, 1985 to Mr. Bhim Singh, Member of the Legislative Assembly of Jammu and Kashmir. "If the personal freedom of a member of the legislature is played in this way, one can only ask what could happen to lesser mortals".

In the case of *Rajasthan Kisan Sangthan v. State*[35] – The Supreme Court upheld that "A person being maltreated & ill-used in the police custody was eligible & entitled to monetary compensation regardless of the legality or illegality of detention."

In addition to the case of *Saheli a Women's Resource Centre v. Commissioner of Police, Delhi (1990)*[36] it culminated the death of a nine-year-old child in the hands of police, the court dismissed the State's immunity claim and granted compensation for a sum of 75,000 rupees.

[32] K.D. Gaur, 'Justice to Victim of crime: A Human Rights Approach ' in Dr. K.I. Vibhute (eds), Criminal Justice a Human Rights Perspective of the Criminal Justice Process in India (1st, Dr. K.I. Vibhute, EBC 2004).
[33]Sebastian Hongray v. Union of India [1984] 571. AIR 1-6 (Supreme Court of India)
[34]Bhim Singh, MLA v. State of J&K and Ors. [1986] 494. AIR 1 (Supreme Court of India)
[35]Rajasthan Kisan Sangthan v. State [1989] 10. AIR 1-8 (Rajasthan High Court)
[36]Saheli a Women's Resource Centre v. Commissioner of Police, Delhi [1990] 1 SCC 422. AIR 1-4 (Supreme Court of India)

Another case would be *Nilabati Behera v. State of Orissa*[37] - The petitioner's son was taken into police custody and killed; his body was found on a railway track. Once again, the Supreme Court utilized Article 32 to grant monetary compensation. In this decision, the Supreme Court also established that High Courts could issue compensation under Article 226 of the Constitution. The court ordered the State of Orissa to pay Rs. 1,50,000 to the petitioner, the deceased's father, for violation of human rights.

Although these cases helped establish a right to compensation, the Supreme Court has not interpreted this right as absolute or mandatory. In *Sube Singh v. State of Haryana*[38], the court held that "before ordering compensation, courts will examine whether the violation of the right to life is 'patent and incontrovertible', shakes the conscience of the court, and results in the death or disability of the arrested person."

In the case of *Khatri (II) v. State of Bihar*[39]*:* Bhagwati, J**.** In this case. Remarked: "Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty."

Regarding the State's duty to pay compensation for the prevention of Article 21, the court answered in the confirmation that Article 21 was unprotected from its considerable affluence in the absence of opportunity. The court further observed that where questions of most significant constitutional importance, including the inquiry into another dimension of the privilege to life and individual rights, have arisen, given the complex constitutional jurisprudence advocated by the court, it must set out the proper implications of the protected right in Article 21.

In the case of *M.C. Mehta v. Kamal Nath*[40] - The SC held that it has the authority to grant compensation to the pollution victims according to Article 32.

The Andhra Pradesh High Court has claimed that Kasturi Lai's case has not been filed with respect to the three leading judgements of Rudal Sah, Sebastian Hungary and Bhim Singh where there is a deprivation of personal freedom or life. The High Court of Andhra Pradesh noted the Law Commission's first report on constitutional recognition of state duty.

[37]Nilabati Behera v. State of Orissa (1993 [1993] SCR (2) 581. AIR 1-22 (Supreme Court of India)
[38]Sube Singh v. State of Haryana [2006] 3SCC. AIR 1-21 (Supreme Court of India)
[39]Khatri & Ors v. State of Bihar (1981) 1 SCC 627
[40]M.C. Mehta v. Union of India, (1987) 1 SCC 395

This case opened up new perspectives for individual action against the State, since Article 300 was deemed no exception to Article 21.

When India ratified the International Convention on Civil and Political Rights, it made a declaration on the right to compensation (ICCPR).

Compensation in India is not a right to be enforced. An adequate compensation system will prohibit government officials from criminal activity and allow victims to prosecute their cases. At present, in India, neither the structure nor its absence exists. For victims of State-enforced violence, a mandatory right of compensation must be established.

7. IMPORTANT CASES REFERRED

- *Sebastian Hongray v. Union of India [1984] 571. AIR 1-6 (Supreme Court of India)*
- *Bhim Singh, MLA v. State of J&K and Ors. [1986,] 494. AIR 1 (Supreme Court of India)*
- *Rajasthan Kisan Sangthan v. State [1989] 10. AIR 1-8 (Rajasthan High Court)*

CASE NO. 19

C. B. MUTHAMMA

V.

UNION OF INDIA & ORS.

(1979 AIR 1868)

INDIA'S FIRST IFS OFFICER'S BATTLE AGAINST THE MISOGYNIST FOREIGN SERVICE RULES.

ABSTRACT

This case is one of the initial audacious voices raised by the highly spirited women of India against the misogynist organizational service rules. C.B. Muthamma, being the first woman officer in the Indian Foreign Services by qualifying the arduous UPSC examinations in the year 1948 epitomized as a role model for the rest of the women under the veil and set the pace for women empowerment just after the independence from British colonial rule.

But after a few years of continuous dignified service in the Ministry of Foreign Affairs, she faced evident discrimination on grounds of sex, when her promotion to the post of Grade 1 officer in the IFS was rejected by the Ministry owing to Rule 8 (2) of Indian Foreign Service (Conduct and Discipline) Rules, 1961 and Rule 18 (4) of the Indian Foreign Service (Recruitment Cadre Seniority and Promotion) Rules, 1961. Both of the above provisions were in violation of Article 14, 15 and 16 of the Constitution of India.

Hence this gallantry senior women officer in the Ministry of External Affairs filed a writ petition under Article 32 of the Constitution against the Union of India and the respective Ministry. This case was adjudicated by Justice V.R. Krishna Iyer, which turned out to be a landmark precedent for all forthcoming cases on gender-based discrimination in India.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition No. 743 of 1979
Jurisdiction	:	Supreme Court of India

Case Decided On	:	September 17, 1979
Judges	:	Justice V. R. Krishna Iyer, Justice P.N. Singhal
Legal Provisions Involved	:	Constitution of India, Article 14, 15 and 16 Rule 8 (2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961; Rule 18 (4) of the Indian Foreign Service (Recruitment Cadre Seniority and Promotion) Rules, 1961.
Case Summary Prepared By	:	Tanya Katyal School of Law, Delhi Metropolitan Education, GGSIPU, New Delhi

2. BRIEF FACTS OF THE CASE

The present case is a writ petition filed under Article 32 before the Supreme Court of India by C.B. Muthamma, a Senior Officer of the Indian Foreign Services against the Union of India and the Ministry of External Affairs for the violation of Article 14, 15 and 16 of the Constitution of India, regarding inequality before the law and gender-based discrimination in matters of public employment.

The petitioner faced various instances of gender discrimination since the very beginning of her UPSC examinations in 1948 where she has alleged the Chairman of the UPSC of having gender prejudice while her interview selection round. The petitioner informed that the Chairman himself on a subsequent occasion after her selection, revealed her that he deliberately dissuaded her from joining the services and has used his authoritative supremacy to give minimum marks to her in the viva.

Further, Miss Muthamma still managed to clear the UPSC examination because of her meritorious examination record. But soon after her selection, at the time of entry into the Foreign Service the petitioner again had to face the same fate of gender discrimination as she was asked to give an undertaking that, if she had to get married then she would have to resign from the services as per the Rule 8 (2) of the Indian Foreign Service (Conduct and Discipline)Rules, 1961.

Eventually, after 30 years of continuous noble service to the Ministry, the petitioner once over again faced the misogynist attitude of the Ministry, when she was denied promotion to Grade 1 of the Indian Foreign Service ignoring her seniority and unblemished record

whereas, on the other hand, her junior male officers were promoted within the interval of some months of joining the service.

Subsequent to all these occasions of gender discrimination, Miss Muthamma filed a writ petition under Article 32 for the violation of Article 14, 15 and 16 of the Constitution.

In the wake of the institution of these proceedings, the Ministry promoted the petitioner stating that "she was not found meritorious enough for promotion some months ago she has been found to be good now has been upgraded and appointed as Ambassador of India to the Hague for what it is worth".

3. ISSUES INVOLVED IN THE CASE

I. Whether there is a long-standing practice of hostile discrimination against women in the Ministry of Foreign Affairs or not?
II. Whether a female employee at the Indian Foreign Services were supposed to give an undertaking at the time of joining the services that, 'if she were to get married. she would resign from the service' or not?
III. Whether she had to face discrimination as a consequence of being a woman or not?
IV. Whether the members of the appointment committee of the Union Cabinet and respondent no. 2 are basically prejudiced against women as a group or not.?

4. ARGUMENTS OF THE PARTIES

The respondent informed the court by an affidavit, that Rule 18 (4) which has been challenged by the petitioner has been deleted on November 12, 1973. Furthermore, by the same token the Central Government's affidavit affirmed that Rule 8 (2) is about to slide into obscurity since its deletion is being gazetted.

Further, the counsel for the respondent, Former Solicitor General, Soli J Sorabjee, defended Rule 8 (2) by contending that the rule intended to prevent married women from leaking confidential information and thereby endangering security.

Post-initiation of proceedings, the Ministry promoted the petitioner to Grade 1 of the services, for which the respondent has expressed justification for its act of promotion. They stated that earlier the petitioner was not found meritorious enough for the position but now

she has been upgraded as ambassador of India to the Hague as she has been found to be good now.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal issues raised by the plaintiff as grounds for this petition under Article 32 are violative of Article 14 which clearly states that, “the state shall not deny to any person equality before law”; Article 15 which states that, “the state shall not discriminate against any citizen on the grounds of only religion, race, caste, sex, place of birth or any of them”.

In addition to the above violations, the respondent also violated Article 16 which explicitly states that, “there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state” and “no citizen shall on grounds of only religion, race, caste, sex, decent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state”.

Further, the petitioner challenged two provisions from two distinct statutes issued by the Ministry of Foreign Service, which are as follows: -

I. Rule 8 (2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961;
II. Rule 18 (4) of the Indian Foreign Service (Recruitment Cadre Seniority and Promotion) Rules, 1961.

6. JUDGEMENT IN BRIEF

This case is classified as a landmark judgement because of the expertise adjudication by Justice V.R. Krishna Iyer in the history of gender justice. He authored this judgement with the opening statement which is shocking yet true by the fact that, “the writ petition filed by Miss Muthamma, a senior member of the IFS, bespeaks a story which makes one wonder whether Article 14 and 16 belong to myth or reality”. By this very statement he wanted to convey the widened cavity between the fundamental rights enshrined under the Part III of the Constitution and its real-life application where there is no reference of equality in the actions of the society and not even in the government’s service rules.

The very two provisions issued by the Ministry which were challenged by the petitioner, were held to be unconstitutional and having stains of gender discrimination over them.

Justice Iyer, explicitly highlighted three instances from the petition filed by Miss Muthamma. First being, the discouragement and discrimination faced by her at the time of interview selection round at the hands of the Chairperson of the UPSC; secondly, the various occasions when the petitioner faced discrimination one of them being the undertaking which was asked by her that she would be required to resign from her position post marriage; and lastly, when the member of the appointment committee ignored the seniority and unblemished record of the petitioner for promotion to Grade 1 of the IFS, because of the deep rooted gender prejudice.

The court after considering all of the above instances referred the Ministry of Foreign Services as a *"misogynistic"* workplace depicting *"masculine hybrids"* which is a possible anathema for the fundamental rights of the ordinary human being.

The bench held that the provisions are outrightly discriminatory against women as she needs to seek the permission of the government to get married whereas the same isn't applicable to the male members of the services.

With the due course of proceedings, the petition got dismissed as the petitioner, Miss C.B. Muthamma got promoted and the two rules were obliterated by the Ministry of External Affairs.

At last, Justice Krishna Iyer conclusively held that the petition is being dismissed but not the problem!

7. COMMENTARY

When we observe Gender Equality and also the Constitution, Article 14 is that the initial such article enshrined within the Constitution that clearly prohibits State's discrimination. A pertinent question arises here that whether or not the Indian Foreign Service may be a "State" as outlined underneath Article 12 of the Indian Constitution. The Indian Foreign Service is a branch of the Ministry of External Affairs, that may be a part of the Govt. of India, we are able to deduce that Indian Foreign Service is well inside the preview of State as provided by Article 12 of the Constitution.[41]

Further, Article 14 states that the State shall not deny to a person equality before law, as per the statements created by Muthamma concerning the denial of her promotion supported the

[41]Art. 12, Constitution of India

grounds of benefit, the State didn't offer her equality before law as per Article 14 of the Constitution of India. There was unblushingly discrimination in Muthamma's geographic point as women had to administer an explicit endeavour before marrying and that they might be pink-slipped at the discretion of the Govt. too because of her marriage and domestic responsibilities.

It is secured by Article 15 of the Constitution of India that there shall be no discrimination diverted on the premise of sex. To bring out a case underneath this text, 2 parts should be evidenced.[42] The primary criterion is that a symptom should be concerning the unwarranted discrimination created by the state. The other being that the aforesaid discrimination has adversely affected the complainant. Further, this guarantee against sexism should be secure by all the subsequent, the legislature, executive and the judicial branch.[43]

This was an affirmation provided by Muthamma herself, that she faced various instances of gender discrimination since the very beginning of her UPSC examinations in 1948 where she has alleged the Chairman of the UPSC of having gender prejudice while her interview selection round as the Chairman himself on a subsequent occasion after her selection, revealed her that he deliberately dissuaded her from joining the services and has used his authoritative supremacy to give minimum marks to her in the viva. But, Muthamma still managed to clear the UPSC examination, after her selection, at the time of entry into the Foreign Service the petitioner again had to face the same fate of gender discrimination as she was asked to give an undertaking that, 'if she had to get married then she would have to resign from the services as per the Rule 8 (2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961'.

By this statement we are able to conclude that there was a clear hostile set up for discrimination towards ladies within the UPSC throughout those times. Secondly, the undertaking that was alleged to be signed by the petitioner is a clear indication of discrimination as women were supposed to get permission before wedding.

Muthamma expressed that many of her junior colleagues got higher posts between her first and second analysis despite her being rather more capable than any of the individuals being evaluated. She aforesaid that it deeply affected her career and name and therefore it is control that since her career and name were full of the aforesaid discrimination directed towards her,

[42]Kathi Ranning v. State of Saurashtra; AIR SC 123 (1952)
[43]Nain Sukh v. State of U.P.; (1958) SC 384

there was a clear discrimination on her standing as a lady, citizen and an operating official. Hence, the discrimination has undoubtedly adversely affected the petitioner.

The Article 16 of the Constitution of India guarantees to each national civil right, protective from discrimination, within the field of public employment. It bars sex-based discrimination within the matters of state employment. this text stresses upon the equality of "opportunity" and therefore, terribly pertinent in our case. The case of Muthamma was brought on to the Supreme Court. However, some high court rulings before the Muthamma case were conjointly delivered to limelight.

In a case almost like CB Muthamma's, a difficulty arose within the High Court of Odisha concerning a rule that disqualified married ladies from choice to the post of a district judge. The opposite party created an odd statement that wedding ends up in unskillfulness in ladies and therefore hampers with the work. However, the Court control that although potency is a crucial facet to appear at, however disabling ladies may be a direct case of sexism underneath the Article 16 of the Constitution of India.[44]

This proves a transparent discrimination underneath Article 14, 15 and 16 of the Constitution of India against ladies and also the prejudiced mentality against married ladies and questioning their ability to perform well when wedding once men aren't subjected to any such rules. The burning desire for gender justice has still not been cooled down, this landmark judgment of C.B. Muthamma still breathes in various cases as a turning point in the fight for gender justice. The judiciary continuously thrives to restore the founding faith of equality enshrined in Article 14, 15 and 16 of the Constitution to highlight that, "Freedom is indivisible, so is Justice and Equality."

8. IMPORTANT CASES REFERRED

- *Radha Charan Patnaik v. State of Orrisa; 1969 AIR 237*
- *Kathi Ranning v. State of Saurashtra; AIR SC 123 (1952)*
- *Nain Sukh v. State of U.P.; (1958) SC 384*

[44]Radha Charan Patnaik v. State of Orrisa; 1969 AIR 237

CASE NO. 20

SHEELA BARSE

V.

UNION OF INDIA & ORS

(1986 3 SCC 632)

GRAVE CONDITION OF MENTALLY AND PHYSICALLY RETARDED CHILDREN IN JAIL.

ABSTRACT

This case relates to the writ petition which was filed under Article 32 of the Constitution highlighting the grave situation of physically and mentally retarded children who were abandoned in jails for a long period of time. Later, the Supreme Court had issued certain directions in order to deal with the situation. But most of the authorities did not perform their duties under the order. The petitioner, then, filed a criminal miscellaneous petition in order to withdraw the previous petition since according to the petitioner, the court, the state and the central authorities did not understand the gravity of the case.

The case highlighted the main problem- the inaction of the public authorities which included the court and the state governments. Since the Public interest Litigation wasn't disposed off under the required or reasonable time period, the question arose as to whether or not this was a violation of the right to speedy trial, which is a fundamental right as laid down in the case of *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*[45]. The case reflects upon the reality of how the public authorities took the matter into cognizance. Even though a huge progress has been made for the children who are restrained in jails, however, a lot of progress is yet to be made so that the basic human rights of these children are preserved and secured.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal Misc. Petition No. 3128 of 1988

[45]AIR 1979 SCR (3) 532

Jurisdiction	:	Supreme Court of India
Case Filed On	:	August 5, 1988
Case Decided On	:	August 29, 1988
Judges	:	Justice Rangnath Misra
Legal Provisions Involved	:	Constitution of India, Article 21 & 32 Contempt of Courts Act, 1971, Section 2(c)
Case Summary Prepared By	:	Tanishqua Pande Symbiosis Law School, NOIDA

2. BRIEF FACTS OF THE CASE

The Children Act was passed in the year 1960 for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children. However, it was not enforced in majority of the states. There were thousands of children who were languishing in the jails for a long period of time in the name of 'safe custody'. Therefore, Sheela Barse who is now a veteran activist, filed a writ petition in the Supreme Court directing the Supreme Court to release the children below 16 years who are stuck in the jail. The case was filed in order to direct states to enforce the act without any delay, set up adequate number of juvenile courts in each district in order to deal with the cases concerning children. Further, to nominate Chief Judicial Magistrate to visit the jails in order to ascertain the number of children below the age of sixteen years confined in the jail. Remand homes as well as observation homes must be set up so that the children below the age of 16 years who are accused of an offence can be placed, rather not be confined in jails. However, in the current Criminal Miscellaneous Petition, the petitioner expresses their dissatisfaction concerning the progress of the case. The previous writ petition was treated as a Public Interest Litigation. The petitioner felt that the Court along with the State and Central Governments did not understand the gravity of the cases concerning the accused children below the age of 16 years since the proceeding concerning the case had yet not disposed off. Orders were being made from time to time, however, the case wasn't being disposed off due to the deficiencies of the court and unjustified adjournments by the respondent. This way, the case was being unnecessarily being dragged for a long period and the children concerned were suffering as a result of this delay and their basic human rights were being violated.

3. ISSUES INVOLVED IN THE CASE

I. Whether there has been a violation of the right to speedy trial of the children restrained in jails by the court due to the delay in the final disposal of the Public Interest Litigation filed earlier under Article 32 of the Constitution?

II. Whether the previous public interest litigation can be withdrawn and the current criminal miscellaneous petition be allowed since
    a. The proceedings with regards to the PIL filed earlier hasn't been disposed off yet and
    b. The State Governments and the Central Government has failed to comply with the orders passed by the Supreme Court during the proceedings of the previous PIL?

III. Whether the criticism of the Court because of the delay in the disposal of the Public Interest Litigation was a contempt of court?

4. LEGAL ASPECTS INVOLVED IN THE CASE

It must be noted that this case was filed due to the dissatisfaction of the progress made when a writ petition under Article 32 of the Constitution was filed before the Supreme Court in order to highlight the plight of physically and mentally retarded children languishing in jails.

Article 32 of the Indian Constitution provides for the provisions wherein an individual can approach the Supreme Court if they think their fundamental right has been violated.

The questions were raised as to whether the right to speedy trial which is a fundamental right under Article 21 of the Constitution, laid down in the case of *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar* was violated or not? In this the court realized the plight of under-trial inmates who are at most cases, unaware of their ability to seek release on parole or due to hardship, are unable to hire a lawyer.

Article 21 provides for the fundamental right to life and personal liberty. In the case where children are constrained in jails for long period of time, their right to personal liberty has been infringed and therefore needs to be protected.

The petitioner had criticized the Supreme Court's take on the previously filed petition in the case *Sheela Barse & Ors v. Union of India & Ors.*[46] and had contended that the Court did not understand the gravity of the violation of the fundamental right of the children and delayed the disposal of the Public Interest Litigation.

Section 2(c) of the Contempt of Courts Act, 1971 provides for the definition of a criminal contempt. A criminal contempt can be filed when one makes a publication that tends to lower the authority of any court, interferes with any judicial proceeding or tries to obstruct the administration of justice[47].

5. JUDGMENT IN BRIEF

In the previous Public Interest Litigation filed in the case of *Sheela Barse & Ors. v. Union of India & Ors.*[48], the Supreme Court ordered certain directions from time to time in order to tackle the issue of the children restrained in jail for long periods. Herein, the Supreme Court ordered the state government to take necessary in order to establish juvenile courts in the district. The Supreme Court directed to establish enough remand homes and observation homes for children, so, that these remand homes can be used as an alternative to keep the children rather than restraining them in jails. The Supreme Court issued directions for the cases wherein an FIR is filed against a child who is accused of an offence punishable not more than 7 years, investigation should be completed within 3 months of the date of the filing of the complaint and the charge sheet should be completed within 6 months of filing of the FIR[49]. If in case, the investigation or the charge sheet is not completed within the stipulated time period, then, the proceedings against the child should be quashed. The Central Government was asked to initiate parliamentary legislation so that there is a uniformity of provisions in the children's act passed in different states.

In the current case, however, the proceedings of the PIL filed earlier was supposed to be finally disposed off in November 1986, however, due to unnecessary adjournments by the respondent, as contended by the petitioner, had delayed the disposal of the case. The Court acknowledged that right to speedy trial is a fundamental right under Article 21 of the Constitution. However, in the particular case wherein the main petition was treated as a

[46]Sheela Barse & Ors v. Union Of India &Ors, (1986) 3 S.C.C. 632
[47] Contempt of Courts Act 1971,§ 2(c)
[48]Sheela Barse & Ors v. Union Of India &Ors, (1986) 3 S.C.C. 632
[49]Juvenile Justice (Care and Protection of Children) Act, 2015

Public Interest Litigation, in case of Public Interest Litigation, there is no determination or adjudication of individual rights. A huge group of people are concerned or are aggrieved. Whereas in case of dispute resolution or the traditional adjudications, the party structure is absolutely bipolar wherein the interest or the rights of either or both the parties are concerned. Herein the remedy is limited to the array of the parties unlike in case of Public Interest Litigation, wherein a remedy has to be conferred to a large group of people. Therefore, judicial innovation is required for the social and economic transformation of the welfare state. The main object of a Public Interest Litigation is to provide an effective remedy to the group of individuals. In order to mitigate the issues raised in the Public Interest Litigation, the court has to take into account of all the factors and come up with a remedy beneficial for the larger group. This cannot be compared to private party disputes. Therefore, the current criminal miscellaneous petition was rejected on this ground. According to the court, there is no final disposal in litigation. There is no formal or a declared termination of proceedings. Therefore, there wouldn't be any point in allowing the current criminal miscellaneous petition. Therefore, there was no violation of the right to speedy trial of the parties concerned in the case of The Court acknowledged that the State Governments and the Central Government has not complied with the orders passed. However, the court also held that forcing the states or using coercive action against them could make them counter-productive. For the affirmative action to succeed, the willing cooperation of the authorities is absolutely vital. If the proceedings are diverted or there is non-compliance by the authorities, the purpose of the proceedings would be overshadowed.

The Court while dealing with the issue of contempt of court, held that the applicant was influenced by certain perceptions which she considers to be more important in the particular case. All the institutions, including judicial institutions are under public assessment. The court therefore, acknowledged that the criticism of judicial work is well and appreciated however, the court held that it cannot allow such persons to oversee the judicial work in their individual case wherein they are immediately concerned.

6. COMMENTARY

Locking children up or restraining them in jails can have detrimental effects on the mental as well as physical well-being of children. Restraining them in harsh conditions does more harm than good and does nothing to protect our communities. Juvenile courts are established with the aim to only deal with the cases concerning children with sensitivity. In the present case, it

was noted that even though the Chief Judicial Magistrates of the country were asked to look into the number of children in jails under their jurisdiction by the Supreme Court by an order, however, majority of the Chief Judicial Magistrates failed to provide a report. The Supreme Court had directed to establish enough remand houses and observation homes; however, many states did not comply with this order, giving financial insufficiency as the reason. The Court had taken account of all these cases, but the court held that one cannot take coercive action against the authority or else the authority might become counter-productive.

Children are the future of this country and the asset of our nation. It is our duty to protect them under any circumstances. In this case, one can clearly see the incompetency of the State Governments by not adhering to the order of the Supreme Court. In the 2017 report of National Crime Records Bureau (NCRB), it was revealed that around 1600 children under the age of 6 were spending time in various jails[50]. This was because their mothers were in the jail. Children who are up to the age of 6 are allowed to stay with their mothers, however, those children between three and six should be taken care of in nurseries. It was seen that the State of Uttar Pradesh and Bihar did not have any kind of facility to take care of children.

In my opinion, the court was very lenient while dealing with the states who did not establish the required infrastructure to deal with the cases. Insufficiency of financial resources is no excuse to ignore the ongoing problem of children in the jails. The States should be accountable for their inaction. The Court has held a very idealistic view by saying that coercive action could lead to counter-productivity. I believe that action should be taken against the authorities unwilling to perform their duty. Thousands of people are affected because of the State or the Central Government's inability to establish observation homes or remand homes. Judicial accountability should also be established in the case wherein the Chief Judicial Magistrate failed to provide reports of the number of the children in jails.

In my opinion, the petitioner in the particular case did not mean to undermine the work done by the Supreme Court but, wanted to point out what was lacking. Mere order isn't going to bring any difference in the condition of children who are languishing in jails. Operation of an order is required. Even though there wasn't any point to withdraw the current public interest litigation, however, this case showed the inadequacy of the state governments as well as the central government. It also showed the reality of how public authorities have been dealing with such sensitive and extremely important issues. The Supreme Court had pointed out that

[50] Crime in India, 2017 Statistics

a substantive amount of work was done after the order relating to the previous petition was passed. But, in order to completely solve this issue, one must look at the work which is ought to be done. It is important to understand that the justice system must work for the rehabilitation of the children who are stuck in jail or are troubled from young age[51]. Restraining them in jails could expose them to toxic environment. India is a welfare state and it is the responsibility of the state to ensure the welfare, protection and maintenance of troubled children.

7. IMPORTANT CASES REFERRED

- *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar, AIR 1979 SCR (3) 532*
- *Sheela Barse & Ors. v. Union of India & Ors, (1986) 3 S.C.C. 632*

[51]Copp, J., & Bales, W. (2018). Jails and Local Justice System Reform: Overview and Recommendations. The Future of Children, 28(1), 103-124

CASE NO. 21

KISHORE SINGH

V.

STATE OF RAJASTHAN

(AIR 1981 SC 625)

KEEPING PRISONERS IN BAR FETTERS AND SOLITARY CONFINEMENT – VIOLATION OF ARTICLE 21.

ABSTRACT

The following is a case summary of *Kishore Singh v. State of Rajasthan* wherein the petitioners brought before the Apex Court their sufferings in prison via telegram. They complained about the insufferable, illegal solitary confinement and bar fetters for a longer period. This telegram was converted into a habeas corpus proceeding brought under Article 32 of the Constitution of India by the Supreme Court. The apex court effectively dealt with this situation and immediately ordered the jail authorities to remove them from solitary confinement and bar fetters. This court by citing its earlier decision laid down in *Sunil Batra* case held that keeping the prisoners in bar fetters and solitary confinement for usually longer period without due regard to safety of the prisoners and security of the prison is clearly a violation of Article 21 of the Constitution of India.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Civil) -No. 5287 of 1980
Jurisdiction	:	Supreme Court
Case Filed On	:	October 3,1980
Case Decided On	:	November 4,1980
Judges	:	Justice R. S. Pathak, Justice V.R. Krishna Iyer
Legal Provisions Involved	:	Constitution of India, Article 21, 32 Rajasthan Prisons Rules, Rules 79 and 1(f) of Part XVI

		Prisons Act, 1894, Section 46
Case Summary Prepared by	:	Anchaliya Priti, V.T. Choksi Sarvajanik Law College, Surat.

2. BRIEF FACTS OF THE CASE

- This case is about a habeas corpus proceeding in the Supreme Court which begun with a telegram (October 3, 1980) received from one of the petitioners complaining about the insufferable and illegal solitary confinement in the prison. He further complained that he was kept in iron fetters along with the two petitioners. Hence the court on October 6, 1980 directed that the petitioners to be freed from solitary confinement and bar fetters. The court also ordered the Superintendent of the Central Jail to present the report of the number of cases with particulars of persons in solitary confinement in that prison on October 21, 1980 to answer for the violation of law laid down in *Sunil Batra* Case.
- The Court appointed Shri P. H. Parekh as *amicus curiae* for the prisoners who informed the court that when the prisoners were being escorted to the court, the escort police inflicted deep wounds on one of the petitioners named Surjeet Singh. So the Superintendent of Jail was then ordered by court to take special care of the prisoner after giving proper medical care.
- Another fact that came before this court was that the bar fetters were put on Kishore Singh for several days and on Surjeet Singh for thirty days. The counsel for the petitioner also brought to the notice of the court that "loitering in the prison", behaving insolently and in an "uncivilised" manner were the flimsy grounds of the torture some treatment done to the prisoners in solitary confinement and cross-bar fetters.

3. ISSUES INVOLVED IN THE CASE

I. Whether keeping prisoners in bar fetters and solitary confinement violates Article 21 of the Constitution of India?

II. Whether the prison authorities have acted in utter disregard of the mandate of the Supreme Court laid down in Sunil Batra case?

4. ARGUMENTS OF THE PARTIES

- The counsel for the petitioner argued for the cause of the prisoners by mentioning the grievances they had while in prison.
- On the other hand, the counsel for the respondent argued on behalf of the Jail Superintendent. He laid more emphasis on Section 46 of the Prisons Act and Rule 79 of the Rajasthan Prison Rules and argued that the Superintendent gave a hearing to the prisoners before punishing them with solitary confinement and bar fetters.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Article 21 forms a major part of the Constitution of India as it gives protection to life and personal liberty. The scope of this article has been widened by the apex court in its many landmark judgments. According to the Supreme Court any form of torture or cruel, inhuman or degrading treatment is clearly a violation of Article 21 of the Constitution. Incorporating human right concern within Article 21, the court is of the view that "it will become dysfunctional unless the agencies of the law in the police and prison establishments have sympathy for the humanist creed of that Article."

Rules 79 and 1(f) of Part XVI of the Rajasthan Prisons Rules

79 Special Precautions for security

The Superintendent shall use his discretion in ordering such special precautions as may be necessary to be taken for the security of any important prisoner, whether he has received any warning from the Magistrate or not, as the Superintendent is the sole Judge of what measures are necessary for the safe custody of the prisoners; he shall be held responsible for seeing that precautions taken are reasonably sufficient for the purpose.

1 (f) Cells may be used for the confinement of convicted criminal prisoners who are in the opinion of the Superintendent, likely to exercise a bad influence over other prisoners, if kept in their association.

These Rules were framed under Section 46 of The Prisons Act, 1894

Section 46 Punishment of such offences

The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by

(6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the Governor General in Council;

(7) imposition of fetters of such pattern and weight in such manner and for such period, as may be prescribed by the rules made by Governor General in Council;

(8) separate confinement for any period not exceeding three months;

Explanation: Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of other prisoners, and allows, him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners;

(9) Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of other prisoners;

That the Jail Superintendent's version that he had given a hearing to the prisoners before punishing them cannot be believed. Neither section 46 of the Prisons Act nor Rule 79 of the Rajasthan Prison Rules can be read in the absolutist expansionism, the Prison Authorities would like them to be read. That would virtually mean that prisoners are not persons to be dealt with at the mercy of the prison echelons.

6. JUDGMENT IN BRIEF

- The Supreme Court held that "Article 21 of the Constitution of India, with its profound concern for life and limb, will become dysfunctional unless the agencies of the law in the police and prison establishments have sympathy for the humanist creed of that Article."
- In *Sunil Batra v. Delhi Administration [1979] 1 SCR 392 (Sunil Batra I)* case Supreme Court held that "bar fetters which curtail to a very considerable extent locomotion, which is one of the facets of personal liberty under Article 21 of the Constitution cannot be put on a prisoner. Subjecting him to bar fetters for a longer duration would be violative of basic human dignity and not permitted under the Constitution.

It held that bar fetters could not be put on a prisoner by jail authorities unless important procedural safeguards are taken into compliance. They are:

1. It must be absolutely necessary to put bar fetters;
2. The reason for doing so must be recorded;
3. The basic condition of dangerousness must be well grounded;
4. Natural justice must be observed;
5. Fetters must be removed at the earliest opportunity

- The prisoners have been kept in solitary confinement for a long period of 8 to 11 months with bar fetters for several days on the frivolous grounds. And so the prison authorities have acted in utter violation of the precedent laid down in Sunil Batra case.
- Neither the court accepted the fact that the Superintendent of Jail gave a hearing to the prisoners before punishing them nor it was of the view that Section 46 of the Prisons Act and Rule 79 of the Rajasthan Prison Rules be read in the absolutist expansionism.
- The Sessions Judges in the State of Rajasthan was directed to remember the rulings of this Court as laid down in Sunil Batra I & II and Rakesh Kaushik and act in such manner that "judicial authority over sentences and the conditions of their incarceration are not eroded by judicial in-action. If special restrictions of a punitive or harsh character have to be imposed for convincing security reasons, it is necessary to comply with natural justice as indicated in Sunil Batra case."
- The court further directed the State Government of all states "to convert the rulings of this Court bearing on Prison Administration into rules and instructions forthwith so that violation of the prisoner's freedoms can be avoided and habeas corpus litigation may not proliferate."
- The court ordered the state to re-educate the police and incorporate a sense of respect for the human person. If any of the escort policemen are found to conduct any misconduct, it should be brought to the notice of the authorities so that condign action can be taken against them.

7. COMMENTARY

Solitary confinement is where there is complete isolation of prisoners from the other prisoners and the outside world and hence the court has held in both the Sunil Batra case that bar fetters and solitary confinement should not be given unless necessary. It has also held in both the Sunil Batra case that prisoners should not be denuded of their fundamental rights

merely because they are convicted. The constitution guarantees other freedoms also (except the right to move freely throughout the territory of India or the right to practice a profession) of which deprivation of these fundamental rights is not necessitated by the fact of incarceration.

We have come so far since various precedents has been laid down by the Apex Court pertaining to custodial torture; however, the situation is still same. Prisoners are still been given inhuman, cruel and torture some treatment which calls for an urgent need for anti-torture law in India. The precedents laid down in various landmark judgements and provisions under the criminal acts are not effective enough to protect the prisoners from custodial torture. Looking to the human rights concern and the fundamental rights of the prisoners, there is a need to bring in the attention of the lawmakers to the plight of the prisoners.

8. IMPORTANT CASES REFERRED

- *Sunil Batra v. Delhi Administration [1979] 1 SCR 392 (Sunil Batra I)*
- *Sunil Batra v Delhi Administration [1980] 2 SCR 557 (Sunil Batra II)*
- *Rakesh Kaushik v. B. L. Vig, Superintendents Central jail, New Delhi [1980] 3 S.C.R. 929*

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About ProBono India

Founded in October 2016 with an aim to integrate legal aid and awareness initiatives – ProBono India has ventured into different avenues viz. legal aid, legal awareness, legal intervention, legal journalism, legal activism etc. – all with the underlying objective of contributing to the positive development of the society with a strong socio-legal approach.

The activities at ProBono India include an active dissemination of legal information via the medium of its official website, rolling internship programmes for law students to help them develop a holistic personality with a socio-legal approach to their professional personality, interviews with eminent personalities working at the ground-level offering insights into their successful projects, providing a platform to promote and publish the art of research and legal writing, amongst many others.

The team of ProBono India works to promote legal activism as we believe that law and society are two sides of the same coin. Law and society are so inextricably interdependent that to both need to be equally improved in order to lead the world into the desired new order. We at ProBono India believe in a better and brighter tomorrow. We believe not just in being passengers on this drive to change – rather, we aim to drive towards the change.

Vision

Integrate Legal Aid and Legal Awareness Initiatives.

Mission

To provide the legal aid, conduct legal awareness activities, disseminate legal aid, legal awareness activities of various organizations of the world and conduct research on overall aspects of legal aid and legal awareness.

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