

BOOK REVIEW: THE CASES THAT INDIA FORGOT BY CHINTAN CHANDRACHUD

by

Anagha P

School of Legal Studies, Cochin University of Science and Technology

ABSTRACT

The book taken up reviewing consists of 10 chapter divided over four parts, namely, Politics, Gender, Religion and National Security. The various issues involved in the course of the book range from electoral mandates to reservation system to sexual harassment and also carry with it issues pertaining to state activities aimed at curbing menaces such as insurgency and extremism. At various junctures, the judgements delivered by the Courts are subject to intense scrutiny by the author who also recollects the responses these judgements received at that time from all fields of the nation. The book also carries a mixture of case laws hailing from the formative years since Independence and also encompasses very recent cases as well. Yet another highlight is the fact that most of these cases have witnessed the attendance of stalwarts of the Indian judiciary and this grandiose list includes the names of HM Seervai, MC Setalwad, Nani Palkhiwala to just name a few. The varying and sometimes contradicting stances adopted by eminent judges and leading lawyers over various cases have also been noted by the author. Altogether, *The Cases That India Forgot* by Chintan Chandrachud presents a large picture of cases that marked rich and occasionally ironic milestones in the history of Indian judiciary.

The Cases That India Forgot by Chintan Chandrachud

The book placed under review is the result of extensive research work conducted by the author who is an associate at the London office of Quin Emanuel Urqhart and Sullivan LLP and also holds a PhD from the University of Cambridge, United Kingdom. Though in various legal texts, landmark cases which gave rise to various legal doctrines and legal propositions have been discussed, most often preceding or succeeding case laws of equal importance have not

been given due attention in the legal sphere. This book which is reviewed, effectively fills up this void.

The book is divided broadly into four categories; Politics, Gender, Religion and National Security and has a total of 10 chapters. The first chapter deals with one of the most glaring instances of an acute legal consternation between the important institutions in a democracy - the legislature and the judiciary through the Keshav Singh case¹. The landmark case began which began with a pamphlet distributed by Keshav Singh, a worker of the Socialist Party in 1964 (where Congress MLA Narsingh Narain Pandey was alleged to be corrupt), went up to the Supreme Court, through the fifth Presidential reference made since the enactment of the Constitution. The case witnessed the arguments presented by H M Seervai and MC Setalvad and the outcome was determined by the Supreme Court's interpretation of Article 194(3) and Article 211. The victory of the High Court judges and Advocate Solomon (who were ordered to be brought in custody into the legislative assembly, following the decision that Keshav Singh be released on bail) were evident though not unanimous. And the judgement was criticized on grounds that there was no role for the Assembly to decide its own privileges and the Supreme Court held that parliamentary privilege would yield to personal liberty, leading to the legal approach that parliamentary privilege will trump certain fundamental rights, not all. Inferentially, it is noted by the author that the disagreements rose to such a level only because of certain errors and mistakes and that such conflicts should be solved through "statesmanship rather than brinkmanship".

The second chapter dealt with the Minerva Mills case² which arose when the nationalization of Minerva Mills was challenged by its erstwhile owners. The issues included whether the two amendments made to Article 368 during the emergency period giving the Parliament unfettered powers to amend the Constitution was valid and consequentially whether the Janata Government's deletion of the right to property from fundamental rights was valid or not. The case witnessed the attendance of legal luminaries like Nani Palkhiwala, the then Attorney General LN Sinha and the then Solicitor General KK Venugopal. The case was heard by Chief Justice Y.V. Chandrachud and Justices A.C. Gupta, N.L. Untwalia, P.N.Bhagwati and P.S. Kailasam. The amendments made to Article 368 was struck down and the amendments to Article 31C was also struck down on the grounds that it disturbed the balance between fundamental rights and directive principles. The judgement was followed by a numerous

¹ Keshav Singh v. Speaker, Legislative Assembly up AIR 1965 ALL 349

² Minerva Mills Ltd. & Ors vs Union Of India & Ors 1980 AIR 1789

criticisms from the Government side, the legal fraternity and also from within the Bench itself (precisely from Justice PN Bhagawati), and a rather unsuccessful review petition filed by the Government. However, almost four decades later, the author observes that the judgement has assumed the role of an established constitutional doctrine and the amendments challenged in the case are accompanied in the Constitution by the footnote: 'This section has been declared invalid by the Supreme Court.'

The third chapter deals with the case *Rameshwar Prasad v. Union of India*³ which is a very contemporary instance of power tussles post elections. With the NDA secured ninety-two seats in the Bihar state elections in 2005, while the RJD, the LJP and the Congress secured seventy-five, twenty-nine and ten seats respectively, the Governor sent a couple of reports to the UPA Government at the Centre which suggested of fresh elections to prevent the on-going 'horse-trading'. Subsequently a Presidential order signed by the then President Dr. APJ Abdul Kalam dissolved the assembly and fresh elections were announced. The order was challenged by review petitions filed by 4 elected MLAs and in its detailed judgement the Supreme Court held the Presidential proclamation as unconstitutional but there was no legal remedy provided since considerable resources were already employed for fresh elections. The Chief Justice also held that the governor misled the council of ministers. While the Governor Buta Singh resigned a week after taking the Republic Day salute on 26 January 2006, Dr. APJ Abdul Kalam, India's most loved President however was persuaded from not resigning by the then Prime Minister Dr. Manmohan Singh as his resignation could result in the toppling of the UPA government itself.

The second part is with regard to gender and begins with the fourth chapter which deals with the case *Tukaram v. State of Maharashtra*⁴. The case presents a very unfortunate state of affairs where a rape survivor was denied the justice which was due to her, by utilizing the hollows of legal positions and its various nuances. A survivor of custodial rape, filed a case in the Sessions Court which acquitted the defendants and held the survivor to be 'habituated to sexual intercourse'. An appeal to the High Court resulted in a judgement favoring the survivor but a subsequent appeal to the Supreme Court reverted back to the position taken by the Sessions Court. Following an open letter (which sparked public outrage) to the then Chief Justice of India YV Chandrachud, the Supreme Court, in a bid to redeem itself of the bad reputation gained through its previous judgement in the case, the Supreme Court reviewed its judgement

³ *Rameshwar Prasad And Ors v. Union of India* 2006 2 SCC 1

⁴ *Tukaram v. State of Maharashtra* AIR 1979 SC 185

and held that corroborative evidence was not required in cases involving sexual offences. The Law Commission was also asked by the then Congress Government to study the law of rape and sexual assault of women. Neglecting several recommendations of the Commission, the Parliament still enacted special provisions to deal with custodial situations and also made the disclosure of the identity of the victim without her consent a criminal offence. Beyond all legal and legislative circles, the author laments the most unfortunate scenario where a rape survivor was let down by the acclaimed independent judiciary of the world's largest democracy.

RD Bajaj v. KPS Gill⁵ is the case law which is covered in the fifth chapter. The case is with regard to the sexual harassment of a senior IAS officer RD Bajaj by KPS Gill, the then Director General of the Punjab Police. The case took 17 years to reach its culmination with the Supreme Court deciding that KPS Gill's behavior did not suit a high ranking Police officer. The ironies of the case in hand include, the endless cycle of decisions and appeals to the various courts of law coming under the judicial hierarchy, the High Court's verdict which only reinforced age-old perceptions as to the modest Indian woman (without exonerating Gill as Bajaj wanted), the Chief Judicial Magistrate convicting Gill and the Sessions Court judge granting him probation along with a bond. Yet another stark irony was that Gill was awarded the Padma Shri even after the initial High Court verdict which acquitted Gill. The author also reflects on the accessibility to justice by women from the underprivileged sections when put in a similar unfortunate circumstance.

The third part deals with religion. The case of Champakam Dorairajam v. State of Madras⁶ forms the subject matter of the sixth chapter. In the said case, the revised Communal G.O of 1927 which existed in India even after Independence was put under judicial scrutiny. The High Court struck down the Communal G.O citing lack of any clause under Article 15 and Article 29 which is analogous to Article 16(4) and also that Article 46 coming under the Directive Principles of State Policy would be subsidiary to Fundamental Rights and a similar stance was adopted by the Supreme Court as well upon an appeal. However, the Nehru Government decided to overturn the decision of the Supreme Court and a new clause was added to Article 15 by virtue of which the state could not be prevented from making special provisions for the 'educational, economic and social' interests of the backward classes. The judgement of the Supreme Court was severely criticized by Dr BR Ambedkar as well and even decades later,

⁵ Mrs. Rupan Deol Bajaj & Anr vs Kanwar Pal Singh Gill & Anr 1996 AIR 309

⁶ Champakam Dorairajam v. State of Madras AIR 1951 Mad 120

has its imprint in the incessant battle between reservation and merit, which according to the author, arguably, must never have existed.

In the seventh chapter, the focus is brought to *State of Bombay v. Narasu Appa Mali*⁷, where the Bombay Prevention of Hindu Bigamous Marriages Act 1946 was challenged. Justice Chagla and Justice Ganjendragadkar heard the case and upheld the Act as constitutional. However to the pressing question of whether the Muslim personal laws which support polygamy must also be struck down, the Court held that personal law is different from custom in Article 13 of the Constitution, as per the Government of India Act 1915 and this judgement indirectly gave safeguards to regressive religious practices. The author opines that even in the recent triple talaq case, the Narasu judgement wasn't overturned, the Court relied upon the rationale that triple talaq wasn't integral to Islam and doesn't form part of personal laws. From the author's perspective, those judgements which do not overturn erring judgements of the past are graver mistakes in judicial parlance.

With regard to the fourth part of the book, which consists of cases relating to national security, the eighth chapter is *Kartar Singh v. State of Punjab*⁸. The chapter takes a detailed perusal of the incidents resulting from the implementation of TADA and also analyses the Court's approach to the case where TADA was challenged. Justice SR Pandian who delivered the judgement held that the Parliament had the legislative power to enact the Act and did not strike down Section 15 of the Act. Despite widespread criticism against the judgement it was the National Human Rights Commission's efforts which ensured that TADA would not be renewed beyond 23rd May 1995 and the author ends with a note that though TADA was never renewed, existing prosecutions under TADA continued for many long years.

In the ninth chapter, the view is directed at the Armed Forces Special Powers Act which was enacted in 1958 and after fifteen years since the Act being brought under legal challenge, the Supreme Court in the bench headed by Justice JS Verma took cognizance of the petitions in 1997. In the case *Naga People's Movement of Human Rights v. Union of India*⁹, the Supreme Court upheld the license to kill, license to arrest and license to search under AFSPA and gave little importance as to whether such an Act violates the fundamental rights and so is constitutionally valid. Through the chapter the author also takes note of the atrocities committed in the 'disturbed areas' due to this Act, the outcry of the public against such

⁷ *State of Bombay v. Narasu Appa Mali* AIR 1952 Bom 84

⁸ *Kartar Singh v. State of Punjab* 1994 SCC (3) 569

⁹ *Naga People's Movement of Human Rights v. Union of India* AIR 1998 SC 431

unfortunate incidents and the recommendations given against AFSPA by the Justice Jeevan Reddy Committee in 2005 and the Second Administrative Reforms Committee headed by Veerappa Moily in 2007. The chapter ends on a looming note that the Supreme Court did not go beyond mere civil recommendations and warnings when it was given an opportunity to curb an anti-insurgent Act which had ‘little or no effect’ on insurgency in Manipur, as observed by the Justice Hegde Commission in 2013.

The tenth and last case deals with *Nandini Sundar v. State of Chattisgarh*¹⁰ where the appointing of the local citizens of Chattisgarh as Special Police Officers in a counter-insurgency measure started by Congress MLA Mahendra Kumar. The Supreme Court, in 2011, struck down such appointments as unconstitutional and violative of the fundamental right to equality and right to life. The judgement was received with a clarification petition filed by the UPA Government at the Centre to which the Supreme Court clarified that the decision was limited to the state of Chattisgarh. The state government later filed an affidavit notifying the formation of the Chhattisgarh Auxiliary Armed Police Force to aid and assist the forces combating the Naxal forces in Chattisgarh. The author seems to be rather skeptical about this as this auxiliary armed police force seemed to have the exact same functions as those of the SPOs. Other factors retold by the author include the alleged shoddy investigation done by the NHRC which was directed by the Court in 2008 to investigate the allegations made by the parties to the case, the economic observations made by the Supreme Court and the apparent underlying non-compliance with the substance of the judgement delivered, according to the author’s perspective.

Inferentially, the book under review gives a detailed study about some of the landmark cases of the Indian judiciary which remained in the sidelines for long. The circumstances of each case, the social scenario prevalent when the judgment was delivered and the legislative and societal responses to these judgements have also been brought under the author’s scope of study. The efforts put in by the author and Juggernaut Books in bringing out this book and thereby opening a doorway to analyze crucial judgements of yesteryears truly deserve immense appreciation.

-ANAGHA. P*

¹⁰ *Nandini Sundar v. State of Chattisgarh* AIR 2011 SC 2839

* Student, BCOM LLB (HONS), SLS, CUSAT.



Journal of Multi-Disciplinary
Legal Research