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Chapter 1

From Election Battle To Court

From Field to Court

The year 1969 stands as a pivotal milestone in Indian political history, marking the rise of Mrs. Indira Gandhi to a position of formidable power within the Congress party and, by extension, the country. This tumultuous year witnessed a significant split within the Congress, fragmenting the party and forcing Mrs. Gandhi into a marginal role in the Lok Sabha. Yet, despite this setback, she remained undeterred and began seeking opportunities to fortify her political foothold.

To navigate the precarious landscape of Indian politics, she enlisted the support of the Communist Party of India, an alliance she personally disdained but deemed necessary for pushing through her legislative agenda in the Lok Sabha. Nevertheless, when the Privy Purses Abolition Bill faced staunch opposition in the Rajya Sabha, stalling its progress, the stage was set for Mrs. Gandhi to reclaim her narrative.

On December 27, 1970, encouraged by the waning fortunes of her opponents, Mrs. Gandhi advised the President to dissolve the Lok Sabha and call for elections in early March of the following year—this decision came a full year ahead of the Constitutionally scheduled elections in 1972. The opposition coalition, obscured by surprise at this rapid shift, quickly regrouped to pledge their unity against her. They dubbed themselves the 'grand alliance,' encompassing prominent non-communist opposition parties like the Congress (Organization), Jan Sangh, Swatantra Party, and the Samyukt Socialist Party.

On December 29, 1970, Mrs. Gandhi convened a press conference to discuss the upcoming elections. During this session, an Opposition member accused her of switching her constituency from Rae Bareli to Gurgaon. With a firm resolve, she countered, "No, I am not," reaffirming her commitment, as she had successfully contested and won her first Lok Sabha seat from Rae Bareli in the 1967 General Elections.

Meanwhile, the opposition was busy selecting candidates for the elections. On January 19, 1971, Raj Narain was declared their joint candidate from Rae Bareli, challenging Mrs. Gandhi. Even other opposition factions, like the Bhartiya Kranti Dal, chose not to field their own candidate in a show of collective strategy. The following day, in a speech in Coimbatore, Mrs. Gandhi took aim at Narain, characterizing him as a notorious critic of Jawaharlal Nehru, a move designed to resonate with the electorate's historical sentiments.

The political theatre intensified further when the Election Commission awarded symbols for the elections. On January 25, 1971, the Congress party, led by Mrs. Gandhi, received the symbol of cow and calf, while the Congress (Organization) was allotted a lady with a charkha. This distribution did not go unnoticed; Shanti Bhushan, a notable figure in the legal and political landscape, received a telegram from C. Rajagopalachari expressing discontent with the cow and calf symbol. He urged Bhushan to legally contest this allocation, branding the symbolism as religiously charged. However, Bhushan countered that the election process had commenced, making a challenge impractical until after the votes were cast.

As the critical date for filing nomination papers approached, Mrs. Gandhi outlined her campaign itinerary for Rae Bareli, including a designated time to file her candidacy on February 1. On that day, she arrived at the District Magistrate's office accompanied by Yashpal Kapoor, her newly appointed election agent. Kapoor, who had recently left his post in the Prime Minister's Secretariat, was a familiar face in her political circles—having previously worked on her campaign in 1967 before rejoining her team post-elections.

With the nomination phase concluded, the air shifted from internal party tensions to fervent electoral campaigning. The opposition's rallying cry became "Indira Hatao" (Remove Indira), accusing her of fostering corruption during her tenure. In contrast, Mrs. Gandhi effectively recast her image, branding herself a radical socialist intent on alleviating poverty. In deft response to the opposition's slogan, she crafted "Garibi Hatao" (Remove Poverty), signaling her commitment to social justice. Addressing her rallies, she synthesized the electoral discourse, stating, "All the Opposition wants is the removal of Indira; all I want is the removal of poverty. Now, it is up to you to decide what you want." The resonance of her rhetoric would soon be measured by the impending election results.

The polling in Rae Bareli commenced on March 7, 1971, unfolding without notable incident. Vote counting began on March 9, with Raj Narain prematurely leading a victory procession the day before, expressing gratitude to his campaign supporters. However, the results soon shattered his confidence, projecting a landslide victory for Mrs. Gandhi's Congress party—a result that exceeded even the keenest predictions among her allies. In a direct confrontation, Mrs. Gandhi decisively triumphed over Raj Narain, securing an overwhelming margin of over 110,000 votes. She garnered 183,309 votes, while Narain could only muster 71,499. The remaining independent candidate, Swami Adwaitanand, failed to capture significant voter support.

The astonishing nature of the results left Raj Narain dazed, transforming his previous optimism into disillusionment. Conspiratorial whispers began circulating among opposition ranks, suggesting dastardly tampering of the ballot papers with chemical treatments. The narrative postulated that invisible stamps, pre-printed on the ballots, would only reveal themselves during vote counting, rendering the election's integrity suspect. For Narain and other opposition leaders, these speculations fueled a sense of betrayal that necessitated action.

Feeling compelled to challenge the election outcome, Raj Narain filed a petition contesting Mrs. Gandhi's victory. The specter of alleged corrupt practices loomed large, though at that moment, they constituted secondary concerns in a courtroom drama about to unfold. Thus, the political landscape braced itself for a historic legal battle, the repercussions of which would resonate throughout Indian democracy for generations to come.

Chapter 2

The Petition

Legal Proceedings Unfold

In India, the Representation of the People Act of 1951 lays out the crucial framework for challenging the results of elections. According to this act, any election outcome declared by a returning officer can only be disputed through an election petition presented to the High Court that oversees the jurisdiction where the election took place. Importantly, there is a strict deadline: such petitions must be filed within forty-five days following the election result announcement.

It was around mid-April when Raj Narain, determined to contest the recent election results, sought the expertise of Ramesh Chandra Srivastava, a reputable lawyer based in Allahabad whom he knew well. To bolster his legal team, Raj Narain made the strategic decision to enlist Shanti Bhushan as his senior counsel. Although they were not personally acquainted, Raj Narain recognized Bhushan's reputation as an effective lawyer and an active member of the Congress (O) party. Furthermore, Bhushan was known for undertaking numerous political cases pro bono.

Having engaged a junior lawyer for the initial drafting, Raj Narain met with Bhushan on April 22 to present the draft petition. This initial draft contained various allegations, primarily centering around:

1. An assertion that the ballot papers had been chemically altered. 2. The claim that Yashpal Kapoor, a key election agent for Mrs. Gandhi, had bribed Swami Adwaitanand with Rs 50,000 to encourage him to run as a candidate. 3. Allegations that Mrs. Gandhi's representatives had distributed quilts, blankets, dhotis, and even liquor to sway voters. 4. The assertion that a considerable number of voters were transported to and from polling stations using vehicles organized by Mrs. Gandhi's team. 5. The claim that Mrs. Gandhi's campaign expenditures far exceeded the regulated limit of Rs 35,000. 6. The accusation that Mrs. Gandhi had utilized Yashpal Kapoor's assistance while he was still a serving government gazetted officer.

Most of these allegations, barring the first, fell under the category of corrupt practices as defined by election laws. If any corrupt practice could be substantiated against a winning candidate, the consequence could be severe, leading to the candidate's election being deemed void and facing disqualification from holding public office for a period of six years.

However, Bhushan was skeptical; he regarded the petition more as a vessel for political propaganda than a serious legal challenge. He expressed reservations about the first allegation (the chemical modification of ballots)—the cornerstone of Raj Narain's case—stating his reluctance to move forward without substantial evidence. Bhushan insisted that if he were to advocate for Narain, it must be treated as a serious election petition, devoid of any propagandistic undertones. He eventually urged for the removal of the chemical treatment claim. After some hesitation, Raj Narain reluctantly acquiesced to Bhushan's demands.

As the discussions progressed, Bhushan added three more allegations aimed at strengthening the

petition's framework:

1. That Mrs. Gandhi had sought help from various gazetted officers and police personnel to facilitate her election campaign through various organizational efforts for her rallies. 2. That members of the armed forces had been coerced into providing transportation for her campaign through Air Force aircraft. 3. That the cow and calf symbol employed by Mrs. Gandhi appealed to voter sentiment in a religious context.

When Bhushan was asked to comment on the petition's chances of success, he candidly replied that they were "negligible." He explained that the evidential foundation was insufficient and that few judges would muster the political bravery to unseat the incumbent Prime Minister. However, he emphasized the importance of pursuing the case to ensure their efforts were not in vain.

The following day, Raj Narain was agitated; he could barely sleep due to the prior conversation about removing the chemical treatment claim. Thus, in a show of persistence, he approached Bhushan again, pleading for the contentious allegation to be reinstated. After some back-and-forth, Bhushan agreed, albeit with a modification: rather than alleging that the ballot papers had been tampered with through chemical means, they would claim that many of the ballots counted in favor of Mrs. Gandhi were fabricated. This assertion was particularly bolstered by the fact that the seal marks on these dubious ballots were conspicuously identical.

With these considerations in mind, the final draft of the petition formally alleged:

1. That Yashpal Kapoor's assistance was solicited for her election while he still held office. 2. That at Mrs. Gandhi's behest, Swami Adwaitanand was bribed to become a candidate from Rae Bareli. 3. That members of the armed forces were employed to transport her to campaign events using Air Force resources. 4. That the District Magistrate and the Superintendent of Police arranged for barricades, platforms, and sound systems during her election events at her request. 5. That her agents distributed incentives, including liquor and blankets, to entice voters. 6. That the cow and calf symbol was strategically employed to appeal to religious sentiments among voters. 7. That vehicles were hired by Yashpal Kapoor and her agents to ensure voters traveled to polling stations at no personal cost. 8. That money was spent beyond the legally permissible amount of Rs 35,000 for campaign purposes.

Each of these claims constituted purported corrupt practices under the election law, thereby rendering the election results voidable based on the petitioner's allegations of electoral misconduct. The last claim involving ballot tampering remained a critical focal point of the petition.

On the evening of April 24, Raj Narain and Ramesh Srivastava submitted the petition to the Additional Registrar of the Allahabad High Court, coincidentally the deadline for submitting such a petition. The case was then assigned to Justice W. Broome, who directed notices to be dispatched to the primary respondents: Mrs. Gandhi and Swami Adwaitanand.

Mrs. Gandhi's formal response to the allegations arrived on August 5, 1971, where she refuted claims that Yashpal Kapoor participated in her campaign prior to resigning. She dismissed the bribery accusation concerning Adwaitanand as unfounded.

In her defense, Mrs. Gandhi clarified that travels conducted on Air Force planes were pursuant to existing governmental policy for Prime Ministers, which mandated such arrangements even during personal travels. She urged that utilizing Air Force resources did not constitute a corrupt practice but was a systematic provision for her role as Prime Minister.

Alongside her denials, Gandhi clarified that any barricades, platforms, or police arrangements made during the pre-election period were purely for maintaining public order rather than fostering her campaign. Furthermore, she denied any involvement in the distribution of inducements, asserting that the cow and calf symbol represented her party and did not appeal to religious sentiments. She categorically rejected the allegation of ballot tampering as whimsical.

Following the filing of her written statement, Justice Broome commenced framing the primary issues for deliberation on August 19, 1971:

1. Did Mrs. Gandhi enlist Yashpal Kapoor for her campaign while he was still a government officer? 2. Did Yashpal Kapoor bribe Swami Adwaitanand to induce his candidacy? 3. Were Air Force resources arranged for Mrs. Gandhi's use, and did this action violate election laws? 4. Were local law enforcement personnel involved in facilitating her campaign through barricades or equipment arrangements? 5. Did her agents provide materials to voters to sway their electoral choices? 6. Did the cow and calf symbol amount to appealing to religious inclinations among voters? 7. Were voters provided free transportation to polling stations with Kapoor's approval?

In addition, Justice Broome indicated that an examination of suspected tampered ballot papers would be conducted.

As the case advanced, an application was filed by Narain, seeking to deliver interrogatories to Mrs. Gandhi based on established civil procedures. The defense contested this notion, citing that electoral petitions followed a different procedural framework that did not recognize such measures. However, after thorough consideration, Justice Broome permitted the delivery of these interrogatories.

Representing Mrs. Gandhi was S.C. Khare, a seasoned lawyer and staunch Congress supporter. Expressing objections to the court's allowance for Narain's request, Khare pressed the matter further to the Supreme Court.

This subsequent review involved Justices Hegde, Khanna, and Vaidyalingam, but after comprehensive discussions, Khare withdrew the appeal when advised by the bench.

Amid these proceedings, Raj Narain remained troubled by Bhushan's casual dismissal of the crucial allegation regarding alleged ballot tampering. Urged by his convictions, Narain introduced Bhushan to a scientist who purportedly could prove the claims of chemical alteration. This scientist demonstrated the varying colors of ballot papers under ultraviolet light to Bhushan, but the attorney remained unconvinced. He contended that differences in printing among various presses could account for the disparities noted.

In a bid to resolve concerns regarding tamper allegations, Justice Broome personally inspected samples of ballots on November 15, 1971. After scrutinizing 200 ballots favoring Narain against 600 that benefited Mrs. Gandhi, he found inconsistencies that dispelled the likelihood of tampering.

Around this time, another collection of thirty-one interrogatories was put forward to Mrs. Gandhi. However, her legal team labeled them as "unreasonable, vexatious, oppressive, unnecessary, and irrelevant." The interrogatories primarily zoomed in on Yashpal Kapoor and Adwaitanand's actions. They also argued that the petition's foundations were lacking, demanding that these issues be struck from the record.

Once Justice Broome examined the objections raised, he agreed with Khare's contention and subsequently dismissed several allegations.

Nonetheless, Narain sought to amend the petition citing Section 86(5) of the R.P. Act, aiming to delineate Mrs. Gandhi's candidacy timeline and Kapoor's involvement starting December 27, the day Parliament was dissolved. This retrospectivity was crucial since election misconduct is typically attributed post-candidacy. Unfortunately, this amendment faced significant resistance from Khare, who argued vehemently against its validity.

Justice Broome sided with Khare's perspective, denying the amendment application on December 23, 1971.

Discontent with the verdict, Raj Narain proceeded to appeal to the Supreme Court when Broome's ruling became final. Justices Hegde, Jagan Mohan Reddy, and Mathew constituted the bench that reviewed his petition.

Justice Hegde, delivering the judgment, ruled in favor of Narain, emphasizing that reasonable interpretations of the allegations implied Kapoor's engagement within the context of electoral misconduct. He asserted that while strict proof of personal wrongdoing was requisite, the petitions mustn't be constrained by rigid interpretations.

Authorizing Narain's request for amendments, the Supreme Court mandated that the issue pertaining to Yashpal Kapoor be redefined substantively.

Simultaneously, though Justice Broome had timely retired, the case transitioned through the judiciary, eventually under Justice K.N. Srivastava.

On April 27, 1973, Justice Srivastava instituted additional queries, particularly addressing Kapoor's official capacity, and whether Mrs. Gandhi had publicly declared her candidacy before February 1, 1971.

As the case progressed, witness testimony began on September 10, 1973. One critical witness, S.S. Saxena, holding a position within the Uttar Pradesh government, faced challenges when called upon to present specific documents. His refusal to disclose certain documentation, tied to police communications regarding Mrs. Gandhi's campaign, was predicated on a claim of state privilege under Section 123 of the Evidence Act.

Countering this assertion, Bhushan argued for transparency, stating that without an affidavit asserting state injury via document disclosure, the privilege claim was baseless. Furthermore, as portions of relevant documents were public, he maintained that they didn't qualify under confidential state records.

Despite opposition from Khare and the State's representative, Justice Srivastava opted to allow document production, leading Khare to threaten an appeal to the Supreme Court. Subsequently, a special leave petition was submitted to contest this ruling, prompting delays in proceedings.

During this interim, Justice Srivastava retired, handing over the case to Justice Jag Mohan Lal Sinha who prioritized navigating its complexities, expediting witness testimonies on unresolved matters. By January 1975, the oral evidence collection phase for Narain's side was largely completed.

Amidst these proceedings, the Supreme Court dealt with an important case known as Amar Nath Chawla's case on October 3, 1974. This case influenced the interpretation of election expenses, determining that any expenditure conducted with the candidate's implicit knowledge must be considered part of their official election expenditures. When Raj Narain's legal team reveled in this precedent, a sudden ordinance backpedaled the implications of Chawla's ruling, amending election laws to exclude third-party funding from official expense limits retroactively, infamously viewed as a calculated political maneuver to protect Mrs. Gandhi.

On January 1975, the Supreme Court confronted the privilege issue regarding document disclosure amidst clear hesitations on the part of the executive to bring forth specific correspondence deemed sensitive. The legal discourse expanded, with parties arguing the extent of the court's purview concerning state secrets, leading to profound implications for transparency in political proceedings.

The Supreme Court ultimately upheld the need for an official affidavit to contextualize privilege claims, balancing public interest with judicial oversight, thereby shaping the narrative around electoral integrity in India. Each stage of the journey was marked by legal intricacies, public performances of power, and a relentless quest for accountability in the political realm—a narrative that not only echoed through the courts but rippled out into the very fabric of Indian democracy.

Chapter 3

Prime Minister In Court

Indira Gandhi Appeals to the Supreme Court

On February 12, 1975, the dramatic saga unfolding in the Indian judicial system took a crucial turn as the oral evidence for the pivotal case involving Indira Gandhi began to be recorded. The first witness to take the stand was P.N. Haksar, who, at the time, served as the Deputy Chairman of the Planning Commission. He appeared before the court bearing testimony on a significant aspect: the resignation of Yashpal Kapoor. During his examination, Haksar asserted that Kapoor had indeed submitted his resignation letter on January 13, 1971, and that he had accepted this resignation verbally at that moment. This revelation introduced a new angle to the already complex narrative surrounding Kapoor's resignation.

As the cross-examination commenced, Haksar, probing the depths of administrative norms, revealed that he had taken his office position as Deputy Chairman based solely on a verbal order from none other than the Prime Minister. When Bhushan, the counsel examining him, inquired whether government officials could be appointed without formal written orders, Haksar confirmed that it was permissible for temporary government employees, though he couldn't cite a specific rule allowing such practices. Furthermore, he maintained that appointing authorities possessed broad powers, enabling them to make and terminate appointments verbally without extensive documentation.

The spotlight eventually turned to Yashpal Kapoor, who emerged as the key witness for the respondent. His testimony was expected to establish critical connections regarding his resignation, his role as a supporter of Mrs. Gandhi during the elections, and issues tied to campaign financing. On February 18, 1975, Kapoor appeared in court, ready to present his case. His demeanor was striking; he exhibited a palpable bravado, strolling confidently in the witness box, hands tucked into his pockets, a smile that could easily be interpreted as one of disdain. This apparent nonchalance was misleading, as Kapoor struggled under the pressure of cross-examination, inadvertently revealing inconsistencies and blunders in his statements.

The ramifications of Kapoor's less-than-stellar performance did not go unnoticed by Mrs. Gandhi's legal team. Recognizing the gravity of the situation, they recommended that the Prime Minister herself testify; thus, a request was made on February 26 by Khare to Justice Sinha, suggesting the formation of a Commission in Delhi to record her statements. However, Justice Sinha deemed it inappropriate to grant the Commission the authority to dismiss questions at will. Consequently, it was arranged for Mrs. Gandhi to appear in person at the Allahabad High Court.

Contrary to popular belief that she was summoned, Mrs. Gandhi's decision to testify stemmed from her own volition and her lawyers' guidance. This advice, though widely debated thereafter, was notably cautioned against by Pandit Kanhaya Lal Mishra, the former Advocate-General of Uttar Pradesh, just days before his demise. He conveyed his apprehension through a letter imploring her not to take the stand for her own sake—a warning that would later echo in Mrs. Gandhi's reflections.

The court scheduled her testimony for March 18, 19, and 20, prompting a flurry of preparations

on both sides. Mrs. Gandhi's legal team conducted rigorous rehearsals to formulate questions aimed at bolstering her position, while on the opposite side, petitioner Raj Narain and his team, comprising diligent aides, gathered daily at Bhushan's residence to refine their strategy. They cast their net wide, reaching out to the Congress (O) office based at Jantar Mantar in search of documents that could undermine Mrs. Gandhi's credibility, as this repository contained an extensive collection of records prior to the Congress party's split in 1969.

From the multitude of materials sent back from Jantar Mantar, only one document stood out as potentially damning: a letter from the Lieutenant-Governor of Himachal Pradesh, the Raja of Bhadri. This communication referenced the successful Lok Sabha by-election candidate and suggested that Mrs. Gandhi had not only been a pivotal figure but had perhaps even exerted undue influence on neutral authorities, which could backfire dramatically.

By the time Mrs. Gandhi arrived in Allahabad on February 17, the case had flown under the radar of the public eye. Local media had reported on certain developments, but largely, the proceedings were dismissed as inconsequential—a frivolous election petition from an aggrieved party. That perception shifted abruptly with the impending cross-examination of India's Prime Minister, an event unprecedented in Indian history. Such a scenario drew massive attention, with security tightened around the courthouse. Access was restricted to only judicial personnel, attorneys, and select members of the press, leaving the court teeming with anticipation.

As court convened, an unsettling incident unfolded right outside: Govind Misra, an editor of a local publication, was intercepted by security for allegedly carrying a loaded firearm hidden within his briefcase. The unease this sparked reverberated through Parliament, prompting calls for more stringent security measures for the Prime Minister.

Inside the packed Court No. 24, high-profile opposition leaders, including Madhu Limaye and Shyam Nandan Mishra, had converged to witness the proceedings, their presence an unmistakable testament to the stakes at play. Among the audience was Raj Narain, who had obtained permission to attend despite his fiery reputation—he had promised to remain silent throughout.

At 10 a.m. prompt, the judge entered, prompting a customary standing ovation from the court. Despite the conventional protocol of remaining seated for the presence of witnesses, a wave of enthusiasm led some to rise as Mrs. Gandhi graced the courtroom. Uncharacteristically, she was seated on an elevated platform beside the judge, signaling the importance of the moment. Her demeanor was remarkably composed, exuding confidence devoid of showing visible nervousness for the ordeal to come.

Khare took the lead in the examination, his excitement palpable. His focus zeroed in on critical matters—whether Mrs. Gandhi represented herself as a candidate before February 1, and ultimately, the veracity surrounding Kapoor's resignation. His initial questioning lasted about an hour, setting the stage for Bhushan's awaited cross-examination, which carried monumental implications not just for the case, but for the political fabric of the nation.

As Bhushan arose, his anticipation was palpable, knowing the gravity of the moment that awaited him. Cross-examinations are often draped in the guise of dramatic unveiling; nevertheless, they frequently tread in more subdued territories, where intrigue gives way to procedural rigor.

At day's end, the courtroom breathlessly anticipated the next chapter. An informal gathering over tea at Bhushan's home allowed the gathered opposition leaders to contemplate the day's proceedings. While the consensus was that Mrs. Gandhi had maintained a sturdy front, others hinted at deeper strategies yet to unfold. Piloo Mody even urged Bhushan to adopt a more aggressive approach, a thought he cheekily dismissed, hinting that the Prime Minister would soon fall into a cleverly laid trap.

As days unfolded, Bhushan seizing upon a critical and fortuitous piece of evidence altered the trajectory of the cross-examination. Mrs. Gandhi had previously claimed to have made the decision to contest the Rae Bareli seat only on February 1. Yet, a document from the AICC countered this statement, revealing that a pivotal decision had been concluded weeks prior, thus catching her off-guard. On being presented with the additional written statement, she struggled to assert her understanding of its legal jargon—a slip that, while slipping under public radar momentarily, resonated with sharper observers.

As the case readied for its concluding arguments, Raj Narain found himself incarcerated due to his participation in a civil disobedience movement. True to form, this wasn't his first experience with incarceration, having spent a considerable portion of his post-Independence life behind bars. Nonetheless, he was allowed daily visits to brief his legal team, during which he bestowed upon Bhushan a curious stone—a charm steeped in faith but viewed with skepticism. However, its presence clung steadfastly to Bhushan throughout the ensuing moral and legal struggle, embodying the tension enveloping the courtroom drama as it edged closer to its climactic finale.

Chapter 4

Now High Court

The Opening Argument of the Petitioner

In a courtroom thick with tension and anticipation, Bhushan stood poised to present the opening arguments on behalf of the petitioner. The focus of his discourse was a matter of legal and ethical gravity—an intricate web woven around the use of Air Force planes by Respondent No. 1, former Prime Minister Indira Gandhi, during her electoral campaign.

The Issue of the Air Force Plane

The crux of the matter was encapsulated in the court's question: did members of the armed forces arrange Air Force planes and helicopters for Mrs. Gandhi, allowing her to reach election meetings on February 1 and 25 in 1971? Furthermore, did this constitute a corrupt practice under Section 123(7) of the Representation of the People Act (R.P. Act)?

Section 123(7) delineates corrupt practices as unauthorized assistance obtained or procured from certain classes of government employees for the electoral advantage of a candidate. The list notably includes members of the armed forces, gazetted officers, and excise officers. The law clearly states that any assistance that furthers a candidate's election prospects, beyond merely casting votes, is grounds for allegations of corruption.

Bhushan asserted that the facts surrounding this issue were undisputed. It was acknowledged by the defense that Mrs. Gandhi had flown from Delhi to Lucknow in an Air Force plane on February 1, which facilitated her journey to Rae Bareli to file her nomination papers. Bhushan's argument hinged on two pivotal points he needed to substantiate: firstly, that Mrs. Gandhi did indeed procure the Air Force personnel's assistance specifically for her benefit; and secondly, that this assistance was directly linked to enhancing her electoral prospects.

He refuted the opposition's claim that the Air Force plane had been provided by standing orders for the Prime Minister's travel. He pointed out that amendments made in 1968, of which Mrs. Gandhi was a party to, had changed the regulations allowing Air Force planes to be utilized for non-official purposes, including election-related activities. "She cannot escape the charge of corrupt practice," Bhushan stated emphatically, stressing that irrespective of rules, the onus of ethical compliance lies with the candidate.

He further argued that the presence of the armed forces could not be justified as necessary for security alone. If security could be a rationale to provide advantages to a sitting Prime Minister, it implied that every member of the ruling party could exploit the same plea, giving them an unfair advantage in the electoral process. Such actions contravened the very spirit of fair elections, as outlined in Section 123(7) which is focused on ensuring equality among all candidates.

The Issue of Rostrum and Loudspeakers

Transitioning from the Air Force issue, Bhushan shifted to the arrangements of rostrums, loudspeakers,

and barricades during Mrs. Gandhi's election campaign. This led to another critical aspect: whether these provisions were made at her behest and if they constituted a corrupt practice under the same section of the R.P. Act.

The defense held that local officials acted in accordance with the Blue Book's guidelines for organizing events related to the Prime Minister. Yet, Bhushan argued that administrative orders cannot overrule statutory provisions. The amendments made to these guidelines in February 1969 further illustrated that the procedures were tailored to include arrangements for election meetings too—an alteration that showed intent and awareness on Mrs. Gandhi's part.

He cited a letter from the UP Chief Minister, expressing concerns over the financial burdens imposed by these arrangements meant to secure the Prime Minister, which inadvertently added to the strain on state resources at the taxpayers' expense.

"Security cannot be a blanket justification," Bhushan passionately posited, reasoning that every arrangement made solely for the party in power could distort the electoral balance. Moreover, his focus was on how these resources utilized for her campaign effectively translated to an unfair enhancement of her election prospects.

The Issue of Election Expenses

Next, Bhushan turned to the significant matter of election expenses, underpinned by precise legal boundaries set by Section 77 of the R.P. Act, which capped campaign expenditures at Rs. 35,000. He argued that Mrs. Gandhi and her election agent, Yashpal Kapoor, had certainly exceeded this limit by a substantial margin, as evidenced by various transactions that were omitted in her expense filings.

Citing past Supreme Court decisions, he clarified that the election expenses claimed by political parties must accurately reflect the spending and, crucially, cannot simply be delegated to others without accountability. This would be tantamount to manipulating political financing laws, enabling wealthier candidates to cloak their excesses under convoluted legislative amendments.

He detailed every aspect of the spending, from arrangements made for rostrums to the hiring of twenty-three vehicles utilized across multiple constituencies during her campaign. The evidence painted a vivid picture of noncompliance, including a bank account of the District Congress Committee proving substantial transactions that were directed towards Mrs. Gandhi's campaign needs.

The Issue of Holding Out

Among the more thorny issues discussed by Counsel was the timeline of when Mrs. Gandhi officially became a candidate. According to the R.P. Act's definition, a candidate is deemed to hold this label at the point they position themselves as such to the public. Through various public statements and press conference footage, Bhushan insisted Mrs. Gandhi pre-emptively held herself out as a candidate well before the official election announcement, thus implicating her in corrupt practices.

Drawing on witness testimonies and evidence from the media, Bhushan pressed the argument forcefully, asserting that Mrs. Gandhi's own statements indicated a clear and present intention to contest the election from Rae Bareli long before she filed her nomination papers on February 1.

The Issue of Yashpal Kapoor

Shifting focus to Yashpal Kapoor, the question emerged whether he was indeed procured for assistance while still serving as a government officer. Bhushan meticulously dissected the timeline of Kapoor's resignation, pointing out discrepancies in the narrative provided by both Kapoor and the Respondent. His resignation was officially accepted well after he had started working on her campaign, leading to questions about the legality of his involvement under civil service rules.

"Circumstantial evidence suggests Mrs. Gandhi orchestrated the timeline of events while ensuring she'd have Kapoor at her disposal under dubious pretenses," he concluded, emphasizing not just the letter of the law, but the spirit in which such law was intended to uphold democracy.

The Religious Symbol Issue

Finally, Bhushan addressed the controversial use of the cow and calf symbol that Mrs. Gandhi had campaigned with, interpreting this as an appeal to religious sentiments that violated Section 123(3) of the R.P. Act. He argued robustly that while the acknowledgment of this symbol by the Election Commission did not absolve her from the responsibility of confrontation over its nature, it was nothing short of a tactical maneuver to galvanize a core demographic within the electorate.

With every piece of evidence presented and arguments articulated, the courtroom resonated with the echoes of constitutional law intertwined with the very fabric of democracy. Bhushan concluded his extensive arguments with gratitude towards the judge, acknowledging the patience shown through lengthy proceedings that elucidated one of the most contentious electoral matters in Indian history, one that raised questions on governance, ethics, and the very essence of democratic principles.

Chapter 5

Some Progress In Case

The Attorney General's Defense of the Amendment

As the courtroom buzzed with anticipation, a significant announcement captured the attention of all present: the Attorney-General, Niren De, would personally represent the Union in the High Court to defend the validity of the controversial amendment to the Representation of the People (R.P.) Act. In the complex world of legislative law, challenges to the validity of parliamentary laws frequently arised in various High Courts. These courts, when faced with such challenges, typically served notice to the Union, requiring it to defend its legislative actions. While it was customary for standing counsels to handle these matters, the stakes were evidently high in this case, prompting the Attorney-General's direct involvement.

On May 5, an air of intensity filled the courthouse as Niren De commenced his arguments. His strategy unfolded with a sharp critique of Justice Bhagwati's judgment in the Chawla case, where the matter at hand was ostensibly straightforward yet had spiraled into an extensive debate on election expenses. De vehemently asserted, "The issue in Chawla's case was a simple matter of fact. Yet the learned judges decided to outline substantial legal stipulations regarding election expenses, an area where they had no jurisdiction." He continued, exposing what he called the judges' philosophical aspirations regarding electoral reforms, which, he insisted, lacked practicality in application.

"The notion of equality between candidates stands flawed," De argued passionately. "How can we expect true equality between a candidate who earns Rs 100 a month against another who earns Rs 50,000? Even if we impose a spending limit on election expenses capped at Rs 100, it raises an essential question—can a starving individual truly afford even that minimal amount to participate in an election?"

At the heart of De's argument lay a profound misconception he attributed to the judges' ruling that equated democracy directly with equality. "No democracy exemplifies perfect equality," he contended. "Look at Switzerland—women still do not vote there. Can anyone, in good faith, argue that it lacks democratic essence? Furthermore, one must consider the pivotal role of money in electioneering in the United States. Are we to claim the termination of democracy if complete equality among candidates remains unachievable?"

He meticulously dismantled the conclusions drawn in Chawla's case regarding distinctions between expenditures for party propaganda and individual candidates. "During election campaigns, all expenditures incurred by a party are inherently tied to its candidates," he stated. "Does Chawla's ruling imply that party representatives cannot even enter a candidate's constituency to promote their policies?"

Justice Sinha interjected, seeking clarification. "You can certainly enter the constituency, but you're expected to discuss general party policies. If a party bears all the expenses for a candidate, does it follow that the candidate isn't obligated to report any election expenses?"

To which De answered, "Yes, no such return needs to be filed."

The Attorney-General continued to underscore the absurdity of the limitations placed by the ruling on

general party expenses. He framed a rhetorical inquiry, expressing disbelief: "If empowering the common man is central to our democracy, should we not simply dissolve political parties? Can we realistically anticipate achieving social, economic, and political justice through arbitrary ceilings on party expenses? Such aspirations are nonsensical."

Drawing on his personal political experiences, De invoked memories of his own run for Parliament in 1951 against a prominent Congress candidate. "Anyone contesting knows that wealth does not always dictate an outcome. I lost my race despite having robust financial backing, primarily due to the proliferating Nehru posters that filled my constituency. JFK triumphed in a fierce political atmosphere, and despite a Republican financial juggernaut, he won simply because of his looks appealing to female voters. Where does the notion of money power figure into this narrative of democracy?"

Further reinforcing his argument, he referenced precedents from past judgments related to election expenses—as he asserted, Chawla's case represented a stark deviation from established legal tenets, despite attempts by the judiciary to claim otherwise. "What the Supreme Court opines regarding historical cases bears little relevance now," he stated firmly. "The High Court must reinterpret earlier Supreme Court rulings anew."

Turning to the crux of the matter—the amendment's validity—De laid out critical considerations: addressing whether Parliament's legislative actions fell within its competence and if they infringed upon any fundamental rights enshrined in the Constitution. He firmly opined that it was within Parliament's purview to establish legislations freely, impervious to judicial scrutiny. "Even should this amendment contradict a Supreme Court decision, it must be upheld by the courts. Amending law post-judgment isn't an affront; it's a necessary clarification of legal ambiguities left by Chawla's case," he asserted.

He then addressed Bhushan's claims regarding the discriminatory nature of the amendment due to its retrospective nature. "Before you can assert protection under Article 14, you must demonstrate how the law discriminates against you. The petitioner fails to show that he perceived Chawla as law during his electoral contest. Bhushan's arguments are, at best, unfounded."

At this juncture, Bhushan interjected to clarify his stance: "I never argued against the legislature's authority to create retrospective laws. My contention strictly pertains to retrospective laws concerning corrupt practices."

De swiftly acknowledged Bhushan's clarification but countered that he had yet to substantiate his claims with legal authorities. The Attorney-General began citing cases, including one in which the Supreme Court invalidated the Cuttuck Municipal Elections. Subsequently, the Governor had retroactively validated these elections through an ordinance declared valid by the Supreme Court.

He juxtaposed this with another instance cited by Bhushan, where the Bombay High Court annulled an appointment to the State Electricity Board over relaxed qualifications. The Attorney-General noted that unlike the latter case, no barriers existed preventing Mr. Narain from contesting the elections in question.

"Bhushan's assertions about Article 327 only empowering Parliament to enact prospective laws are misconceived," De articulated with confidence. "Legislative authority encompasses both prospective and retrospective legislation. If Parliament can legislate prospectively, it certainly holds the power to legislate retrospectively as well."

As he pushed back against Bhushan's characterizations of the amendment as a mere tool to shield an individual, De maintained, "Nothing in this amendment indicates it was crafted exclusively for Mrs. Gandhi. It comprehensively applies to various cases currently winding through the court systems. Even if we conceded that the amendment's primary beneficiary happens to be Mrs. Gandhi, that does not inhibit Parliament's constitutional prerogative to enact such laws."

Finally, as the Attorney-General entered the closing phase of his 2.5-day-long defense, he assured the court that the amendment itself did not erode the foundational aspects of democracy, nor could it be dismissed on ambiguous grounds. "The essence of the Kesavananda Bharati case established that key elements of the Constitution cannot be dismantled. However, the mere notion of democracy isn't encapsulated as a 'basic feature.' The Constitution guarantees adult suffrage and prohibits discrimina-

tion in voting based on attributes like race, caste, sex, or religion. All other electoral laws are within Parliament's jurisdiction to modify," he elaborated decisively. He implored the court, "To claim that changing the definition of corrupt practices equates to dismantling democracy is a steep leap. If we were to assert that no ceiling on election expenses denoted the absence of democracy, how can anyone argue that democracy did not exist in India prior to Chawla's ruling?"

As the Attorney-General wrapped up his vigorous pleas, having firmly articulated his position, he left the courtroom in a taut silence that left many contemplating the delicate interplay between law, democracy, and the future of electoral integrity in India.

Chapter 6

Now Pms Turn

The Counsel for the Prime Minister

As the courtroom buzzed with anticipation, the atmosphere grew tense. The Attorney-General had just concluded his arguments, laying the groundwork for the pivotal case that involved the Prime Minister, a situation fraught with political undertones and legal complexities. Among the legal team representing the Prime Minister was Khare, who had just excused himself, feeling unwell from a sudden headache. His absence, however, did not deter the proceedings; J.N. Tewari, Khare's junior, stepped up, noting the need to hear the petitioner's rejoinder on the validity of the amendment before the respondent's reply.

"I respectfully request, My Lord, that we hear our rejoinder prior to the respondent's arguments," Tewari urged, though he was met with refusal from Justice Sinha. The judge insisted that Khare's absence was inconsequential—Tewari was well-versed in the intricacies of the case and could commence with the arguments.

Tewari shifted slightly as he admitted, "My Lord, I do not have the paper books with me."

"Why don't you utilize mine?" Bhushan offered, sharing the records of evidence. A grimace crossed Tewari's face; he had hoped for a different order, one that would allow him to argue in his preferred sequence. Nevertheless, he proceeded with the Air Force plane argument, aided by the materials provided.

Simultaneously, as the court convened, a message reached Khare. The urgency of the situation compelled him to set aside his discomfort, and he rushed back to the courtroom, realizing that Tewari had been standing for only twenty minutes, a task he promptly took over.

With gravitas, Khare addressed the court, "Your Lordship will notice that this is not an ordinary election petition."

"Not at all," acknowledged Justice Sinha.

Khare proceeded passionately, asserting, "This petition serves as a platform for political figures of the grand alliance to slander the Prime Minister. It mirrors the scheme devised by historical figures like Goebbels, aimed merely at tarnishing reputations without substantial evidence." His words pierced through the courtroom, spotlighting the politically charged nature of the petition.

He continued vehemently, "The petitioner's counsel has displayed a shocking irresponsibility, launching baseless allegations against the Prime Minister. The document is rife with ridiculous and fabricated claims, most of which have been withdrawn during the trial." He pointed towards the inconsistencies, citing the testimony of Mr. Nijilingappa, leader of Congress (O), who had traveled all the way from Mysore merely to present a newspaper, lacking any personal knowledge relevant to the accusations. Alongside him, other prominent leaders like Mr. Advani and Mr. Banarasi Das had also come with only partisan intent, seeking to amplify the sensational aspects of the petition rather than present factual evidence.

Khare emphasized that the petition was hollow and served solely as a means of political propaganda, a strategy that had been consistent through each proposed adjournment, hoping to prolong the sensationalism surrounding political figures.

Justice Sinha reminded the court, “Proceedings have been adjourned, as requested by both parties.”

Bhushan interjected, clarifying, “In truth, they were the ones who primarily filed appeals to the Supreme Court.”

Sinha responded neutrally, ”Well, you also took your case there...”

“Yes, we did so once,” Bhushan noted. “However, they approached twice, one instance being on an absurd issue that was abandoned even before substantive arguments commenced.”

In an organized rebuttal, Khare elaborated on the issues that, in his view, held no merit. He cited the specific allegation that Yashpal Kapoor bribed someone—a claim duly abandoned by the petioner's counsel, demonstrating the absence of solid grounds for the case. Allegations involving distributions of blankets and other items to voters were dismissed when investigative scrutiny revealed only a single witness's contradictory testimony.

Khare pushed further, stating, “The Prime Minister's activities have been overt; looking through the records reveals that she did nothing in secrecy. Her travels by Air Force plane on February 1, 1971, were in line with established protocol, just as all Prime Ministers have done in the past 25 years.”

He argued that the core of the petition rested on an erroneous assumption that the burden of proof lay with the Prime Minister, calling out the irrational notion that mere conjectures validated claims of corrupt practices. Khare articulated his position against the amendment's alleged illegitimacy: “The contention that the amendment was a colorable legislation is wholly unfounded. It does not grant any undue advantage to the Prime Minister.”

Khare dissected Bhushan's argument about the amendment infringing on a constitutional tenet, asserting that while such concerns could apply to constitutional amendments, they hardly stretch to the realm of ordinary legislation. ”Provisions about elections inherently sit within the basic structure established by the Constitution. This amendment does not alter that essence,” he clarified.

Turning the discussion toward retrospective amendments, Khare pointed out historical precedents like the Bihar Legislature (Removal of Disqualification) Act, illustrating that if the Constitution itself could adopt such amendments, there was little justification in resisting ordinary laws from similar treatment.

As the discourse shifted to the contentious issue regarding Air Force plane usage, Khare argued that Mrs. Gandhi had neither procured nor requested the Air Force services—the protocols were predetermined. “This assistance is pivotal during elections because the Prime Minister must continue to operate without interruption,” he elaborated, advocating for the necessity of security amid unforeseen circumstances like national emergencies.

His argument resonated further as he shared examples of notable figures, including Biju Patnaik and Maharani Gayatri Devi, who also utilized aircraft for their campaigns, emphasizing the commercial nature of such services. “If one were to argue that any government services rendered constituted corrupt practice, then one might as well disqualify candidates who traveled by train, as they too are availing of public resources,” Khare proposed.

Justice Sinha queried, “Does the facade of payment differentiate it in terms of electoral practice?”

“It does!” Khare pressed, “This is a protective measure given the relevant authorities. Even the Prime Minister's movements, much like any governmental operation during crucial times, require such provisions.”

A series of pointed debates ensued, particularly surrounding Yashpal Kapoor's role and resignation. Khare argued the validity and timing of Kapoor's resignation, countering contradictory claims regarding the acceptance of that resignation and the implications of his actions in the lead-up to the elections. He asserted that the timeline and circumstances backed their narrative; his resignation was duly noted and

accepted orally, lifting any doubts the petitioner sought to impose.

As Khare engaged with the compelling narratives of speeches and gatherings during the electoral campaign, he emphasized that Kapoor's contributions did not constitute an official tacit endorsement or demand. Through cross-examinations of witnesses brought forth by the petitioner, he dismantled their credibility, characterizing their testimonies as partisan conjectures lacking substantial proof.

As the deliberations evolved, Khare tackled pressing issues regarding whether Mrs. Gandhi had held herself out as a candidate leading up to the elections. Analyzing her public statements, Khare argued that unless she had clearly established her candidacy, any claims of holding out deemed baseless.

In closing, he underscored his commitment to justice and legal integrity: "The decisions and actions taken here deserve prudent consideration. I aspire for the court—your Lordship—to deliver a ruling grounded in the law, devoid of favor but reflective of a statesman-like clarity." After enduring a rigorous debate over nearly nine extensive days, Khare concluded his compelling arguments, a testament to the political and legal maelstrom surrounding one of India's most historic electoral disputes.

Chapter 7

Fighting Back

The Petitioners' Response

In a critical moment of the proceedings, Bhushan initiated his rejoinder by addressing the arguments presented by his adversaries, Khare and the Attorney-General. He noted, "Your Lordship, over the past thirteen days, you have been presented with extensive submissions from both the Attorney-General and my esteemed colleague, Mr. Khare. While they have shared insights drawn from their personal experiences in electoral contests, it is pertinent to mention that I, unfortunately, do not share that same background as I have never contested an election."

Continuing, Bhushan remarked on Mr. Khare's testimony regarding the extravagant expenditures some candidates incur for their campaigns, referencing Khare's mention of costs such as Rs 20,000 spent on cosmetic enhancements and substantial sums on Scotch whisky purportedly to maintain a candidate's spirits during the grueling election process. Khare elaborated on the financial outlay for multiple new suits to ensure candidates would present a fresh appearance at every electoral gathering.

Contrastingly, the Attorney-General shared a more sobering account of his own run in the 1951 general elections as an independent candidate. Despite his substantial financial resources, he lamented a loss attributed to the widespread visibility of Jawaharlal Nehru's campaign posters throughout his district. In light of this experience, the Attorney-General argued that monetary influence was not a determining factor in electoral success. Bhushan interjected, casting doubt on the Attorney-General's claims about his campaign funds, noting that the expense cap in place during that election year was relatively low. He suggested that the advantages enjoyed by the Congress candidate in 1951, including favorable public perception, ultimately contributed significantly to the Attorney-General's defeat.

Before delving into the specific nuances of the opposing arguments, Bhushan expressed concerns over several general assertions made by the other side. He recalled that the Attorney-General's vehement critique of Justice Bhagwati's ruling in Chawla's case had been met with such astonishment that it garnered significant media attention, even earning a headline stating, "Attorney-General questions the wisdom of the Supreme Court." Bhushan clarified his respect for Justice Bhagwati's judgment, describing it as the work of an eminent jurist, and highlighted the gravity of the Attorney-General's critique of a binding Supreme Court decision, which is enforced under Article 141.

In another surprising instance, the Attorney-General addressed the Supreme Court ruling in the landmark Kesavananda Bharati case. He acknowledged that the majority decision articulated fundamental principles regarding the immutability of the Constitution's core tenets. Nevertheless, he discredited the ruling's significance without providing justification. This approach raised questions in Bhushan's mind—it appeared that the Attorney-General's disregard stemmed from the fact that three judges involved in that majority ruling were superseded in their appointments by the government. Bhushan made it clear that the Attorney-General's stance was beneath the dignity befitting his esteemed position.

Highlighting the continuous validity of decisions made by the Supreme Court under Article 141,

Bhushan mused whether the Attorney-General was attempting to introduce a novel distinction for Supreme Court rulings, coining the term "disapproved by the Attorney-General" (DAG), suggesting an unwarranted undermining of established legal authority.

Turning to Khare's principles, which alleged that a witness's credibility was dependent on their status, Bhushan made a compelling counterargument. He asserted that a witness's station in life should have no bearing on the evaluation of truth, particularly when that individual has a personal stake in the matter at hand. He cited common knowledge that those of higher social standing might have greater incentives to misstate facts compared to individuals with less to lose.

Mr. Khare had further posited that the court should navigate the case as a "statesman" rather than a politician. Bhushan respectfully rebuffed this suggestion, affirming his belief that the court would act judiciously and solely in the capacity of a judge. In defining the essence of justice, he laureled the judge's role as the highest of all societal functions, venerating their moral integrity and intellectual prowess.

Mr. Khare had introduced an element of probabilistic reasoning by suggesting the court should weigh the potential outcomes of its ruling. To illustrate his point, Bhushan quoted the venerable William Wilberforce, who stated, "Sir, when we think of eternity and the future consequences of all human conduct, what is there in this life that should make any man contradict the dictates of his conscience, the principles of justice, the laws of religion, and of God." He encapsulated his thoughts with the assertion that a nation's greatness lies in its adherence to principle over mere personalities—justice thrives in its foundation upon enduring values rather than capricious considerations.

As the discourse moved towards the validity of the amendment at hand, Bhushan laid out the crux of the opposing argument, which suggested that the amendment merely reinstated the pre-existing legal framework articulated by the Supreme Court prior to Chawla's ruling. Bhushan challenged this notion by clarifying that, whether or not ambiguity existed in the legal understanding prior to the Chawla case revolved around the necessity for express or implied authority concerning candidate expenditures.

He emphasized that the amendment's language does not address the nature of authority but unequivocally states that all expenditures attributed to political parties or external affiliates should not be viewed as a candidate's own. This broad interpretation could lead to a scenario where a candidate could escape accountability for their spending if another party authorized it, a perspective Bhushan cited was not previously recognized by any court.

Refuting the Attorney-General's suggestions that financial resources had little bearing on electoral contests, Bhushan turned to the teachings of the Supreme Court in Chawla's case, underscoring the widespread acknowledgment of monetary influence in electioneering. He remarked on the Attorney-General's assertion that the legislature holds the prerogative to legislate both retrospectively and prospectively, refuting this notion by illustrating cases where retrospective application might result in discrimination.

Bhushan elaborated with hypothetical illustrations, casting the Attorney-General's retrospective legal revisions as reminiscent of a whimsical fiction—wherein grave consequences might unfold before legal reasoning capable of addressing them even surface. To avoid descending into such errant enforcement, Bhushan asserted that laws should precede election activities, rather than serving as an afterthought.

Delving deeper into the Attorney-General's claims, Bhushan criticized the illogic embedded within the assertion that Mr. Narain needed to prove no law infringements occurred for him to establish a case of discrimination. The presumption of innocence lies at the heart of jurisprudence, where an individual should never be required to prove their non-culpability in the face of law unless they have been unequivocally proven guilty.

As the discussion progressed further into other retrospective electoral law cases cited by Khare, Bhushan unveiled that they merely involved the annulment of disqualifications stemming from candidates holding offices of profit, thereby validating their elections. He stipulates that such removals do not equate to unfair treatment of rival candidates, whose chances remained equal under the existing laws.

When confronting the allegations regarding the constitutionality of the Amending Act, Bhushan expressed regret regarding the Attorney-General's claim that democracy was not acknowledged as a

fundamental aspect of the Constitution in the Kesavananda Bharati judgement. Quoting the various judges in that groundbreaking case, he asserted that all had underscored the importance of democracy. Arguing, "If we disregard democracy as a basic feature, then what else remains?" Clutching a copy of the Constitution, Bhushan conveyed his sentiment that the Attorney-General appeared more concerned with the physical book than its underlying principles. It was crucial to grasp not merely the text but the living essence of democracy that the Constitution embodies.

As Bhushan presented his points regarding election expenses, he firmly tackled Khare's claim that no election expenditure occurred concerning the usage of Air Force planes, positing that expenses attributed to electoral activities extended to any costs related to campaigning—regardless of direct electoral benefit. He cited relevant Supreme Court cases illustrating that even funds directed towards candidates whilst still seeking nomination were classified as election expenses.

He challenged a further argument made by Khare, which stated that since specifics were omitted regarding certain expenditures, those costs should be disregarded. Citing multiple cases where the lack of specificity did not hinder the acceptance of pertinent expenditures led Bhushan to assert that sufficient evidence exists to consider these matters in light.

In addressing the contentious topic of vehicles—specifically twenty-three claimed to have been utilized—he countered Khare's assertion that insufficient evidence existed regarding their use in Mrs. Gandhi's campaign. Bhushan pointed to existing evidence, asserting that their release by Kapoor indicated a direct connection to the campaign finances within the constituency. The burden of proof, he argued, should then shift to the opposition to demonstrate these vehicles bore no relationship to Mrs. Gandhi's electoral endeavors.

Tackling Khare's contention that expenses associated with security rostrums could not be classified as election costs, Bhushan passionately refuted this notion, revealing an official directive that outlined the purpose of such arrangements: ensuring every attendee could view and hear the Prime Minister uninterrupted. He inferred that any expenses related to facilitating public access served to enhance a candidate's electioneering efforts.

Delving deeper, he pointed out Khare's contradictory claim that since the rostrums were constructed by a state government—an entity led by the opposition—those costs should not be included in the total expenditure. Through an engaging analogy, he posed a hypothetical: if a candidate were to request gasoline from an enemy under duress, should that expenditure not count against them? Justice Sinha jokingly quipped, "Where is the gun?" to which Bhushan, undeterred, stated, "Article 356 of the Constitution acts as that gun," emphasizing the President's power to manage state affairs under specific circumstances.

Bhushan continued to assert that the suggestion the Prime Minister had a mandated obligation to utilize these constructed rostrums lacked legal foundation. "There are no statutory requirements compelling her conformity to specific security measures," he noted, suggesting that her choice of platform remained at her discretion.

Turning to the Air Force planes, Bhushan expertly disassembled Khare's arguments surrounding their legality, asserting that the provisions of the R.P. Act do not limit corrupt practices to a candidate's constituency—they only require a candidate to ensure that such practices are not employed to advance their election. He compellingly questioned the rationale for permitting an infraction merely because it had previously occurred without challenge.

Bhushan concluded his reflections on the ongoing case. Addressing apparent contradictions and probing the substance of Khare's assertions, he maintained a resolute stance against the ethical implications involved in leveraging state resources for political gain. As proceedings transitioned toward the symbol issue, he reiterated that the legitimacy of the manifestations of corrupt practices must serve the electorate's interests above all else.

In closing, Bhushan wrapped up his arguments on May 22 after several days of intensive discourse. His cohesive narrative underscored the intersection of legal theory, moral jurisprudence, and salient societal values inherent within democratic processes.

The final segment of this consequential exchange was taken up by Dr. R. S. Dwivedi, a Sanskrit scholar

who enriched Bhushan's arguments related to the religious symbol in question. He drew extensively from sacred Hindu texts, asserting that the cow was emblematic of divinity within the religion and its veneration integral to Indian culture.

Justice Sinha, engaging with Dr. Dwivedi, posed thought-provoking inquiries about the practicality of worship within contemporary society, emphasizing the need to consider the populace's perspective on such religious symbols. Dwivedi interpreted the reverence afforded to the cow through theological texts, asserting that while logic may not completely delineate religion, faith in these texts remains rooted in an unwavering conviction.

As the courtroom dialogue ebbed on, Justice Sinha sought context on the perceived socio-religious significance of the cow, compellingly probing whether such respect translated to a collective understanding among Hindus today. Dwivedi's articulate but complex defense of the symbolic representation of the cow emerged as both a point of contention and inquiry regarding the broader implications of faith amid legislative matters.

Wrapping up his arguments on May 23, the last working day before the High Court's summer recess, a reporter inquired about the anticipated timeline for the judgment. Flashing a knowing smile, Justice Sinha responded wryly about the numerous references to authority made by counsel but none addressing the timing of his decision, though he assured them of his intent to deliver the judgment come June, underscoring the pressing nature of the matter at hand.

In this intricate tapestry of legal, ethical, and cultural implications that unfolded, the proceedings marked a momentous chapter not just for the parties involved, but for the democratic ethos of the nation itself.

Chapter 8

The Verdict

The Judgment

With the conclusion of the arguments, an air of tense anticipation enveloped the courtroom. The long-awaited judgment was now on the horizon, fueling hopes and fears alike. Legal teams on both sides brimmed with optimism; Shanti Bhushan was convinced of his strong chances, perhaps even greater than a mere 50-50 split. Conversely, S.C. Khare, representing Prime Minister Indira Gandhi, scoffed at the possibility that their side could lose, firmly rooted in his belief of her absolute position in the political arena.

Outside the walls of the Allahabad High Court, speculation buzzed through the crowds like electricity. Bets were placed among enthusiastic onlookers and the curious, their excitement translating into palpable tension as the date of the judgment approached. Although those who had actually heard the arguments were cautious, recognizing the delicate balance of the case, the wider public remained largely skeptical of Justice Sinha's potential decision. The mere fact that the Prime Minister was the respondent seemed to cast a shadow of intimidation over everyone, leading many to speculate without truly engaging with the merits of the case.

Meanwhile, Justice Sinha immersed himself in detailed note-taking throughout the hearings, preparing for the task ahead. Once the session concluded, he felt the weight of responsibility to draft the verdict that would ripple through India's political landscape. Before starting, he turned to his steadfast Private Secretary, his voice serious and laden with consequence: "I don't want this judgment to leak out to anyone, not even your wife. It is a big responsibility. Can you undertake this?" A calm and trusted aide, the secretary assented, vowing to guard the information with utmost secrecy.

MANOEUVRINGS BEHIND THE COURT

Justice Sinha, determined to craft his judgment in solitude, found himself repeatedly disrupted by a persistent Congress MP from Allahabad. Despite his clear request for peace, the MP continued to intrude upon his seclusion, prompting the judge to reach out to his neighbor, Justice Parekh, to intervene. When more direct means failed, Sinha opted for a more drastic solution: he withdrew entirely, retreating from sight and even refusing to emerge onto his own verandah. Curious visitors were told he had gone to Ujjain for a visit with his brother. For a solid stretch from May 28 to June 7, he kept his distance from everyone, including his closest friends and associates.

Prior to vanishing, however, Justice Sinha had encountered a notably distinguished visitor. During their cordial exchange, the guest shared that his name had surfaced in elite political circles in Delhi, where discussions of Sinha's potential elevation to the Supreme Court were swirling. The judge, accommodating yet firm in his humility, dismissed such notions, asserting, "I am but a small man unfit for that big chair."

By June 7, the judgment was nearing completion. At that time, a significant phone call came through from Dehradun—a call from the Chief Justice of Allahabad. The gravity of their conversation was

unavoidable: the Additional Secretary of the Home Ministry, P.P. Nayar, requested a postponement of the judgment until July. This timing was likely strategic, aiming to align with Mrs. Gandhi's upcoming trip to Mexico for the International Women's Year Conference, where she presumably wished to be present in India during the delivery of the verdict. Justice Sinha, incensed by such interference, firmly stated that he would not comply with this request. He swiftly drove to the High Court, ordering the registrar to inform all parties and the press that the judgment would be delivered on June 12.

News of the judgment date reached Bhushan while he was in Bombay. Upon reflecting on Sinha's timing, he commented, "It is a singularly appropriate date for the judgment. The polling for the Gujarat elections will conclude on June 11, just before the counting begins on June 12. This way, the judgment will occur after polling but before results are disclosed. Therefore, there can be no accusations of him influencing the election or being influenced by it." As events unfolded, this insightful analysis proved prescient, aligning entirely with Justice Sinha's intentions.

On June 11, Bhushan met Morarji Desai, freshly returned from his campaign trail in Gujarat. Desai queried Bhushan's thoughts on the judgment. Bhushan offered a cautionary optimism: "Strictly on merit, the case is almost impregnable. However, given the high stakes, any reasonable judge could be subconsciously influenced. Thus, I'd place the chances at 75 percent in our favor."

Meanwhile, Khare, the opposing counsel, was in Srinagar on June 9 with no immediate means of communication. A senior police officer was tasked with locating him, ultimately summoning him to Allahabad just in time for the momentous judgment.

As the atmosphere in Allahabad grew ever tenser, the stakes escalated dramatically. A special task force from the Criminal Investigation Department (CID) was deployed to ascertain the contents of Justice Sinha's ruling. Under the cloak of night on June 11, they approached Manna Lai, the judge's secretary, demanding to know what the judgment contained. Manna, caught in the crossfire, insisted he was unaware of the details—a statement not entirely untrue, since the judge had not finalized all crucial aspects until the last moments. When Manna remained silent despite their persistent questioning, the CID agents issued a thinly veiled threat: "We'll return in half an hour. You'd better share the judgment if you wish to keep things easy for yourself."

Fearful, Manna hastily sent his wife away to relatives for protection and sought refuge at Justice Sinha's home. For that night, he was safe, but the following morning brought renewed pressure. Just before 8 a.m., a convoy of cars arrived at his residence once more, this time accompanied by juniors from Khare's legal team. They reiterated the inquiry about the judgment, even suggesting that Mrs. Gandhi was awaiting his disclosure on a direct line. Feeling the mounting tension, Manna claimed he was running late and swiftly departed for Justice Sinha's house.

Even after the judgment was rendered, Manna Lai found himself subjected to ongoing harassment by the CID. They relentlessly pursued him, attempting to gather intelligence about Justice Sinha's visitors during June, scrutinizing whether the judge's comportment had changed recently. The nature of their questions raised eyebrows, given Justice Sinha's reputation for integrity. Yet suspicions of foul play lingered, notably fueled by Khare's vehement claims that foreign agencies, particularly the CIA, had allegedly spent excessive funds to secure the judgment.

In a separate, seemingly unrelated effort to undermine Bhushan's resolve, an enticing opportunity was offered to him on May 7—the evening when the Attorney General concluded arguments about the validity of the election amendment. This suggestion came during a dinner party hosted by B.N. Sapru, a government advocate who had once been Bhushan's classmate. Overlooked in the celebratory atmosphere, the Attorney General discreetly implied that, with Bhushan's impressive standing following his Supreme Court arguments, a new post of Additional Attorney General could be opened for him—should he sever his political connections, which were a significant obstacle. Bhushan, treasurer of the All India Congress (O), replied fervently about his commitment to political service and its importance for the nation. The exchange ended on an unresolved note but later, following the Janata Party victory in 1977, the Attorney General conveyed a newfound understanding of Bhushan's position in a congratulatory letter, marking a shift in judicial perspective.

The fateful date, June 12, arrived. The High Court's premises were thronged with police as Justice Sinha's courtroom filled to capacity by 9:30 a.m. Notably absent was Bhushan, who had decided that

being in Bombay was preferable, underestimating the significance of his presence—a choice he would come to rue. His juniors, R.C. Srivastava and M.C. Gupta, attended, along with Khare and his team. An expectant hush fell over the crowd, charged with an unusual fervor as they awaited Justice Sinha's entrance.

As he arrived punctually at 10 a.m., the courtroom erupted in a flurry of flashbulbs, capturing the historic moment. Justice Sinha entered, and everyone rose in respect. The courtroom settled into silence as he glanced around before reading the operative order—a procedure in High Court that diverged from the Supreme Court custom of reading the judgment in full.

"In view of my findings on issue number 3 and issue number 1 read with additional issue numbers 1, 2, and 3, the petition is allowed, and the election of Smt. Indira Nehru Gandhi, Respondent Number 1, to the Lok Sabha is declared void."

A deafening roar exploded in the courtroom with those concluding words, drowning out the remainder of the judgement as jubilant throngs erupted into cheers of "Raj Narain Ki Jai!" and "Shanti Bhushan Ki Jai!" Never before had a courtroom burst forth with such raw emotion; carried away in a wave of elation, supporters hoisted Ramesh Srivastava and M.C. Gupta onto their shoulders, triumphantly parading them amid the cheers.

In stark contrast, desolation gripped the ranks of Prime Minister Gandhi's legal team. Khare, utterly stunned, was initially speechless. It was evident he had not anticipated such a decisive outcome. As someone offered him water to regain his composure, he reluctantly began drafting an application for a stay order.

Within minutes, at approximately 10:20 a.m., one of Khare's juniors hurried to Justice Sinha's chamber to submit the application for stay. The document outlined two principal arguments for delaying the enforcement of the order: that Mrs. Gandhi, in her role as the Congress party leader, was essential to the operations of the government, which could face disruptions without her guidance.

Justice Sinha reviewed the application and requested that Khare's junior summon the opposing counsel to the chamber. In the charged atmosphere, a misstep occurred: the junior counsel claimed to have informed the other side, a statement that proved to be patently false. As a result, the legal representatives for Raj Narain were left in the dark regarding the motion for a stay, a tactical error that may never have occurred had Bhushan been present. Misjudging the situation, Sinha proceeded with an ex parte stay order, postponing the execution of his earlier decision for twenty days without seeking the opposing counsel's input.

As this seismic shift unfolded, chaos emerged. Upon learning of the stay order, Ramesh Srivastava rushed to Justice Sinha's chamber, demanding an explanation for not being notified. Justice Sinha, caught in the web of misinformation, conveyed the earlier claim regarding the communication. Frustrated, Srivastava asserted that he would pursue a review of the stay order based on the misconduct of Khare's junior. However, he was informed that such an application could not be placed before Sinha but needed to go to the vacation judge.

After the review application was filed, the impact was limited, failing to gain traction due to delays, and it was ultimately abandoned.

Justice Sinha's judgment, a hefty 258-page document, contained a multitude of relevant issues pertaining to the case. His analysis began with the allegation regarding the use of Air Force planes by Mrs. Gandhi. The judge recognized that the prime minister had, indeed, orchestrated their use; he reasoned, "Since the tour programme is sent from the Secretariat of Respondent No. 1 after her approval is obtained, and since Respondent No. 1 as Prime Minister knew fully well that thereafter it was the duty of the Air Headquarters to place the plane at her disposal, there is no escape from the conclusion that by sending the tour programme to the Air Headquarters, the Respondent No. 1 required an IAF plane being placed at her disposal."

The judge dismissed the arguments presented by the defense over the use of the aircraft based on the Pillai Committee Report, stating that such a justification failed to absolve the Prime Minister's actions from being categorized as corrupt practices in accordance with Section 123(7) of the law. He also refuted

any ideas suggesting that the use of Air Force planes constituted a commercial service exclusive to the Prime Minister's benefit.

However, he acknowledged that the flight from Delhi to Lucknow fell within the broader context of a nationwide election campaign. He contested the notion that its primary purpose was merely to facilitate her arrival in Rae Bareli for the nomination. This allowed him to acquit Mrs. Gandhi of corrupt practices concerning this particular flight.

Moving on to the matter of the rostrums, Justice Sinha ruled against the Prime Minister. He noted that the construction of rostrums by state officers provided an unfair advantage by allowing her to address gatherings from a dominant position. "I do not think it was indispensable for the state government for the maintenance of law and order or security that its officers should have taken upon themselves to get rostrums constructed," he wrote. This directive from Mrs. Gandhi implied her initiative to solicit state resources for her campaign, which he characterized as a corrupt practice.

On the topic of the controversial political symbol, the judge maintained an objective view while discarding previous allegations surrounding its historical context. He examined testimonies and materials, ultimately concluding that while the cow could be revered in Hindu practices, it did not attain the status of a deity. Therefore, he ruled that the depiction of a cow and calf could not be deemed a religious symbol under the law.

Addressing financial concerns, Sinha scrutinized expenses related to the election campaign as asserted by the petitioner. He maintained that they would first analyze the expenses in light of the situation before the Amendment Act came into effect. After a thorough investigation into various claimed costs, he concluded that Mrs. Gandhi did not exceed the legal election expenditure threshold, thus deeming her not guilty on that front.

Justice Sinha deliberated on the indications of when Mrs. Gandhi first presented herself as a candidate, identifying a timeline that extended back to late December 1970. Observing the timeline established by the electoral campaign activities, he determined that Mrs. Gandhi had essentially held herself out as a prospective candidate since December 29, much to the decision's implications.

On the matter of Yashpal Kapoor, the judge found that the circumstances encapsulating his resignation had not been convincingly established. He ruled that Kapoor, having retained his status as a government officer until late January, had acted improperly by assisting Mrs. Gandhi while in office. Justice Sinha concluded that Mrs. Gandhi had indeed procured Kapoor's assistance in violation of the law.

Thus, in his final ruling, Justice Sinha declared, "In view of my findings on issue number 1, issue number 3, and additional issue number 3, the petition is allowed, and the election of Smt. Indira Nehru Gandhi, Respondent No. 1, to the Lok Sabha is declared void." Following this groundbreaking decision, he disqualified her from holding any public office for six years as specified by the Representation of the People Act. While the petition challenging the legitimacy of the election law amendment was dismissed due to a lack of substantial grounds, the ramifications of Justice Sinha's ruling reverberated throughout the country, marking a significant chapter in India's political narrative.

Chapter 9

The Reprercussions

Repercussions Following the Verdict

At precisely 10:10 a.m. on that fateful day, news of the judgment reached Mrs. Indira Gandhi, the Prime Minister of India. The courtroom verdict had reverberated through the corridors of power, yet Mrs. Gandhi maintained an outward calm. Her political acumen was evident as she promptly instructed her secretary to gather all pertinent details surrounding the ruling. As anxiety spread among her advisers and allies, two key figures—H.R. Gokhale, the Union Law Minister, and S.S. Ray, the Chief Minister of West Bengal—hastily made their way to her residence, eager to lend their counsel. Not far behind them was Nani Palkhivala, a distinguished constitutional lawyer, who found himself in the capital and decided to offer his expertise.

By the time Palkhivala arrived, Justice Jagmohan Lal Sinha had issued a pivotal twenty-day stay on the judgment. In a series of discreet discussions, Mrs. Gandhi learned from her legal team that, due to the stay, there was no immediate legal imperative for her to resign. As more details of the judgment began to unfold, thoughts of potential next steps filled the room with a charged atmosphere.

Meanwhile, in a hotel suite in Bombay, lawyer Rajeev Bhushan was celebrating the news with mixed emotions. At 10:15 a.m., his brother Vijay Kumar reached out to him with the anticipated verdict. Bhushan's hard work had culminated in a powerful blow to Mrs. Gandhi's premiership. When reporters caught up with him, they posed the daunting question of Mrs. Gandhi's future as Prime Minister. Bhushan politically maneuvered through the inquiry, asserting that while she might retain the title legally, morally she bore an obligation to resign. He added a vivid illustration of the potential embarrassment her continued leadership could bring to India on an international stage, particularly if a foreign delegate were to question her credibility stemming from the court's findings.

At 10:20 a.m., Raj Narain, one of Mrs. Gandhi's most vocal opponents, received the news from a friend in Allahabad. Pure elation enveloped him; sweets were distributed to celebrate the judicial ruling, which appeared to elevate the judiciary's stature in the nation. In his characteristic style, Narain publicly declared that Mrs. Gandhi should step down immediately, warning that no power could shield her from the judgment's repercussions.

As the judiciary's ruling set off a celebratory fervor among the Opposition, they swiftly turned the situation to their advantage. Leaders from various parties applauded Justice Sinha's bold stance and issued a united front demanding Mrs. Gandhi's resignation. Piloo Mody, a leader of the Swatantra Party, put forth a dramatic claim that as of 10 a.m., India had lost its legitimate Prime Minister. "Now we must figure out how to address this imposter," he declared, giving voice to a rallying cry of discontent.

THE CONGRESS REACTION

Later that day, the Congress parliamentary board convened at 6 p.m., with notable figures in attendance, including Barooah, Jagjivan Ram, and Chavan, while a handful of dissenters like Mohan Dharia

and Chandrashekhar chose to remain absent. Notably, Dharia had previously been ousted from Mrs. Gandhi's Cabinet for suggesting dialogue with the fierce critic Jayaprakash Narayan. Unlike many peers, he openly expressed that Mrs. Gandhi must resign post-judgment, although others privately shared this conviction without voicing it publicly.

Instead of a show of accountability or foresight, the meeting turned into a fervid display of loyalty to Mrs. Gandhi's leadership. Speaker after speaker labeled her irreplaceability as pivotal to the nation's stability. Ironically, though, Jagjivan Ram's remarks drifted slightly from the script—weaving in confident applause for the judiciary's independence without the quintessential praise of her indispensable leadership.

Meanwhile, prominent Congress leaders and chief ministers rushed to the capital to express their unwavering support for Mrs. Gandhi, presenting a united front at her residence, which quickly became the epicenter of demonstrative allegiance. The streets resonated with chants celebrating her, interspersed with critical cries aimed at Justice Sinha.

On that fateful evening, Mrs. Gandhi emerged before her amassed supporters, keeping her next move purposefully ambiguous. In rousing tones, she reiterated her commitment to service while subtly implying her resolve to fight for her position, even as the specter of resignation loomed large.

The gravity of her decision weighed heavily. Resigning could ostensibly dispel the narrative of dictatorial rule and revamp her dismal popularity. However, should she concede now, a successor could take her place, possibly hindering her political resurgence even with a favorable judgment from the Supreme Court. This tug-of-war in her mind reflected the tripwire nature of political power in India, particularly where comebacks were rarely, if ever, straightforward.

Mrs. Gandhi to Appeal

As night fell, her advisers pored over the judgment details, deliberating the next steps. Palkhivala, who had already made headlines as a critical voice against her regime, suggested there was a strong possibility for a successful appeal at the Supreme Court. With the stakes at an all-time high, it was decided that an appeal would indeed be lodged, with Palkhivala's name attached to the case. His decision to take up this apparently contradictory role astonished many given his past criticisms of Mrs. Gandhi. While such transitions are somewhat common in the legal field, the magnitude of this political struggle made public perception critical. He was expected to articulate his reasons for accepting the case, but circumstances rendered this futile; however, his reputation faced challenges going forward.

PRESS REACTIONS TO THE VERDICT

The following morning, both local and international media outlets exploded with reactions to the historic ruling. Headlines blared, "Court Unseats Indira. Disqualified for Six Years." Editorials chimed in as well, with The Hindustan Times expressly stating that while a stay had been issued, the judicial verdict had not been nullified politically. They asserted it would be judicious for Mrs. Gandhi to resign while the appeal moved through judicial processes, emphasizing the upholding of democracy and the legal tenets necessary for its health.

The Statesman, in a poignant reflection titled "A Time to Resign," made known their view that Mrs. Gandhi's ability to lead both her party and the nation had been fatally compromised by the judgment. "By not resigning, she would be guilty of far more than any violation of electoral law," they warned.

By and large, the press consensus aligned against her, reinforcing that the ruling had imperiled her moral authority. Even the world's gaze shifted towards this judicial verdict, with surprise radiating through international circles—particularly given the fallout from the Supreme Court judge supersession in 1973, which had marred the judiciary's image abroad. Many observers perceived this bold ruling as a sign of a resilient democracy, and they looked ahead with eager anticipation for developments.

Just the day after the judgment was delivered, Mrs. Gandhi held another rally outside her residence. The gathering was electrified, with vibrant dances and demonstrations of loyalty to the embattled leader. In a display of indignation, some supporters even set fire to an effigy of Justice Sinha. Addressing the crowd, Mrs. Gandhi made reference to the judge's finding regarding the state-funded rostrums, arguing that the construction was managed by a state government controlled by the opposition at the time.

As the narrative unfolded, rumors began to surface regarding Justice Sinha's wellbeing, with an article mistakenly reporting the death of a retired judge named Jagmohan Lal, which some alluded to as a conspiracy against the judiciary. The rapid spread of such rumors illustrated the decline of Mrs. Gandhi's credibility in the aftermath of the judgment.

As days slipped away into a routine of rallies and speeches, Mrs. Gandhi's demeanor was palpable—she grew increasingly fervent against the Opposition, accusing them of treason against the nation. With accusations flying, she became relentless in her denouncement of their motives, stating, "They are bent on destroying the country. Their singular aim is 'Indira Hatao' while they ignore pressing issues of 'Desh Bachao.'"

On the 16th of June, she stood firm, publicly declaring her intention to fight back against those who challenged her.

PRIME MINISTER OR NOT?

As Bhushan observed Mrs. Gandhi's steadfast refusal to resign, he recognized the Congress party's inclination to rally behind her instead of seeking new leadership. In a strategic move, Bhushan addressed reporters, asserting that morally and legally, Mrs. Gandhi was no longer the Prime Minister.

He elaborated, stating, "Once the judgment was rendered at 10 a.m., Mrs. Gandhi lost her status as a Member of Parliament, and consequently, her role as Prime Minister ceased. Though one can exist as a minister for a while without being an MP, the court's ruling invalidated her election. Therefore, as of June 12, she was no longer Prime Minister."

This assertion sparked an outcry from Siddhartha Shankar Ray, who expressed disbelief that a fellow lawyer could claim such interpretations. He pointed to legal statutes indicating that a stay would imply that the High Court ruling had never been active.

Undeterred, Bhushan countered Ray in a public forum, illustrating that had the stay arrived twenty days later, it wouldn't reinstate Mrs. Gandhi's position. His articulation drove home the implications—if a new Prime Minister emerged during the stay, what would then become of her dormant claim to leadership?

'India Is Indira'

On June 18, as Congress party members convened again, expectations swirled around the possibility of nominating a new leader. However, the meeting unfolded as a mere ritualistic display of confidence in Mrs. Gandhi, with over 300 members present to extol her leadership as indispensable. One after another, speakers echoed the sentiment that whatever happened to her reflected on the nation itself. Barooah, ever theatrical, advanced the slogan "India is Indira and Indira is India," further enshrining her identity within the national ethos.

Not all were applauding. Notable dissenters had deliberately stayed away from the meeting, rejecting the notion that Mrs. Gandhi's leadership was untouchable.

In the face of the parliamentary frivolity, Opposition leaders like Jayaprakash Narayan publicly lambasted the Congress party's resolutions, declaring it a blatant instance of hypocrisy. In response, Piloo Mody penned a satirical verse illustrating the folly of their ritualistic declarations, likening their political world to that of Humpty Dumpty—unable to be restored once toppled.

Frustration mounted for Bhushan as he had anticipated tangible changes within Congress, contemplating the misuse of their stay on leadership claims as new complications unfolded. He quickly asked his assistant in Allahabad to file for a vacation of the stay order, citing how it overlooked the need for selecting a new leader. However, those efforts meant little when soon the Supreme Court would reopen discussions on the stay.

The media's critique of the Congress parliamentary meeting was sharp. The Statesman aptly termed it a scripted ritual, designed to honor Mrs. Gandhi, running afoul of any constructive discourse needed to tackle the judicial judgment. Commentators were aghast at how party managers obfuscated genuine

issues confronting the nation under the veneer of obligatory loyalty.

Concurrently, Mrs. Gandhi's legal representatives continued their preparations for the Supreme Court appeal, seeking an extension of the High Court's stay. With the Supreme Court in recess, arrangements were made for the vacation judge, Justice Krishna Iyer, to hear the application. Dadachandji, Mrs. Gandhi's advocate, urged the judge to expedite the process, managing to secure a dual hearing for the appeal, safeguarding Mrs. Gandhi's position, at least momentarily.

THE 'LARGEST EVER' RALLY

Amidst the legal maneuverings, Mrs. Gandhi organized a grand rally at the Boat Club—an event she touted as the largest gathering the country had ever witnessed. Following orchestrated arrangements, the reach extended from urban locales to rural stretches, with special trains and buses soliciting attendance from every corner. Barriers secured the area and police managed crowds ahead of what was poised to be an emblematic display of her strength.

When she took to the stage, Mrs. Gandhi wasted no time in denouncing the Opposition, framing her rally as a demonstration of unity amid adversity. She sought to portray this gathering not just as her personal reaffirmation but as an invocation of public sentiment.

Adding theatrical gravitas, Barooah again captured the crowd's attention with improvised verses about Mrs. Gandhi, elevating her stature to a near-mythical status within the collective consciousness.

The rally, however, drew ignoble criticism. The Opposition called foul on Mrs. Gandhi's exploitation of state resources for political gain. Internationally, observers noted this paradox—it echoed the very violations that had seen her judged.

THE OPPOSITION RALLY

Unperturbed by Mrs. Gandhi's grandstanding, the Opposition prepared to mount its challenge. They organized a massive rally at the Ramlila Grounds on June 22. Though originally slated to feature Jayaprakash Narayan, unfortunate and questionable cancellations thwarted his appearance. Still, leading figures such as Morarji Desai and Raj Narain took center stage, urging the gathered throngs to rise against Mrs. Gandhi's authority.

Their rally adopted a clarion call to action, advocating a peaceful resistance to force her resignation from office, yet withholding any definitive commitment on the exact timing for commencing the agitation. The politicians in this faction were shrewdly awaiting the outcome of Mrs. Gandhi's Supreme Court hearing, calculating their next steps with precision.

As both sides prepared for a larger confrontation, the air crackled with political tension, setting the stage for a transformative chapter in India's tumultuous history. The battle for the heart of Indian democracy was on, with legacies and futures hanging precariously in the balance.

Chapter 10

The Stay Order

The Injunction Ruling

By the late evening of June 22, a tense anticipation hung in the air as the critical documents pertaining to the appeal and the stay application regarding Indira Gandhi's electoral defeat had been exchanged between both parties. Among these documents was a copy of Mrs. Gandhi's stay application, which was sent directly to Justice Krishna Iyer. Despite the formal appeal being scheduled for submission the following day, the urgency of the situation demanded swift action. In her stay application, Mrs. Gandhi sought an extension of the absolute and unconditional stay the Allahabad High Court had previously granted. This extension was crucial as it would pause the enforcement of the High Court's ruling against her until the Supreme Court could adjudicate on the appeal.

Raj Narain, the primary opponent in this contentious battle, vehemently opposed the extension of the stay in his affidavit. He argued that if any stay were to be granted, it should only be conditional—a typical resolution in cases where charges of corrupt practices against an elected member had been substantiated. A conditional stay, he explained, would allow a parliamentarian to maintain the semblance of membership while stripping them of vital rights, including the ability to vote or actively engage in parliamentary proceedings.

The following day, June 23, the Supreme Court was buzzing with tension and anticipation as the hearing of Mrs. Gandhi's stay petition loomed. Justice Krishna Iyer had selected the Chief Justice's courtroom for this pivotal session. Although it was the largest courtroom in the Supreme Court, it could only accommodate about 150 people, leaving thousands yearning to witness the proceedings that could significantly shift the political landscape of India. The nation's gaze was unwaveringly fixed on the courtroom, where the fate of both Mrs. Gandhi and the country was to be determined.

Of the limited attendees in the courtroom that day, around 100 were lawyers, about thirty were visitors, and around twenty-five were journalists. Outside the courtroom, an overflowing throng filled the corridors, creating a palpable buzz as people clamored for any opportunity to glimpse the proceedings inside. Security was tight; helmeted policemen surrounded the Supreme Court, equipped with protective gear to control the swelling crowd.

As prominent attorneys Bhushan and Palkhivala made their way through the congested halls, they faced a sea of bodies eager to enter the courtroom. They finally managed to navigate the throng and entered just as the clock struck 11:30 a.m. Justice Iyer arrived promptly, setting the stage for the impending legal battle. Palkhivala, representing Mrs. Gandhi, was first up to present his case.

In his opening remarks, Palkhivala requested that the court apply a retrospective effect to the decision on the stay application, asserting that it should be recognized from the moment the appeal was initiated. This request arose from a significant technical issue: as soon as the appeal was filed, the stay granted by the Allahabad High Court risked being invalidated. The core of the matter lay in whether Mrs. Gandhi could retain her position as Prime Minister until the Supreme Court made a determination on the stay

petition's merits. Justice Iyer, upon hearing the request, turned to Bhushan, who indicated he had no objections.

"Trial Judge Made Manifest Errors"

Palkhivala's arguments continued with a strong assertion that the trial judge in the Allahabad High Court had committed significant errors in concluding that Mrs. Gandhi engaged in corrupt practices. He pointed to the disputed issue regarding whether she benefited from government servants aiding her by constructing rostrums, arguing that the line between the government and its servants was misunderstood by the court. According to Palkhivala, the Representation of People Act clearly prohibits candidates from soliciting the aid of government officials. However, he argued that if the government, as a collective entity, offered assistance, it could not be characterized as a corrupt practice—the support, he asserted, came from the state rather than from individuals acting in a personal capacity.

He delved deeper into the nature of corrupt practices, positing that they necessitate a conscious effort to gain improper assistance, emphasizing that in Mrs. Gandhi's case, such actions were routine security measures conducted in her official role. He warned that a ruling against this precedent could set alarming precedents for future elections. What might start as a case dismissed on minor technical grounds today could evolve into broader ramifications, including challenges concerning essential security provisions for electoral candidates.

Palkhivala also contested the trial court's findings relating to the timing of Yashpal Kapoor's resignation. He argued that it was abundantly clear that Haksar had accepted Kapoor's resignation orally on January 14, and stressed Haksar's authority to do so. However, the judge interjected, requesting that they stay focused on the matter at hand—the stay application and not the merits of the underlying case. Upholding the gravity of his concern, Palkhivala insisted that demonstrating the frailty of the petitioner's claims was necessary for understanding the full range of the case.

"Offences Are Technical"

Redirecting his focus, Palkhivala argued passionately that the infractions leading to the charges against Mrs. Gandhi were primarily technical and devoid of any deep moral failing. He urged that to preserve the status quo during the brief period before the Supreme Court could decide the appeal, an absolute stay was warranted. He pointed out that Mrs. Gandhi's ouster from office could fracture the political stability of India. Citing mass rallies rallying in her favor, he painted a picture that claimed public sentiment was solidly behind the Prime Minister in this critical moment.

Citing precedents for absolute stays in previous cases, Palkhivala pressed his case before Justice Iyer. His references to earlier court cases from 1953 and 1954 were met with skepticism from the judge, who noted that those were distinct vintage cases predating the establishment of High Courts as election tribunals. He stressed that since that shift, the Supreme Court had not issued absolute stays following similar findings.

Palkhivala's assertion that public and private justice favored Mrs. Gandhi's case prompted curiosity from Justice Iyer, who sought clarification on the notion of 'private justice'. Palkhivala explained that justice, in this context, referred to equity for both the appellant and the respondent. Without an absolute stay, he argued, Mrs. Gandhi would suffer irreparable harm to her political career. His perspective emphasized that the implications of a conditional stay would merely hinder her ability to govern effectively, thereby inflicting damage on the nation at large.

Justice Iyer encouraged counsels to weigh the functional ramifications of each type of stay, questioning whether the inability of Mrs. Gandhi to vote in Parliament truly equated to a profound injustice to public welfare. However, Palkhivala reiterated that having a Prime Minister unable to cast a vote presented a profoundly embarrassing situation for the nation.

At 2:30 p.m., Palkhivala's opening arguments concluded. As the scheduled hour for lunch approached, Justice Iyer asked the counsel to forgo their meal to maintain momentum in the proceedings—a rare occurrence for such a protocol-conscious institution.

BHUSHAN'S REPLY

When Bhushan took the floor to present his rebuttal, he quickly dismantled the assertion that the offenses committed by Mrs. Gandhi were technical transgressions. He contested that anyone found guilty of corrupt practices had failed in their fundamental duty as an electoral candidate, emphasizing that violations of the law were significant offenses regardless of their technical nature. In his view, the charges against Mrs. Gandhi were not minor infractions; indeed, the High Court had branded her untruthful before the court—a serious matter.

Further elaborating on the robustness of the petitioner's case, Bhushan confidently claimed that it would prevail in the Supreme Court. He noted that while the High Court judge found her guilty on two counts, he was optimistic that the Supreme Court would uphold the original findings on more than just those two issues. The stakes were high, and Bhushan fervently believed the evidence strongly supported the allegations against Mrs. Gandhi.

Challenging the interpretation of the distinction between government servants and the government itself, he articulated the law's intentions to prevent the misuse of governmental resources by those in influential positions. No candidate, he argued, should seek governmental assistance outside of direct mission-critical needs.

Justice Iyer urged Bhushan not to delve into the merits again, but Bhushan defended his need to clarify counterarguments presented by Palkhivala as the discussion unfolded. He clarified that he was fundamentally opposed to granting either type of stay. If Mrs. Gandhi truly held a position of integrity, he contended, she should resign in the face of the allegations impacting her leadership.

"Political and moral propriety demand that a person who has been placed under a cloud by being found guilty of corrupt practices should not remain in such an exalted office," he argued. The discussions turned back to precedence in the handling of similar cases, with Bhushan noting that, until that day, the Supreme Court had yet to grant an absolute stay in electoral cases where corrupt practices were involved.

He highlighted examples from history where public figures had resigned in light of impropriety—instances such as the former chief minister D.P. Mishra being forced to step down under Mrs. Gandhi's instruction, underscoring that accountability is essential for those in high offices.

Bhushan emphasized that the political fabric should prioritize the institution over any single individual's ambitions, ensuring that no individual could become indispensable. Citing a history of smooth governance despite leadership changes in India, he delineated the difference between democratic norms versus the power struggles common in a dictatorship.

"Stay Misused"

Continuing his argument, Bhushan asserted that Mrs. Gandhi had grossly misused the stay previously granted to her by the High Court. He recounted that the arguments made for the stay were predicated on a claim that a sudden removal of the Prime Minister would create a void detrimental to governmental functioning. Yet, upon the Congress parliamentary party meeting on June 18, rather than arranging for leadership changes, the party opted to reaffirm their support for her leadership—a move that rendered her original justification for the stay tenuous at best.

Bhushan pointed out the manipulative nature of the situation, arguing that the party's insistence on Mrs. Gandhi remaining in power despite the gravity of the allegations revealed a paramount need for accountability.

He warned that granting further stay orders could lead to convoluted legal challenges. Drawing attention to Section 107(2) of the Representation of the People Act, he elaborated on how the Act protects acts done in office prior to a judgment. Thus, if the stay were to be granted and the High Court ruling were ultimately upheld by the Supreme Court, the legality of Mrs. Gandhi's prime ministership from the date of judgment to the time her appeal was resolved would become an intricate legal battleground.

With poignant clarity, Bhushan entreated the court to refrain from granting any additional stays, asserting with fervor that neither legality nor morality permitted Mrs. Gandhi to remain in her role under these conditions.

PALKHIVALA'S REJOINDER

In a bid to counter Bhushan's robust rebuttal, Palkhivala succinctly addressed the claim that Mrs. Gandhi's continued role as Prime Minister would be a source of national embarrassment. He countered that it was, instead, the conditional stay that could inflict lasting damage on the institution of the Prime Ministership. He underscored that it would indeed be problematic for a Prime Minister to lack the ability to vote within Parliament.

Palkhivala responded with clarity regarding Bhushan's assertions about the representation made when the stay was issued, insisting that the haste with which the application was drafted had led to misunderstandings. The application had sought time to address leadership questions within the Congress party context; the resolution passed did not necessitate appointing a replacement leader, highlighting the strength of commitment to Mrs. Gandhi's leadership.

As the clock ticked towards the conclusion of arguments, Palkhivala renewed his plea for an absolute stay, underlining the potential consequences of a conditional stay on the nation, stating explicitly that it would endanger the stability of India's governance.

The arguments wound down by 5:05 p.m., marking an hour past the typical conclusion of court proceedings. The anticipation surrounding the forthcoming judgment was palpable.

When questioned about the expected timing of the ruling, Justice Iyer confirmed that he would deliver his decision at 3:45 p.m. the next day.

CONDITIONAL STAY

In the wake of the court's proceedings, Bhushan met with several opposition leaders outside of the courtroom. Ashok Mehta, the president of the Congress (O), voiced curiosity about Bhushan's expectations regarding the judgment. With emerging insights, Bhushan predicted it would range towards a conditional stay, evoking satisfaction from Mehta, who expressed confidence that such a decision would lead to Mrs. Gandhi's ousting.

Meanwhile, the public and press alike had been watching attentively as coverage of the court's deliberation swept across media outlets. On June 24, as the hour for the ruling drew near, an immense crowd gathered outside the Supreme Court, all eagerly awaiting the outcome.

At precisely 3:45 p.m., the judgment was delivered: a conditional stay was granted. However, the judge was clear in his declaration that there was no legal barrier preventing Mrs. Gandhi from continuing in her role as Prime Minister.

Delving deeper into the arguments, Justice Iyer refuted Bhushan's claims regarding Mrs. Gandhi's misuse of the High Court's earlier stay, affirming Palkhivala's position that the party's overwhelming support for Mrs. Gandhi's continued leadership necessitated her retention in office.

The judge dismissed the assertion that the High Court had found Mrs. Gandhi untruthful and agreed with Palkhivala that the infractions initially outlined were not among the most egregious electoral violations.

In acknowledging Palkhivala's argument that the High Court's findings were of questionable merit, Justice Iyer emphasized that that does not equate to indifference towards those findings.

He iterated that, following the establishment of the High Court as the election tribunal in 1956, it was established practice to grant only conditional stays.

Justice Iyer further dissected the implications of a conditional stay specific to the Prime Minister. He asserted in clear terms that while the appeal pertained specifically to her parliamentary membership, this should not obstruct her functions as Prime Minister. While the disqualification affecting her Lok Sabha membership remained in force, she retained vital rights as a leader of the nation, such as addressing Parliament and continuing her official duties.

He concluded that the court's legal authority lay in matters of legality, while broader political ethics

were best handled outside of judicial intervention. Additionally, he noted that either party could pursue a review of the order from the division bench if new circumstances warranted such action.

Reactions to the Stay

Reverberations of the judgment echoing through the corridors of power were amplified when the verdict was broadcast promptly at 4 p.m. by All India Radio, instantly resonating with audiences across the nation, igniting swift political responses.

The Congress and the Opposition each interpreted the judgment in ways that bolstered their respective narratives about the political landscape. Congress leader Barooah declared triumphantly that the ruling clearly indicated no legal impediment to Mrs. Gandhi's continuation as Prime Minister, while Gokhale emphasized that the pathway toward her resignation had been erased. Most Congress leaders echoed this stance, urging opposition members to retract their calls for protest. However, Mrs. Gandhi opted to remain silent regarding the judgment.

In stark contrast, the Opposition viewed the conditional stay as a vindication of their calls for accountability, unified in their demands for Mrs. Gandhi's immediate resignation in light of her inability to vote within Parliament. "Has anyone ever witnessed a Prime Minister unable to cast a vote in Parliament?" they questioned.

Former Chief Justice of the Bombay High Court, M.C. Chagla, weighed in as well, stating that while legal entitlement existed for Mrs. Gandhi to retain her position, political morality dictated otherwise, and under scrutiny, she should step down to maintain ethical integrity.

The implications of the conditional stay led Bhushan to characterize Mrs. Gandhi as a 'crippled' Prime Minister, stripped of critical voting rights, a narrative that gained traction among the media. Even Palkhivala had alluded to the irreparable damage a conditional stay could inflict on her political efficacy. Bhushan urged Mrs. Gandhi to consider a dignified resignation, suggesting even the Supreme Court's ruling hinted at her obligation to honor political conventions by stepping down amidst corruption allegations.

Consistently, the press echoed these sentiments, with editorials from the four leading newspapers calling for Mrs. Gandhi's resignation without delay.

Later that evening, leaders from various Opposition parties convened at Desai's house, deliberating their next steps in response to the conditional stay. Jayaprakash Narayan, a prominent figure within these discussions, emphasized their resolve, declaring that should she decline to resign, they would initiate a countrywide satyagraha against her persistence in power.

The atmosphere was electric as planning commenced for a substantial rally scheduled for June 25 at the Ramlila grounds, widely expected to draw an enormous crowd. Two hundred thousand people were anticipated to converge to hear Jayaprakash Narayan's address.

In his speech, Narayan called for the Chief Justice of the Supreme Court, A.N. Ray, to disassociate himself from hearing Mrs. Gandhi's appeal. He maintained that while he harbored respect for Ray's impartiality, the circumstances surrounding his appointment (where he superseded three preceding judges) initiated a crisis of confidence that could tarnish any verdict he rendered. Narayan implored Mrs. Gandhi to step down calmly, commending dissenting voices among parliamentarians who had sought her resignation and publicly challenging the silence from senior Congress figures like Jagjivan Ram and Y.B. Chavan.

In a stark and provocative moment, Narayan urged the police and armed forces to reject any unlawful orders from the government, provoking an immediate reaction.

Within hours of his impassioned address, Narayan found himself detained, a move that echoed the chilling atmosphere of political tension enveloping India during this trying period—an emblematic precursor to the historic Emergency that would soon engulf the nation.

Chapter 11

Laws?

Which Laws Were Enforced?

Just past midnight on June 25, 1975, the city of Delhi lay quiet, yet it was a night like no other. Underneath the surface calm, the city was stirring with an undercurrent of turmoil. Hundreds of police cars, their sirens silent, moved through the empty streets with a singular purpose—executing a meticulously orchestrated operation aimed at detaining key Opposition figures who threatened the government. This plan was the brainchild of Prime Minister Indira Gandhi, whose anxieties about retaining power were pushing her to unprecedented measures.

Only twenty-eight years prior, India had emerged from the shadows of colonial rule to embrace freedom, but that night, it seemed that the dawn of democracy was being enveloped by the darkness of a police state. As the clock ticked into the early hours, prominent leaders of the Opposition were stirred from their slumber, bewildered and terrified, as armed officers knocked on their doors.

Jai Prakash Narayan, known as JP, had been dozing peacefully at the Gandhi Peace Foundation after a day filled with political activism. His sleep was shattered by the abrupt arrival of police who informed him that his political activities were deemed a threat to national security. As they led him away under the draconian Maintenance of Internal Security Act (MISA), he uttered a poignant phrase that would linger in the air: "Vinash kale vipreet buddhi" (in the face of destruction, reason deserts).

The silence of the capital was broken by the sounds of chaos as other opposition leaders across the nation faced similar fates. Delhi was not the only battleground; figures like Morarji Desai, Charan Singh, Raj Narain, and others were swept up in the government's ruthless wave of arrests, while individuals like L.K. Advani and Atal Behari Vajpayee met the same fate in Bangalore and various other cities, illustrating a coordinated crackdown on dissent.

As dawn broke, Prime Minister Gandhi addressed the nation. In her statement, she announced the declaration of a nationwide Emergency, claiming it was a necessary measure to safeguard the country from threats posed by the Opposition. For many, the news was shocking, leaving the populace reeling and paralyzed by fear; a quiet sort of oppression had descended upon the people. The day continued, but signs of resistance began to emerge in the most unexpected ways.

At around 10 a.m., renowned lawyer Nani Palkhivala released a press statement, declaring his withdrawal from representing Gandhi, citing horror over the arrests of opposition figures as his motivation. While these symbolic acts of defiance flickered in the dark, the government's grip was tightening.

Not long after, orders for media censorship were issued, and newspapers were compelled to submit their content for clearance. In the atmosphere of suppression, creativity became an act of rebellion. Investigative journalism slipped messages between the lines; the small obituary notice in the Bombay edition of the Times of India seemed to resonate louder than the official announcements. It editorialized, 'Died, D.E.M. OCRACY, mother of Freedom, and daughter of L.I. Berty, on 26 June 1975.'

Internationally, the reaction to the Emergency was sharp and critical. The Times of London decried Gandhi's actions as a coup d'état, suggesting they were preemptive moves designed to safeguard her waning influence. The Economist remarked that in declaring the emergency; she had breached the norms that had upheld Indian democracy for nearly three decades. Newsweek bluntly stated: "By her actions, Mrs. Gandhi had served harsh notice that if it came to a choice between the rule of law and the rule of Indira Gandhi, the law quite likely would lose."

In the days that followed, the government's tactics became increasingly brazen. On June 26, the President formally suspended citizens' rights to approach the courts to enforce their fundamental rights, namely, Articles 14, 19, and 22, which ensured equality, freedom of speech and movement, and the right to fair detention. This suspension was rationalized under Article 359 of the Constitution, which granted extraordinary powers to the government during an Emergency.

Strangely enough, this declaration was unnecessary in the eyes of many legal scholars, since an earlier proclamation of Emergency, proclaimed due to the Bangladesh War, had already suspended Article 19. Thus, the situation left citizens under the shadow of two Emergencies, without an increase in governmental powers; it appeared to be little more than a calculated display of strength by Gandhi.

By mid-July, the nation's highest court reopened after vacation. Mrs. Gandhi's case was set to be heard, but fear and manipulation were palpable in the atmosphere surrounding it. In an explicitly political maneuver, the Union Cabinet amended Article 352 to make the President's judgment regarding the Emergency non-justiciable, effectively shielding the government's actions from legal scrutiny.

Parliament's Monsoon Session opened on July 21, but this was not a time for commonly held democratic principles. The question hour was suspended, and Jagjivan Ram went on record to support the Emergency's measures, framing opposition as treasonous. Meanwhile, courageous voices within Parliament clamored for democracy, but their pleas for restraint fell on deaf ears amid widespread trepidation.

By August, the desperation of the Congress party to maintain control became more evident. The court's initial hesitance to expedite Mrs. Gandhi's hearing sparked panic among her supporters. Pressure mounted as the specter of judicial action loomed large, compelling the government to urgently amend election laws to erase any legal basis for her disqualification stemming from prior convictions.

An important bill introduced by Law Minister Gokhale sought to retroactively amend the election laws to nullify the corrupt practices that had previously marred Mrs. Gandhi's victory. In the face of bipartisan support, the bill passed almost without contention in both houses, demonstrating the Congress's determination to maintain its grip on power.

But rather than halting there, Gokhale pushed for even more sweeping constitutional amendments that provided the government with unfettered control over electoral processes. The proposed changes took aim at dismantling judicial oversight over the elections of the Prime Minister and key governmental leaders—declaring such processes entirely outside the purview of the judiciary.

As Parliament moved quickly to approve these amendments, the media, still shackled by censorship, struggled to convey the gravity of what was unfolding. International publications weighed in, portraying the sweeping changes as indicative of India's drift toward authoritarianism.

Despite the barrage of legislative modifications, fear and discontent continued to take root within the legal community. On the fateful day of August 11, the Supreme Court convened to hear Mrs. Gandhi's appeal, marked by unprecedented restrictions on access. Only selected individuals could enter, and the security checks raised the stakes further, undermining the sanctity of the judicial process.

In the court, Ashok Sen, a prominent legal figure, presented the defense for Mrs. Gandhi, painting the amendments as necessary to clarify her tumultuous legal standing. However, Bhushan, representing the Opposition, voiced a profound challenge to the constitutionality of these amendments, drawing upon the foundational principles established in prior landmark judgments that affirmed judicial independence.

The judges deliberated, with the gravity of the situation pressing heavily on them. The atmosphere of fear remained a constant undercurrent, influencing the proceedings and complicating the pursuit of justice in an increasingly politicized judicial system.

As the legal saga continued, the Bar Association began to unify against the indignities faced by its members within the courtroom. The demand for the restoration of respect and fairness echoed loudly, but threats of disciplinary measures were held against any lawyers who dared to defy the officially imposed restrictions.

The June arrests, the subsequent censorship, the emergency orders, and the hurried legislative maneuvers collectively painted a picture of a nation grappling with the very essence of its democratic identity. The events that unfurled during this tumultuous period would forever alter India's political landscape, testing the resilience of its institutions and the resolve of its people to stand against the tide of authoritative control. The struggle was far from over and would echo through the annals of India's history as a tale of resilience, fervor, and unwavering hope for a restored democracy.

Chapter 12

Validity Of The Constitutional Amendment

It Undermines Democracy

As the clock struck 10:30 a.m. on that fateful day of August 25, a palpable tension filled the air of the Supreme Court as the bench took its seats. This session, pivotal in the annals of Indian democracy, would witness heated debates surrounding the validity of the controversial Thirty-ninth Amendment, which had sparked a political maelstrom. Present at the courtroom was J.P. Goyal, the only counsel representing Raj Narain. His colleague, Bhushan, had refrained from attending, adhering to the Bar Association's resolution, which barred lawyers from appearing in front of the Chief Justice until their recent demands were met.

The courtroom was starkly divided; while Goyal stood alone, the opposing side had mobilized its full legal arsenal. Their solidarity was palpable, further underlining the stakes of the matter at hand. When called upon to argue, Goyal sought an adjournment, voicing the necessity of waiting for the Bar Association's meeting, scheduled for later that day.

Yet, Chief Justice, with steely resolve, signaled a departure from this expectation. He insisted upon moving forward with the case, disregarding the current unrest among legal representatives. Goyal, unruffled by the intimidation, escalated his tone. "How can we proceed?" he demanded, impugning the Chief Justice for the discriminatory treatment of lawyers during recent court searches. "Even the lady lawyers were not spared." Angry, yet resolute, Goyal urged for accountability, sparking a tension-laden exchange in the courtroom, where the stakes grew ever higher.

The Chief Justice, momentarily taken aback, softened his stance, explaining the complexities of the case and pleading for cooperation among all parties involved. It was Ashok Sen, on the opposing side, who seized this moment to inform the court that the Bar Association's meeting was indeed in progress, and an update would be available following their discussions after lunch. The Chief Justice, acknowledging the entangled web of circumstances, agreed to a brief adjournment until the hour struck 2 p.m.

When the court reconvened, a sense of formality returned as both sides filled the courtroom. The atmosphere was electric; a constitutional battle loomed large. Sen, taking the lead, began to weave the narrative of the case, outlining the charges of corrupt practices that had led to the High Court's adverse verdict against the appellant. In a move perceived as expedient, the legislature had controversially retrospectively amended the election law, paving the way for the Thirty-ninth Amendment, which sought to shield the case from judicial scrutiny.

Yet, it was Bhushan's turn to speak that truly marked the inception of a fierce ideological divide. With conviction, he dismantled Sen's rationale, articulating that the judiciary's role was paramount in addressing even the most complicated of electoral disputes. "The judiciary is granted the purview to manage election petitions, yet, when faced with a challenge regarding the Prime Minister, suddenly it

becomes too complex?" Bhushan queried, setting the tone for his vehement opposition.

The prosecutor's three-pronged attack on the Amendment illuminated the battlefield of constitutional law. He proposed that the amendment was not a legitimate alteration of the Constitution; that, even if it were, it ravaged the foundational principles of democracy; and most disturbingly, it was enacted during an illegal Parliamentary session, rendering it void ab initio. This last point, echoed through the courtroom, ushered in an air of disbelief, a bold assertion that took many by surprise, even Bhushan himself.

"Were many members of Parliament not unlawfully detained?" Bhushan contended, emphasizing that this illegitimate arrest stripped the session of its lawful sanctity. The Attorney-General, overhearing this line of questioning, interjected, prompting a legislative debate on the extent of judicial reach, especially concerning detentions. Bhushan, adamantly, countered that the legitimacy of the session itself must be examined, irrespective of habeas corpus proceedings.

As the debate intensified, Bhushan pivoted towards his central thesis—the concept of the 'basic structure' doctrine. Drawing upon the landmark Kesavananda Bharati case, he passionately argued that Parliament ought not to dismantle fundamental tenets of the Constitution with naked authority. With an illustrative analogy about organ transplants, he raised the essential question of identity and integrity—could a body still be considered whole when all but one part had been replaced?

The courtroom engaged in contemplative discourse, and rhetorical exchanges ensued with Justice Khanna querying whether merely declaring something valid could indeed be sufficient for it to exist as such. Bhushan asserted that the High Court's judgment would remain unless explicitly overturned, leading to a deep philosophical exploration of the limits of parliamentary power.

Citing precedent and pertinent legal definitions, Bhushan continued to hammer home his argument that the framework of the Constitution could be neither altered nor extinguished without violating its core principles. He clarified that any amendment must be a re-distribution of power among government branches while noting that legislative authority did not extend into the realm of judicial adjudication.

Moreover, as the discussions unveiled, Bhushan pointedly contended that this amendment was not merely a legislative act, but an affront to democracy itself. He illustrated the implications of an arbitrary validation of election results, questioning the very fabric of electoral integrity. Therein lay fertile ground for a dictatorship cloaked in the façade of legality—an unthinkable scenario for a democracy that wrestled with its own ideals as the line between governance and tyranny grew blurry.

With unyielding determination, Bhushan reached the crux of his argument: the expectation of equality before the law must prevail. Amidst judicial queries, he articulated that laws must apply equally to elected leaders, underscoring that the sanctity of democracy requires a rigorous application of ethical standards to those in power.

With every argument laid bare, Bhushan ushered the narrative toward its climax, asserting that judicial review and the rule of law were both essential features irrevocably compromised by the Amendment. As the narrative reached its zenith, he contended that Parliament had abrogated its constitutional commitment, raising pertinent questions about the necessity of checks and balances within the government architecture.

Bhushan concluded with fervor, positing that the Monsoon Session, where the Thirty-ninth Amendment had gained its ill-fated birth, was fundamentally illegitimate due to the unlawful detentions that had shadowed it. The courtroom held its breath as he reaffirmed that even a grain of ill-gotten legality, if left unchecked, would fast track the nation towards a dystopian reality devoid of its fundamental rights.

What followed was a moment of stillness, ripe with the weight of the arguments, as the judges deliberated upon these stirring reflections on democracy, law, and legitimacy. Bhushan's exhaustive efforts, spanning over five arduous days, had captured not just the specifics of an amendment, but had indeed invoked the very essence of what it meant to be a democracy in the throes of defining its identity. In this crucible of ideas, the stakes of justice reverberated, holding the fate of the Indian Constitution in the balance as the courtroom transformed into ground zero of a constitutional confrontation.

Chapter 13

What Law?

The Prime Minister's Supremacy Over the Law

The Crucible of Justice

In the hallowed halls of India's highest court, the tension was palpable as the critical arguments unfolded, centered around the controversial Thirty-ninth Constitutional Amendment. One staunch advocate on behalf of this constitutional review was the renowned lawyer Shanti Bhushan. His arguments had stirred not just the courtroom but the broader realm of Indian political discourse. Observers noted a dramatic transformation in the demeanor of the judges, likening the exchange between Justice Mathew and Bhushan to 'a Tartar meeting a Tartar.' Bhushan's growing confidence about the case's prospect was increasingly reflected through his briefings to foreign journalists, who stood eagerly outside the court, barred from entry yet hungry for insights on the pivotal showdown of legal ideologies.

The legal battle became even more pronounced with the emergence of the Attorney General, Niren De, joined by Solicitor General Lal Narain Sinha, who sprang into action to counteract Bhushan's formidable contentions. De, wielding the establishment's ethos like armor, launched into his defense with remarkable fervor. He argued that for five continuous days, Bhushan had assailed the legitimacy of what De deemed a trivial matter regarding the electoral process. "The Thirty-ninth Amendment does not jeopardize the very foundation of our Constitution; rather, it represents a legislative prerogative, intrinsic to democratic societies," he asserted, framing judicial review of election disputes as a secondary and unessential function of governance.

Building upon his rhetoric, De raised a veil of preliminary objections against Bhushan's premise that constituent power could not encompass judicial authority. He criticized Bhushan's argument for not being previously articulated during the landmark Kesavananda Bharati case, asserting that this omission rendered it moot. "The Kesavananda ruling clarified the boundaries of constituent authority," he asserted, his voice resolute. "Judicial power cannot dismantle what Parliament at its discretion has embedded within the Constitution."

Justice Khanna interjected, emphasizing the judiciary's vital role in ensuring that Parliament operated within constitutional constraints, prompting a heated exchange about the law's reach concerning individual cases. In response, Bhushan stood firm, escalating his argument with citations from pivotal texts like Blackstone's Commentaries, illustrating that laws specifically targeting individuals drift toward sentencing rather than lawful governance.

Responding to the notion of legislative omnipotence, De argued that the constituent power was exhaustive and could enact distinctions even against the backdrop of individual rights. He underscored the point that the Constitution's essence permitted broad swathes of legislative authority and pointed towards the conceptual separation between ordinary lawmaking and the exceptional powers vested in constitutional amendments.

Justice Chandrachud questioned whether the declaration of an election's validity, as posited under the amendment's fourth clause, fundamentally altered legal precedents or simply reaffirmed them. Counsel's reply recast elections as events demanding extraordinary legal acknowledgment, thus positioning the Prime Minister and Speaker as deserving of exceptional consideration due to their high offices.

As discussions evolved, De elaborated on the theory of constituent power, likening it to a fountain from which legislative, executive, and judicial powers flowed without bifurcation. "Political exigencies may necessitate the retraction of judicial oversight over electoral matters," he contended, asserting that an institution should occasionally wield authority to act in the nation's interest without being fettered by the rigidities of judicial processes.

Justice Mathew's probing questions revealed the precarious balance at play; he reminded the court that its judgment needed to stand firm against political tides, implying that constitutional loyalty should supersede momentary political necessities. The canvas of debate stretched further when the interpretations of Articles 329(b) and the very principles of judicial review entered the fray. Sinha emphasized that the legislature had been endowed with full authority over electoral disputes, suggesting that this power remained unencumbered by judicial limitations, thus asserting that the constitution's design via the Thirty-ninth Amendment was both necessary and legitimate.

Behind Sinha's strategic arguments stood an array of international precedents, each painstakingly recounted to solidify the assurance that parliamentary governance over elections was a hallmark of democracy—the same essence liberating various global constitutions. With each reference, he aimed to underscore the intricacy of jurisdiction and the legitimacy of legislative resolutions in the face of contested electoral validity.

As the hearing progressed, Justice Khanna delineated the judicial doctrine surrounding the basic structure of the Constitution, offering a reminder that while legislature can amend, it cannot fundamentally alter the bedrock principles that underpin civil democracy. Bhushan's assertions on equality as an inalienable component of these principles resonated with the judges, further complicating Sinha's and De's arguments.

With the courtroom assembled on September 5th, an air of expectancy hung heavy. The Attorney-General's health had faltered, yielding the floor to Sinha, who pressed on in bold defense of the amendment. His arguments grew increasingly complex, navigating the realms of judicial authority, political necessity, and the intricate dance between legality and democratic integrity. "The very mechanism of parliamentary proceedings cannot be undone by the specter of individual electoral disputes alone," Sinha asserted, entwining legal rhetoric with political strategy.

Despite their fervent defenses, the underlying current was clear: the scrutiny of this constitutional amendment signified more than mere legality; it was a test of the nation's democratic fabric itself—a harbinger of how India would reconcile its evolving identity with its foundational values. Justice Khanna's pressing inquiries continued, illuminating the nuances that the Court faced as it prepared to deliberate over the fundamental structures at stake.

Thus, the courtroom became a crucible of discourse as advocates from opposite ends of the political and legal spectrum engaged in an intricate ballet of advocacy, each seeking not just to sway opinion but to etch their interpretations into the annals of constitutional law. Each argument molded the atmosphere, underscoring that within the spectrum of justice and power, the balance between citizen rights and governmental powers lay at the heart of an evolving narrative that was far larger than any single case. The outcome of this judicial confrontation would not only reverberate through the courtroom but also throughout the very fabric of Indian democracy, forever altering the landscape of legislative authority, judicial powers, and the rights of the citizenry.

Chapter 14

Amendment

Amendment as a Decree

As the atmosphere in the courtroom thickened, the air charged with anticipation, Ashok Sen rose to commence his arguments representing Mrs. Gandhi. With a commanding presence and focused clarity, he began by interpreting the pivotal amendment that had recently stirred political waters. "Clause 4(4) of the Thirty-ninth Amendment explicitly states that no law enacted by Parliament prior to this amendment can be applied to election petitions and related matters concerning the Prime Minister. Importantly, this clause has been given retrospective effect," Sen articulated, his voice confident.

He elaborated, "It's evident from this provision that not all components of the election law have been rendered moot regarding the Prime Minister's election. The Representation of the People Act consists of eleven parts; however, it is only part six that addresses disputes related to elections. Consequently, only part six has been nullified concerning the election of the Prime Minister. Since this particular section endows the High Court with the authority to adjudicate election disputes, such jurisdiction has been retroactively rescinded for the Prime Minister's election. Therefore, any judgement rendered under part six stands automatically void. As a direct implication of this, the election itself is consequently validated without necessitating a formal declaration."

Justice Mathew interjected to clarify a crucial point, "Is it not necessary for a court to adjudicate on whether an order passed by a lower court without jurisdiction is void, or does such an order automatically hold that status?"

Sen responded thoughtfully, "Indeed, if a court lacks any jurisdiction from the outset, then its order is automatically void. However, in cases where a competent court misuses its jurisdiction, the resulting order must be declared void through proper legal procedures."

Justice Mathew countered, "But aren't both scenarios—where an order is void due to lack of jurisdiction—the same in effect?"

"Not quite," Sen replied, emphasizing the nuance. "The distinction lies in determining whether the court exercised its jurisdiction correctly in the latter case."

Breaking the tension in the courtroom, Justice Mathew prodded further, inquiring, "Which body is responsible for declaring such an order void? Would it be the court or the legislature?"

"If the responsibility lies with the court, then it is indeed the court's role. However, in this situation, the constituent body itself has declared the order void," Sen explained, drawing the court's attention to the community's involvement in governance.

Justice Mathew then posed a provocative question, "What becomes of a writ of certiorari if an order made without jurisdiction is considered automatically void?"

"A writ of certiorari would typically be issued to nullify a void order. However, I maintain that the election dispute in this matter has already been looked into and resolved by the constituent body itself," Sen argued, his conviction unwavering.

He painted a picture of judicial evolution, asserting that following the High Court's loss of jurisdiction, the constituent body took it upon itself to determine the validity of the election. After analyzing the recent amendments relating to corrupt practices—which effectively retracted the grounds upon which the election had been declared void—the constituent body found the election valid and without any blemish.

Sen continued, drawing a parallel to historical precedents, asserting, "The contentious amendment exemplifies the established trend of validating Acts. To support my argument, I'll reference a recent Supreme Court decision that upheld the validation of a single election previously declared invalid, notably the case of Kanta Kathuria, where the Parliament retrospectively removed her disqualification to validate her election."

With his head held high, Sen pivoted to address Bhushan's apprehensions regarding the exercise of judicial power by the constituent body. "The subject-matter of the Constitution doesn't impose limitations on the amending power," he argued cogently. "Once a provision is legitimately incorporated into the Constitution, it becomes a definitive part of it. If a provision does not undermine the basic structure, it holds validity regardless of its subject matter. The constituent power inherently differs from legislative power—it is a unique sovereign power. Drawing from historical instances, I will remind you of the firmans issued by native Indian princes, which have received judicial endorsement. Similar to those princes, the constituent body has the unwavering authority to exercise this power."

In a demonstration of deft legal theorizing, Sen added, "Even hypothetically considering a scenario where the constituent authority must uphold the basic structure of judicial power, this limitation would only extend to powers expressly conferred upon the judiciary by Articles 32, 226, and 136. In India, there isn't a sole custodian of judicial power; the entire electoral domain has been assigned to the legislature, merely by circumstance, Parliament entrusted the High Courts with adjudicating on election disputes. Therefore, should Parliament choose to retract this authority from the courts, it cannot be interpreted as an infringement upon judicial power."

As the courtroom atmosphere crackled with legal tension, Justice Mathew sought further clarity, "When resolving election disputes, is there a requirement for the constituent authority to adhere to established judicial procedures?"

"No, there is no such requirement," Sen asserted. He introduced a compelling argument, asserting that the classification of a particular function as legislative or judicial is contingent upon the body exercising that function. "In this case, since the authority to resolve election disputes is vested in Parliament by Article 329(b), this transforms it into a legislative function, not a judicial one."

Interspersed with Justice Mathew's probing inquiries, Sen meticulously navigated the murky waters of legal ecclesiology. Justice Mathew countered, "Are you implying that when courts adjudicate election cases, they are merely executing a legislative function?"

"Precisely," Sen confirmed, dismissing the notion of a rigid distinction between legislative and judicial powers within the Indian context.

Justice Mathew curiously queried, "Once a designated authority is conferred the power to resolve disputes, what methodology governs its execution?"

"Should the authority rest within the legislature, it then employs legislative procedures," Sen clarified.

The argument crescendoed, resonating with a theme of the political nature embedded in election disputes—"These disputes transcend mere contention between parties; they are issues of public concern, engaging the entire constituency."

Justice Khanna, keenly aware of the nuanced relationship between public interest and electoral disputes, remarked, "An election contest is inherently a dual proceeding, involving both public interest and the candidates themselves."

Despite facing such assertions, Sen maintained his stance that an election dispute should not be perceived as solely between the parties involved. He respectively referred to British precedents and a notable Supreme Court ruling, reinforcing the understanding that an election contest creates a scenario that every constituency member is entitled to engage.

Justice Mathew, emphasizing the broader implications, interjected, "What of cases under Section 92 of the Criminal Procedure Code? Public interests are invoked there too, but does that situation inherently alter the fact that it remains a judicial proceeding? Ultimately, an election dispute stems from the contesting candidates, even while the public retains vested interest."

With a renewed sense of urgency, Sen advanced yet another ground-breaking argument. He elucidated, "The amendment in question merely seeks to shield the Prime Minister's election from challenges rooted in equality. The provision that prevents a specific statute from being tested under Article 14 does not annihilate the right to equality itself. The safeguards provided by Article 14 continue as a limiting factor against all executive and legislative actions, preserving the essence of equality while not operating upon the protected Act. Thus, the right of equality remains intact, and if it constitutes a fundamental feature, it endures unblemished."

Taking the courtroom's full attention, Sen further posited, "Moreover, the norms governing free and fair elections are not explicitly outlined within the Constitution. The Constitution simply necessitates the presence of elections, leaving Parliament free to legislate all integral laws regarding them, including determination of electoral disputes. Scrutiny of elections post-incident is not a constitutional obligation, nor is it an essential constituent of free and fair elections. The R.P. Act contains provisions to uphold the integrity of elections, allowing for criminal prosecution of candidates even without a safeguarded mechanism for contesting election validity."

As he neared the conclusion of his arguments, Sen asserted with firm conviction, "It is imperative to understand that the amendments do not compromise the very fabric of republican democracy, assuming this tenet is indeed a basic feature of our Constitution. The act of validating one solitary election cannot warp the entire democratic landscape. Elections to Parliament and state legislatures will continue to be directly elected under laws established by Parliament. This represents merely one election amidst the more than 500 elections that occurred in 1971."

With that, Ashok Sen wrapped up his formidable defense of the constitutional amendment, the weight of his words hanging in the air like a potent charge.

J.N. Kaushal, the Advocate-General of Haryana and counsel for Mrs. Gandhi, then took the floor. Brief yet incisive in his approach, he echoed the rationale underlying the amendment. "The constituent body deemed it essential to validate this amendment, recognizing that the High Court's judgment was being politicized by certain factions within society. The history surrounding election petitions elucidates how such provisions were often wielded maliciously as tools to impede elected representatives. The statistics speak volumes—following the 1967 Lok Sabha elections, out of fifty-two election petitions filed, a mere three emerged victorious. Similarly, after the 1971 elections, of the fifty-eight petitions filed, only three were successful, with one judgment being overturned by the Supreme Court, leaving only two victorious with four pending."

Kaushal concluded his thoughts with a reiteration of points made by Sen and the Solicitor-General, firmly situating the rationale for the constituent body's action as a measure against political harassment of elected officials. With that, the courtroom fell into a focused silence, the weighty deliberations concluding yet a broader narrative of political maneuvering and judicial authority had just unfolded within its walls.

Chapter 15

Now What?

Emergency Action or Soothing Solution

Following the conclusion of Kaushal's arguments, Bhushan stepped up to deliver his rebuttal concerning the contentious constitutional amendment. As he began, Bhushan meticulously dissected the stances taken by the four counsels representing the opposition. He highlighted how each counsel had approached clause (4) of the amendment with a distinctive lens, which he found not only intriguing but also indicative of the larger implications at stake.

Bhushan remarked that the Attorney-General perceived the amendment as a form of "homecoming." He likened Parliament to a principal that had previously delegated its authority to the judiciary—the judiciary, in turn, was viewed as having acted recklessly. Thus, Parliament, upon realizing this, decided to reclaim the function it had relinquished. Contrasting this, the Solicitor-General framed the amendment as an Emergency measure, asserting that when the constituent body sensed impending chaos and anarchy threatening national security, it acted decisively to protect the country from these perils. In a different interpretation, Sen characterized the amendment as a relief mechanism for the Supreme Court, suggesting that Parliament took the initiative to resolve a case too complex for the judiciary, shouldering the responsibility to prevent the judiciary from grappling with a matter beyond its manageable capacity. Finally, Kaushal approached it through a medical metaphor, describing it as a tranquillizer or sleeping pill intended to help the Prime Minister cope with the pressures stemming from a trivial election petition.

Bhushan observed a common thread in what he considered their primary grievance: the High Court's application of the same judicial criteria in this high-profile case as it might have in more mundane legal matters. This very concern, he argued, validated the necessity of clause (4). He drew parallels with historical edicts known as firmans and the argument that judicial interference was unwelcome in political disputes.

Before delving into the complexities surrounding clause (4), Bhushan insisted it was essential to first discuss the tangible effects of its enforcement. He articulated a significant divergence of opinions regarding the interpretation of this clause. The Solicitor-General posited that clause (4) rendered parts 6 and 7 of the R.P Act non-applicable to the Prime Minister's election. In contrast, Sen maintained that while part 6 became irrelevant, part 7—pertaining to corrupt practices—remained applicable. While Sinha contended that the validation of the election stemmed from standards of free and fair elections, Sen insisted that the standards laid out in the corrupt practices section of the R.P Act should have been the guiding reference. But what was the underlying truth? An honest interpretation of clause (4) suggests that the legitimacy of the Prime Minister's election stemmed solely from her position. Bhushan noted that amongst the various perspectives on the amendment, Kaushal's view appeared the most persuasive. According to Kaushal, clause (4) had retroactively stripped the High Court of its jurisdiction concerning the Prime Minister's election. Consequently, the High Court's ruling became void—a sentiment Bhushan echoed. Yet, he contended that while the removal of jurisdiction might void the High Court judgment, the straightforward declaration of the election's validity came across as arbitrary.

Justice Chandrachud followed up, highlighting a possibility: the constituent body might have adhered to its own norms rather than those of a judicial body. What if, after considering a charge, the body believed the claims—though substantially sound—were too technical to invalidate the Prime Minister's election?

Justice Mathew interjected to express concern, emphasizing that the complexities of the amendments changed the nature of the charges significantly.

"Indeed, my Lord," Bhushan confirmed, "the cross-appeal involves serious allegations of bribery. Can such a matter be dismissed as merely technical?"

With clarity and determination, Bhushan outlined several points that he argued showcased the disregard for established norms by the constituent body while validating the election:

1. The amendment not only stripped the High Court of its jurisdiction but also rendered the applicable substantive laws irrelevant for the Prime Minister's election. It outright declared that no grounds for invalidating the election could hold water, which effectively made the election invoidable.

2. If any norms had indeed been employed, the constituent body would have articulated them. The preamble and statements of objectives contain no indication of such considerations.

3. The timeline of events was alarming: the amendment was initially moved on August 7 and received Presidential assent by August 10, suggesting a hasty passage through both Houses of Parliament and a quick ratification by the majority of state legislatures in just three days. How could the complexities and multitude of issues at hand have been adequately addressed by so many decision-makers in such a short time?

Addressing the opposing argument that election disputes fell under parliamentary jurisdiction, Bhushan explained the original constitutional framework. According to Article 324, the Election Commission held the power to appoint election tribunals, and these tribunals were subject to the Supreme Court's jurisdiction under Article 136. The Nineteenth Amendment had significantly altered this arrangement, transferring the authority to adjudicate election disputes from the Election Commission to the High Courts, with normal appeals going to the Supreme Court.

Justice Mathew queried whether the authority granted by Article 329(b) to Parliament inherently limited the Supreme Court's jurisdiction under Article 136. Bhushan firmly disagreed, asserting that any body authorized to handle electoral disputes functions as a tribunal within the context of Article 136, thus subjecting its decisions to Supreme Court appeal.

Drawing on the American legal context, he cited a US Supreme Court ruling where the Senate, while primarily legislative, acted in a judicial capacity when adjudicating election returns and qualifications of its members.

The contention arose regarding whether election disputes were simply political questions outside judiciary purview. Bhushan referred to the avoided inquiries inherent in the American political questions doctrine, branding it as an excuse to sidestep principled decisions that may undermine judicial authority. He asserted that this doctrine had been dismissed in the U.S. and had never found footing in India, referencing the Privy Purse case.

Bhushan quoted Justice Shah's assertion regarding the judicial landscape: "The only forum under our Constitution for determining a legal dispute is the court… Any provision that aims to exclude court jurisdiction in certain matters, depriving parties of normal remedies, ought to be strictly interpreted."

Arguing further, Bhushan contended that Article 329(b) could not realistically exclude the special jurisdiction of the Supreme Court under Article 136. He elaborated, "Your Lordships must weigh which interpretation seems more plausible: a legislature inclined toward self-interest or an unbiased judiciary entrusted with making the final determination in electoral disputes."

BRinging in a historical perspective from England's parliamentary practices, he articulated that prior to 1870, election disputes were addressed by the whole House of Commons, often leading to partiality

and injustice based on political affiliations. To counteract such notorious injustices, the House moved to empower legal tribunals for fair adjudication of election-related disputes.

Bhushan refuted the notion that Article 329(b) should be construed in a manner that would incite further perversion of justice, arguing that a more reasonable interpretation must be sought.

Turning to the limitations on the amending power, Bhushan countered Sen's assertion that constituent power blended legislative, executive, and judicial authority. "Mr. Sen's claim that the constituent power innately mirrors the sovereign powers of Indian royalty is a fallacy. The Kesavananda Bharati case decisively debunked the notion of sovereign or limitless constituent power, establishing that amendments carry definitive boundaries. An amendment under Article 368 must not only represent a law but also correspond to specific subjects governing the creation and relations of governmental organs."

As discussions ebbed and flowed, Justice Mathew interjected, pointing out the extensive nature of the Indian Constitution, suggesting it encompassed concepts far beyond mere governmental mechanics. Bhushan remained resolute, disputing this.

When Justice Mathew raised queries regarding the Directive Principles of State Policy, Bhushan identified them as guidelines for operational functionality within government structures.

"However, everything pertains to state matters," Justice Mathew counter-pointed, indicating that nearly any law could be included in the Constitution. "It raises the question of defining what constitutes law."

To this, Bhushan challenged the notion that purely judicial or executive functions could amount to constituent power.

Justice Beg, questioning the potential for judicial authority in Parliament, prompted Bhushan to clarify: "While it's permissible for Parliament to wield judicial authority, it must align with the parameters of the Constitution's basic structure."

Chief Justice chimed in, reminding that the principle of law implies that if a body possesses the power to create legislation, it can also wield that power.

However, Bhushan rebutted, "This rationale does not hold when juxtaposed against the Governor's power to appoint Judicial Magistrates. Does that mean the Governor may assume judicial roles?"

In discussing the implications of clause (4), Bhushan poised a crucial inquiry about the judicial legitimacy of the Parliament's unilateral validation of the Prime Minister's election. Even if parliamentary legislation nullified the statutory remedy concerning the election petition, the common law rights persisted—they did not vanish alongside the legal process.

Justice Mathew queried, "If election petitions fall outside the scope of law, how does the election petition even exist?"

Justice Khanna chimed in, acknowledging that complaints regarding the elections endure, albeit not under the structure of formal election petitions.

Bhushan reaffirmed, "Correct. While the legal remedy may have been effectively dismantled, this does not extinguish the inherent legal rights at stake."

Justice Chandrachud weighed in, observing, "The purpose of clause (4) appears primarily concerned with nullifying both legal rights and remedies."

"If that premise holds true," Bhushan interjected, "it represents a lamentable violation of the rule of law."

At this juncture, the Solicitor-General interjected, framing the election's validation as a legislative task derived from an evaluation of pertinent information.

Chief Justice openly confronted the Solicitor-General with pointed skepticism: "If no election petition

exists, from what sources did the constituent body derive the relevant information for its conclusion?"

Sinha responded, highlighting that while the High Court's findings may not hold legal weight under the amendment, they possessed factual substance. The constituent body, he suggested, synthesized its judgment based on an evaluative appraisal of the facts surrounding the election, concluding that it was free and fair.

As discussions ebbed toward the case's proceedings, Bhushan returned attention to De's arguments citing historical precedents of electoral validation, emphasizing that in none of these instances were the merits of electoral candidacy engaged nor adjudicated. He elucidated that the R.P. Act of 1956 did not validate any elections outright but merely eliminated disqualifications, thus enabling candidacies in the 1956 elections.

Addressing De's cited examples of election validations by the legislative body, Bhushan asserted that none of them encapsulated a validation of an election in its entirety; they merely rectified specific procedural defects through retrospective legal amendments.

Sinha's viewpoint, equating the nature of function with the authority wielded, met with pointed critique as Bhushan produced a case from the US Supreme Court, arguing that even a legislative body like the Senate could be granted powers not intrinsic to legislation but rather of a judicial nature. Further, he referenced a distinguished Indian case, wherein Justice Bhagwati stated that the nature of proceedings determined their classification, not simply the type of governing body involved.

With that foundation laid, Bhushan shifted focus to the critical assertion of the amendment dismantling key constitutional features. "It must be emphasized that free and fair elections are the bedrock of our democracy. For such elections to exist, there must be mechanisms in place barring candidates who employ corrupt practices from claiming victory. The assertion from the other side that this amendment impacts merely one election whilst all others remain unaffected is disingenuous; it underscores a broader principle. If today, one flawed election can be deemed valid, there exists a slippery slope leading to the illegitimate validation of every unjust electoral outcome in the future."

Bhushan rebutted the assertion that the constituent body had employed its norms during the validation process. He reiterated that no discernible norms existed, further claiming that even if some norms had been established, applying disparate standards to different candidates within the same election fundamentally undermines the democratic process. If Raj Narain's election faced scrutiny under established regulations of the R.P. Act, it made little sense for the constituent body to shield the Prime Minister from similar assessment.

On the other hand, he contended that the claim of legislative resolution in electoral disputes could not be sustained in light of historical context. He detailed how, prior to 1870, controverted elections in Britain were settled by the House of Commons, resulting in recognition of the necessity for impartial adjudication. Consequently, legislative power was relinquished in favor of a judicial framework.

Addressing the issue of equality, Bhushan rebutted the opposing assertions anchored in Article 31(b), emphasizing that the legitimacy of this article had never been in contention—rather the focus lay with the broader constructs surrounding electoral integrity. Did inequality in property matters echo the gravity of electoral disparities? Without hesitation, he stated, "An Act that dilutes electoral equity poses a direct threat to our democracy."

Bhushan emphasized that while Article 14 technically guarantees equality, the Preamble and inherent implications of the Constitution also encapsulate this principle, particularly in matters of opportunity and status. He cautioned against accepting an amendment that rendered electoral appeals immune to challenge based on the status of a candidate—by virtue of her being the Prime Minister.

Drawing attention to Sinha's argument regarding preserving order amidst chaos, Bhushan rebutted, "A democratic Constitution does not establish that one individual is indispensable to the fabric of our nation."

Transitioning to Bhushan's angle on the legality of the Monsoon Session of Parliament, the dialogue reached another level of contention. Justice Khanna interjected, presenting a hypothetical situation:

“What if a District Magistrate issues an unlawful detention order against a Member of Parliament—would that invalidate the entire session?”

Bhushan replied definitively, ”Yes, because the President, having suspended fundamental rights, effectively participates in perpetuating unlawful detention. If some members are barred from attending Parliament, by necessity, the session becomes illegitimate. If we accept otherwise, the government could apprehend the entire opposition and legislate without dissent.”

With this as his closing argument on the constitutional amendment’s legitimacy, Bhushan concluded his presentation.

As Bhushan stepped back, he observed the five judges engage in a serious discussion. To his surprise, mere moments after he finished, the Chief Justice delivered a significant announcement. ”Having listened to arguments regarding the constitutional amendment’s validity, we will now hear submitted counsels on the merits of this case to ascertain the amendment’s legitimacy.”

The unexpected turn left Bhushan stunned; he had anticipated that the court would first determine the amendment’s validity before addressing case merits. Confident that the amendment would be nullified, he sought to present his arguments on the case’s merits only after the amendment’s dismantlement, which would yield a fresh perspective. Alarmingly he raised, “How could the merits of an individual case influence the assessment of a constitutional amendment? Its validity is dictated strictly by constitutional constraints. Moreover, given the amendment nullifies judicial competence to grapple with substantive case merits, it’s imprudent to delve into specifics before resolving the amendment’s constitutionality.”

Emerging support for the Chief Justice’s perspective came from Justice Beg, who asserted the criticality of evaluating case merits in determining the legitimacy of the amendment. Not wishing to challenge the court’s authority further, Bhushan conceded, recognizing his obligation to respect the court’s instruction, and prepared to yield the floor. Thus, it was on September 19 that the court summoned Ashok Sen to articulate the case’s merits, setting into motion the next chapter in this consequential judicial saga.

As Sen took the stage, armed with historical context and legislative ramifications, the deliberations surrounding the electoral amendments took on an augmented sense of urgency. During his exposition, he highlighted the comprehensive impact these amendments had on the charges brought forth in the election matter. Yet, Justice Mathew pressed for clarity, arguing that unless the amendments’ validity were challenged, the conversation delineating the case’s merits would be futile. Following brief consultations with the Chief Justice, attention pivoted once again; Bhushan was beckoned to voice his thoughts on the validity of the electoral law amendments.

The courtroom buzzed with a palpable tension as profound constitutional questions dangled in the air, promising to shape the legal landscape and democratic fabric of India for generations to come.

Chapter 16

Validity Of The Election Law Amendments

Retrospective Alteration of the Rules

As Bhushan rose to address the court, the atmosphere was charged with anticipation. He began by asserting that the crux of the case rested upon the interpretation of the recent amendments to election laws. His strategy was clear: he would first propose his interpretations and, should the court accept them, he would not contest the validity of the amendments. However, should his interpretations be dismissed, he would then challenge their validity outright.

Reworking Definitions: A Fundamental Shift

Bhushan proceeded to unpack the ramifications of the revised definition of "candidate" as stipulated in Section 79 of the Representation of the People Act (R.P. Act). He read from the original statute, which outlined a candidate as someone who had been duly nominated and noted that candidacy was recognized from the moment an individual presented themselves as a prospective candidate during an election campaign. In stark contrast, the amended definition eliminated the timeline component, merely stating a candidate was anyone who claimed to have been duly nominated.

"This amended definition strips away the temporal aspect," Bhushan argued, emphasizing that under the new wording, a person could be classified as a candidate for the purposes of Section 123, which addresses corrupt practices, at any time—be it months, years, or even decades before their official nomination. "I commend Parliament on enacting such a prudent amendment that seemingly renders the election laws on corrupt practices more equitable," Bhushan stated with notable confidence.

However, Justice Beg countered, expressing skepticism that this interpretation could align with what Parliament intended. "Why shouldn't we assume Parliament acts with the intention to create just laws?" Bhushan retorted. The exchange signaled the tension in the courtroom; the judges were well aware of the weight of their interpretations, particularly as Justice Mathew remarked that the notion that judges merely interpret laws and do not create them was an outdated concept akin to a fairy tale.

Imagining Absurdities: The Counterarguments

Continuing his argument, Bhushan elaborated on the potential absurdities that could arise if the court interpreted "corrupt practice by a candidate" as limitlessly temporal. "If this approach is taken, candidates could engage in corrupt practices freely before obtaining their nominations and evade accountability," he warned. He painted a grim picture where voters could be bribed, undue influence exerted, or even rival candidates obstructed, with no legal repercussions until the moment of nomination was official.

Justice Mathew aptly noted, "Section 100 cannot afford to entertain time restrictions." Bhushan insisted, however, that if Section 100 discusses candidates, then the same principles should apply throughout

the law, particularly when it concerns preservation of electoral integrity.

The Nuances of Official Duties

Moving forward, Bhushan shifted his focus to amendments in Section 123(7), which related to corrupt practices. Originally, the law clearly stipulated that any assistance a candidate might receive from government servants, aimed at aiding their electoral prospects, constituted a corrupt practice. The amendment, however, introduced a clause that seemingly provided immunity to government employees acting in the discharge of official duties while aiding candidates.

Bhushan articulated a critical interpretation—he contended that "official duty" should specifically refer to statutory duties codified in law. He pressed the court, arguing, "If that's not established, it opens the floodgates for governmental manipulation, where officials could be ordered to organize election campaigns while incurring no liability for corrupt practices."

The Bigger Picture: Constitutional Integrity

Digging deeper into the implications of these amendments, Bhushan invoked the Ninth Schedule of the Constitution, explaining that the Election Laws Amendment Act of 1975 and the Representation of People Amendment Act of 1974 had both been included there via the Thirty-Ninth Amendment. He clarified that while laws in the Ninth Schedule are shielded from being challenged as violations of fundamental rights, they could still come under scrutiny if deemed destructive to the Constitution's basic features.

Justice Mathew questioned the viability of this claim, challenging how an ordinary law could be discarded based on it undermining constitutional integrity. Bhushan articulated a compelling perspective—one that asserted no legislative maneuvering could ever permit a degradation of democratic principles.

Challenging the Retrospective Nature of the Amendments

A pivotal point in Bhushan's arguments came as he labeled the retrospective nature of the amendments as fundamentally unjust. He argued that retrospective legislation, particularly concerning electoral rules, rendered discriminatory outcomes and thereby violated the principle of equality—an essential tenet of the Constitution. Justice Khanna inquired about previous cases where retrospective removals of disqualifications were upheld, but Bhushan remained firm, stating that the implications of these amendments could open avenues for future legislative abuses, wherein a party could wield unfettered authority to twist laws in their favor.

His assertion was not just an isolated argument, but rather a thorough exploration of the potential erosion of democracy that could stem from such legal alterations. He pointedly remarked, "If the ruling party can retrospectively change laws, what is to stop them from tightening restrictions to safeguard their political dominance?"

Pushing forward, Bhushan adeptly portrayed the amendments as a calculated legislative strategy directed solely toward validating one outcome—the defense of Prime Minister Indira Gandhi's electoral win. He cited that considering the timing and specificity of these amendments, the undue influence of power was both glaring and unacceptable.

Drawing Attention to the Legislative Illegality

He concluded by highlighting the conditions under which these amendments were passed—the Monsoon Session of Parliament, during which opposition figures were unjustly detained. This, Bhushan claimed, rendered the amendments not only flawed legally but also morally void, postulating that the foundational structure of democracy was at serious risk.

With the gravity of his arguments delivered, Bhushan took a step back, poised to transition into the merits of the case, weighing only the issue of election expenditures. He understood the court's inclination—the judges appeared more receptive to his alternate interpretations.

Focusing on Election Expenses: A Survival Tale

Despite the overarching legal labyrinth, Bhushan targeted what he felt was a breath of hope—contending that the assessed expenditures against Gandhi were improperly calculated. With the High Court documenting expenditures totaling roughly Rs 32,000—insufficient by merely Rs 3,000 to exceed legal limitations—he urged the court to reconsider the unaccounted expenses attributed to vehicles employed by the District Congress Committee.

Justice Mathew pondered aloud whether electoral returns were akin to tax returns, to which Bhushan capitalized, drawing parallels and reinforcing the necessity for reasonable estimations in the face of questionable financial records.

Ultimately, Bhushan's vehement arguments sought redress not merely on the grounds of procedural discrepancies but emphasized the larger implications: fostering a truly equitable political landscape where the small man had genuine opportunities against the dominance of wealth in shaping electoral outcomes. "The essence of democracy lies in the voices of its multitude," he professed. If the limits of expense continued to expand, it would mean only those with financial ascendancy could hope to ascend the political ladder.

He called for vigilance, illustrating the weighted reality that the fate of elections—and by extension, democracy itself—was tethered tight to the decisions made in these significant legal moments. Concluding his presentation on September 26, Bhushan's resolve remained unwavering, and the courtroom hung on the precipice of critical judicial determinations that would echo through the annals of history.

Chapter 17

Rules?

Clarification of Rules, Not Alteration

As the courtroom buzzed with the undercurrents of legal deliberation, a palpable tension enveloped the proceedings, particularly given that the Attorney-General was still recuperating from a concerning health episode. In his stead, L.N. Sinha stepped forward to address the pressing matters at hand, specifically the election law amendments that had stirred considerable debate. With clarity and conviction, he embarked on a comprehensive analysis of Bhushan's arguments, setting the stage for a robust legal discourse.

Sinha commenced by posing a pivotal question regarding the applicability of the limitation on basic features to ordinary legislation. He contended that such limitations were not meant to encumber the normal legislative powers granted by the Constitution. To underpin his argument, he articulated three key propositions:

First, he asserted that the Constitution delineates both the affirmative and negative boundaries of legislative power. Any restraint imposed on ordinary legislative authority must stem from specific constitutional provisions, most notably the fundamental rights enshrined within the Constitution itself.

Secondly, he pointed to the landmark Kesavananda Bharati case, which established that the concept of basic features pertains exclusively to the amending power outlined in Article 368. Thus, this limitation bears no relevance to evaluating the constitutionality of statutes enacted under the legislative authority provided by Article 245.

Thirdly, Sinha asserted that the Preamble, along with the Directive Principles, delineates aspirational goals rather than constraints on legislative authority. These components set forth the ends a legislature aims to achieve without restricting the methods employed to attain those ends. He warned that extending implied limitations to ordinary legislation would precipitate a flood of litigation, suggesting that every legislative bill would require prior judicial review—a situation he deemed impractical and detrimental to the legislative process.

Justice Chandrachud interjected, suggesting that inherent limitations may indeed arise from the comprehensive nature of the Constitution. To this, Sinha maintained that any implications need to derive from explicit provisions rather than speculative interpretations. Justice Khanna further probed the paradox in applying basic features to constitutional amendments but not to legislative powers, but Sinha remained steadfast. He condemned the vagueness of the basic feature theory, arguing that such ambiguity would complicate the application of laws and potentially paralyze the legislative process with ceaseless legal challenges.

Continuing, Sinha focused on the Representation of the People Amendment Act, 1974, particularly Section 77, which addresses election expenses. He clarified that "incurred or authorized" refers strictly to expenditures authorized by the candidate or their designated agents. Any funds expended by unauthorized individuals could not justifiably be included in the candidate's expense report. He explained that

this amendment effectively resolved previous ambiguities surrounding the law.

Drawing from the Indian Penal Code, Sinha pointed to Section 171H, which penalizes unauthorized spending exceeding a paltry sum of Rs 10 for a candidate without written consent. This provision illustrates a protective mechanism against misuse of election funds, establishing a direct connection between authorization and accountability. He posited that authorization logically encompasses both rights and responsibilities of financial expenditure, emphasizing the integral concept of reimbursement; without reimbursement rights, the notion of authorization loses its meaning.

Through probing questions from Justices Mathew and Chandrachud, Sinha addressed concerns about individual accountability versus collective responsibility when multiple parties engage in campaign expenditures. He recognized the complexities posed in situations where political parties aid candidates, reiterating that requests do not equate to formal authorization.

Sinha tackled Bhushan's assertion regarding corrupt practices and the expected legal repercussions under the amended definition of "candidate." He highlighted that the new definition eradicated the legal fiction that previously allowed for ambiguity regarding an individual's status as a candidate. Without stepping into corrupt practices before formal nomination, candidates cannot evade accountability for actions undertaken after their official nomination.

Amid the discussion, Sinha also turned his attention to how the amendments defined government official duties in the context of electoral support. He clarified that assistance provided under official capacity should not be misconstrued as electoral support, delineating the boundaries of governmental responsibility vis-à-vis electoral campaigns. The legal clarity offered by recent amendments was meant to safeguard integrity and uphold democratic tenets.

As the dialogue broadened, Sinha defended the reasoning behind modifications concerning official duties and the date of resignation for government servants. He articulated that such amendments sought to cement clarity and facilitate an effective implementation of elections while ensuring that mere speculation of misuse did not overthrow legal enactments.

In a particularly contentious exchange about electoral symbols and their assignment by the Election Commission, Sinha argued for the candidate's protection against consequences arising from Commission errors. He emphasized the Commission's independence, hoping to assure the court that albeit mistakes, candidates should not be unjustly penalized for administrative oversights.

Building on these arguments, Sinha concluded with an emphatic declaration that the amendments were not novel law shifts but clarifications rectifying previous misunderstandings of existing law. His insistence that upholding older rules against retrospective changes would provide stability resonated throughout the chamber.

Not long after Sinha's conclusion, Ashok Sen rose to represent Mrs. Gandhi, introducing his arguments with a focus on the nuanced implications of the amendments in light of Bhushan's critique concerning the definition and conduct of candidates. He seamlessly extended the debate into the realms of electoral law while challenging Bhushan's interpretation of potential corrupt practices.

Sen's efforts were bolstered by vintage references to the Indian Penal Code, specifically highlighting sections relevant to electoral conduct, reinforcing the notion that accountability should arise only post-nomination. He asserted that a coherent tie must exist between actions designated as corrupt and their timing with respect to an individual's candidacy, similarly endorsing Sinha's claims regarding the burdens of proof in allegations surrounding election expenses.

As the discussions continued, Sen and his fellow counsels tackled pivotal issues surrounding expenditure accountability and the definitions necessary for clarifying rights and responsibilities. Together, they navigated the labyrinthine complexities of electoral law, emphasizing the significance of authorizations, guidelines, and the imperative need to delineate boundaries surrounding campaign practices against the backdrop of a democracy striving for transparency and fairness.

In the end, as the various legal representatives traded arguments, the courtroom became a melting pot of interpretations and legal precedents, echoing the enduring struggle between upholding democratic

ideals and safeguarding legislative authority in a rapidly evolving political landscape. The outcome would ultimately hinge on whether the judiciary would uphold the established legislative principles against the tide of impending reformations, thereby defending the sanctity of the election process at a pivotal juncture in Indian politics.

Chapter 18

Law And Parliament

Parliament's Limits on Law Interpretation

In the annals of Indian legal history, few cases have sparked as much debate and scrutiny as the one surrounding the election law amendments during the tumultuous period of the 1970s. As the courtroom buzzed with anticipation, Bhushan stood poised to present his rejoinder, ready to address the other side's assertion that the limitations imposed by the basic structure doctrine could not apply to ordinary legislative enactments.

He began resolutely, stating, "I have absolutely no quarrel with Sinha's first proposition; that there are no limitations on the powers of Parliament derived from natural rights of Man." His voice resonated through the chamber, desperate to make his point clear. He continued, "Sinha asserts that the restriction on the Constituent power stems from merely the word 'amendment' in Article 368." Acknowledging this perspective, Bhushan then asserted, "However, I submit that the basic features of the Constitution certainly cannot be confined to a mere examination of Article 368."

Bhushan elaborated on the complexity of the situation at hand, referencing the landmark Kesavananda Bharati case. "The crux of the issue in that case was deciphering the connotation of 'amendment' as used in Article 368," he articulated. "Merely focusing on the term itself cannot yield a definitive understanding of whether it is intended in a broad or narrow sense. To glean its true meaning, the judges were compelled to examine the entirety of the Constitution to uncover the intentions of its creators. Ultimately, the majority determined that certain fundamental features were intended to endure eternally, impervious to any amendments."

Justice Mathew interjected, seeking clarity, "If we accept that certain features of the Constitution are meant to be permanent, how do you substantiate this limitation on legislative power? Where is this articulated in the Constitution?" The exchange encapsulated the depths of legal interpretation as Bhushan, leaning on judicial precedents from the Kesavananda Bharati judgment, argued that this premise underpinned the conclusion that Article 368's power is indeed limited.

The discussion shifted to the potential vagueness of the basic feature doctrine and whether such ambiguity would hinder its application to ordinary legislation. "I fail to understand why the same vague doctrine applied to constitutional amendments cannot extend smoothly to ordinary legislation," Bhushan argued passionately. "Opponents claim this would unleash a wave of litigation, but let us pause to consider: would we truly desire laws that the Supreme Court regards as contrary to the Constitution's fundamental features?"

Justice Mathew raised an intriguing point about the command of legislative power, relating it to how constitutional principles interact worldwide. "Despite the existence of basic features, why has this argument not led to striking down legislation in the United States?" he queried. Bhushan answered with a measured tone, explaining, "This difference arises from the due process clause in American law, which serves as a safeguard against any legislation deviating from core constitutional principles."

As the discourse deepened, Chief Justice queried Bhushan about his logical underpinning, asking him, "What is the syllogism behind your assertion regarding legislative power?" Clueless momentarily about the term 'syllogism,' Bhushan exited the courtroom only to return with a well-crafted justification. "Your Lordships, the premise established by the Kesavananda Bharati case asserts that certain features of the Constitution are perennially fixed; all legislative power is subject to the Constitution. Hence, it follows logically that legislative power must also adhere to the restrictions posed by these basic features."

This articulation, however, was met with scrutiny. Chief Justice commented, "But Mr. Bhushan, this seems circular." Undeterred, Bhushan pressed on, challenging the notion that the legislature could dismantle fundamental constitutional features through ordinary laws, while stricter provisions governed constitutional amendments requiring a two-thirds majority.

"The irrationality is evident," he continued, "to state that a simple majority could lay waste to what established norms protect." His soliloquy accentuated the delicate balance of power and responsibility. He questioned the motives behind legislative amendments, asking what substantial benefit was achieved while symbolizing that they merely served to justify the reinstatement of one individual's previously invalidated election.

As the dialogue unfolded, Justice Khanna insisted, "We must approach this sensitive territory with care." Yet, Justice Mathew insisted that the argument's vitality could not be overstated. He posed a hypothetical scenario to Bhushan, contemplating if the Kesavananda Bharati judgment had concluded with plenary amending powers for the constituent body. "Would legislative power still be subject to basic features?" he inquired.

Bhushan stood firm, stating, "Absolutely, for the basic features would still imply limitations on the legislative power." Intriguingly, they started to delve into the implications of proportional representation in a democratic structure.

Transitioning to the amendments concerning the definition of a 'candidate,' Bhushan produced gathered comparisons of election laws from various countries like England, Australia, and New Zealand. "These nations allow for corrupt practices to be committed at any time surrounding elections," he noted. Justice Khanna pointedly remarked that—since 1921—not a single person had been disqualified for corrupt practices in England, to which Bhushan countered that effective application of laws engenders respect and fear of penalties among candidates.

Bhushan continued to dismantle the opposing side's argument, positing that it was impractical to hypothesize the legislature intended blanket immunity for corrupt practices skirting the nomination process. He highlighted provisions of the Indian Penal Code that dictated unyielding treatment of bribery, surmising how any belief otherwise undermined the intention of the legislation itself.

Shifting gears, Bhushan approached the amendment addressing government servants' official duties, drawing attention to the Solicitor-General's attempts to limit the scope of such duties. "If the construction of rostrums is deemed an official duty," he asserted, "then surely any election-related duty must also fall into that category."

Discussions about discriminations against unequal advantages followed, prompting Bhushan to challenge the foundation of authorities managing electoral symbols. "Why should the Election Commission, as a quasi-judicial body, hold final authority over religious symbols potentially affecting electoral outcomes?" he queried. His focus sharpened on the symbolism assigned to the cow and calf, presenting a twist of irony tied to the Congress party's symbol preferences and implying absurdities in decision-making within the Commission.

Amidst lighthearted banter from judges, Bhushan baited their scrutiny about retrospective amendments. He discarded the claim that they merely clarified existing laws, ridiculing the notion that Parliament possessed any constitutional provision that enabled it to dictate how judiciary interpreted laws. "Indeed, the judiciary is the ultimate interpreter," he advocated.

The complex arguments evolved into discussions about expenditure limits during elections, where Bhushan argued that the mere word 'authorization' does not equate to a transfer of accountability or responsibilities. He implored judges to view this through a lens that understood practical realities—where

sheer possession of evidence can be challenging under prevailing fears.

As the proceedings drew closer towards concluding remarks, Bhushan illustrated that the piecing together of facts remained undeniably tied to proving corrupt practices' existence and their subsequent ramifications. He emphasized the need for a reasonable estimation of expense discrepancies, backing his conclusions with clarity and a vision of fairness.

Bhushan stepped back, presenting a meticulous and fervent closing argument, encapsulating his perspectives on the election amendments while the Supreme Court's discussions represented a protracted examination that spanned thirty-one days. The weight of each assertive claim hovered in the air, as justice hung in balance. The echoes of Bhushan's arguments lingered, a reflection of a nation grappling with the tenets of democracy.

Chapter 19

Now Supreme Court

The Supreme Court Ruling

The tension in the courtroom was palpable as the Supreme Court arguments related to one of India's most consequential cases drew to a close. Shanti Bhushan, the attorney representing Raj Narain, was approached by foreign journalists eager to uncover his thoughts on the future of the constitutional amendments that had stirred political waters across the subcontinent. With confidence in his voice, Bhushan declared that he believed both the constitutional and election law amendments would be struck down, restoring integrity to the election process.

However, a cloud of pressure loomed over the judiciary—a man who had fought tirelessly for democracy could not ignore the reality of power struggles. When asked if the judges might succumb to this pressure, Bhushan responded candidly. He acknowledged that judges are trained to resist coercion but articulated a haunting scenario: "If I was told that I would be jailed for arguing this case, I could have resisted that pressure. But if I was told that my children would be slaughtered, then, perhaps, the situation would have been otherwise." Despite this chilling perspective, he maintained faith in the Supreme Court judges, expressing hope that they would withstand any external forces urging them toward injustice.

After delivering his arguments, Bhushan traveled to Allahabad, where he received disturbing news about Kanhaiya Lal Misra, the former Advocate-General of Uttar Pradesh, who had previously argued on behalf of Indira Gandhi. Concerned, Bhushan paid a visit to Misra, who, in a weakened state, uttered a poignant declaration: "Democracy is dead in this country." Tragically, he passed away the next day, a stark reminder of the stakes involved in this legal battle.

October 9, the final day of arguments, happened to coincide with the beginning of the Dussehra recess; there was speculation regarding how the Supreme Court might proceed after the break. Would the Chief Justice revisit the arguments presented? Would they delve into the merits of the election law amendments? The legal community buzzed with uncertainty, and amid claims of secrecy, news leaked out on November 2 that a judgment was impending.

On the morning of November 7, an air of palpable excitement filled the Chief Justice's court as visitors and lawyers began to arrive. Access was tightly controlled, with entry by passes only. By 10:30 a.m., the courtroom was at capacity, presenting a rare moment of collective anticipation. Many were ready to witness what was imagined to be the climax of a struggle against perceived dictatorship.

Just as ominous as the silence was the realization that this case was being viewed as a crucial opportunity to challenge Mrs. Gandhi's authority. The Chief Justice, invoking the importance of due process, reserved equal time for all judges to present their judgments, a moment steeped in tradition yet underscored by the gravity of the matter.

He commenced his judgment by addressing the validity of the constitutional amendment—a decisive moment arrived swiftly as he struck down the amendment within twenty minutes. Calls of jubilation

erupted from the reporters waiting outside; however, this initial cheer was as fleeting as it was loud. Just fifteen minutes later, the Chief Justice announced that the election law amendments were upheld. He had accepted the appeal, reversing the High Court's decision, which left many observers holding their breath, anxiously awaiting Justice Khanna's take on the matter.

Justice Khanna launched into his reading, appearing visibly burdened by the decision he was about to render. It was no surprise to his audience when he declared the constitutional amendment invalid, but gasps of disbelief echoed as he upheld the very election law amendments intended to save Mrs. Gandhi. Dismay swept over the courtroom; hope fell short once again.

Justice Mathew then confidently took his turn, affirming Justice Khanna's stand on the constitutional amendment universally while also validating the election law amendments—a moment that seemed to align with the emerging trend of judicial outcomes. It appeared more than likely that the ruling would be unanimous.

The atmosphere took a turn with Justice Beg's unexpected ruling. In a staggering 231-page judgment, he refrained from addressing the constitutional amendment and instead critically examined the merits of the High Court's prior decision. He found flaws in Justice Sinha's conclusions, branding them as "manifest errors" and ultimately absolved Mrs. Gandhi of all liability based on the very unamended laws and context of the case.

Justice Chandrachud concluded the marathon of judgments by issuing the briefest ruling, echoing the same results established by his fellow justices in terms of the constitutional and election law amendments.

As the dust settled, the reactions reverberated throughout the country. While the Opposition lamented the apparent loss, Mrs. Gandhi's residence erupted in celebration—her supporters intoxicated with the triumph of the Supreme Court's verdict. The farcical nature of it all was vividly captured in a satirical cartoon that circled in the news. It presented Mrs. Gandhi perched at a judge's desk, evoking laughter and disbelief over the irony of her situation.

In the aftermath, lawyers for Raj Narain were left stunned, especially given the unexpected turn of Justice Beg's judgment. Fueled by indignation, Bhushan made the decision to file a review application, contesting Justice Beg's ruling on the basis that principles of natural justice were ignored when he delivered a judgment without hearing from all parties involved.

As the review application yet again required the attention of the same five-member bench on December 18, the matter remained ever-potent—a fight for justice that had transformed into more than just a legal case. It symbolized the struggle to uphold democratic values against an overpowering tide of partisan politics.

Thus concluded what many would retrospectively outline as one of the most riveting and consequential legal battles in Indian history, a significant chapter in the narrative of a nation deeply engaged in the quest for justice and representation. In a day, the murky waters of legal interpretation clashed with the stark realities of political maneuvering, revealing not merely a battle in the courtroom, but a confrontation of ideals foundational to democracy itself.

Chapter 20

Epilogure

Transitioning from Legal Dispute to Political Contest

The Supreme Court's decision unambiguously settled lingering doubts about the aftermath of a potential verdict against Indira Gandhi. The implications of an adverse ruling by the High Court had already resulted in the incarceration of the petitioner, raising unsettling questions about the fate of the Supreme Court and its judges had they delivered an unfavorable judgment. Throughout this turbulent period, Mrs. Gandhi refrained from expressing a willingness to conform to any negative decision from the highest court.

On July 13, 1975, the Sunday Times of London posed a pivotal question to Mrs. Gandhi: "If the Supreme Court upholds the Allahabad High Court judgment that annulled your election, would you resign as Prime Minister?" Her response was evasive, emphasizing her right to seek legal recourse, stating, "I have sought legal remedy to which every citizen is entitled. The Supreme Court will give its finding. Is it right to speculate on what it will say?" She pointed out that the government in the state at that time was led by the opposition, and intriguingly, the Minister-in-charge of Police was connected to her constituency as the election agent for her opponent, who initiated the petition.

A few weeks later, on August 1, during an interview with Norman Cousins, the editor of Saturday Review of New York, Mrs. Gandhi was again queried about her intentions should the Supreme Court issue an adverse ruling. Her response, once more, reflected a reluctance to commit to any definitive course of action, closely mirroring her prior sentiments.

The questions directed at Mrs. Gandhi revolved solely around whether she would accept a negative ruling from the Supreme Court. This prompts one to question her hesitation to unequivocally state her willingness to abide by a verdict if she genuinely intended to do so. The appeal to the Supreme Court seemed less about seeking justice and more about maneuvering—where she risked little in the face of potential change.

For the Supreme Court itself, the Emergency, which represented a profound shift in India's political landscape, stands as a cautionary tale moving forward. Beyond the nuances of Mrs. Gandhi's case, the Court's ruling—allowing for retrospective changes in election laws—raised significant debates over legal integrity. Moreover, the most controversial decision emerged from the ADM Jabalpur case, where the Court controversially held that during a state of Emergency, fundamental rights could be suspended, rendering citizens vulnerable to arbitrary detainment without legal recourse. The Attorney-General of India during this trial infamously asserted, "Even if life was taken away illegally, courts are helpless." Years later, Judge P.N. Bhagwati, reflecting on this dark chapter, expressed his deep regret over the majority opinion, stating, "If it was open to me to come to a fresh decision in that case, I would agree with what Justice (H.R.) Khanna did."

The ensuing months of the Emergency have been well documented and need little recounting. The citizens of India delivered a resounding judgment in March 1977, decisively rejecting the Congress party

at the polls. In a poignant electoral showdown between Mrs. Gandhi and Raj Narain, the populace of Rae Bareli turned the tide by defeating Mrs. Gandhi with a striking margin of 55,000 votes. This election, intimately tied to the ongoing case, signified a verdict from the people's court—clearly articulated as 'guilty.'

With time, it becomes clearer to dissect the enduring consequences of this pivotal case. The immediate imposition of the Emergency, while perturbing, seemed to galvanize an awakening in the nation. Democracy, following this tumultuous episode, emerged fortified. The harsh reality of lost rights ingrained a deeper appreciation among the Indian citizenry for their civil liberties.

The emergency period also dealt a significant blow to the alarming ideology that had started to take root before the crisis—that dictatorship could be an optimal governance model for India. The distressing period of authoritarian rule invigorated the public's commitment to democracy, rekindling their faith in the democratic process as the only legitimate path for the nation's governance.

Beyond these long-term rejuvenations, the Emergency birthed at least one immediate upside: the rise of the Janata Party. The very existence of this opposition group could be seen as a direct response to the political environment induced by the Emergency, showcasing that democratic principles could reestablish themselves, even in the face of adversity. The journey from a contentious court battle to a revealing electoral contest encapsulated a nation's resilience, learning not just to navigate the immediate crisis, but also to reflect and emerge stronger for the future.