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Book Review: Cases That India Forgot

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INTRODUCTION

“One precedent creates another and they soon accumulate and constitute law. What yesterday was a fact, today is a doctrine” - Junius

The word precedent means ‘something that has happened before. A precedent is a declaration of law stated in a judicial decision of a High Court or superior court that is intended to be followed by both the same court and lower courts’. The writer examines ten neglected cases to show how India's court has been more executive-minded than the executive at times. His latest book, ‘Chintan Chandrachud’ presents us with a historical perspective on the courts' uneven legacy at a time when faith in their independence in India is waning. He explains the decision-making process in ten "forgotten cases" that may have faded from public consciousness but left an indelible mark on India's justice system.

The author in the preface of the book goes on to tell that though there are many commentaries and writings related to law, they are largely inaccessible to the general public, due to the jargon they use. “A portion of the cases that the Supreme Court and high courts choose are carved in open memory as a result of their social importance or political effect. The Mandal Commission

case set the benchmark for figuring out who the recipients of reservation could be, while the Keshavananda case¹ forced limits on Parliament's power to alter the Constitution. Whole volumes are devoted to these cases, which have been investigated and analyzed. For every one of these milestone cases, nonetheless, there is an inventory of cases that isn't in the overall public awareness. Every part of this book centres around one of these 'neglected' cases - cases that are not in the public memory, but rather ought to be."

The author goes on to say that time is a great levelling factor and has an interesting role in differentiating landmark cases from the ones that are forgotten. In this book, we will see cases that have an interesting interplay of politics and the law. Moreover, we will see cases where the Supreme Court has abdicated its responsibility. Some decisions considered in this book have been profoundly dug into and have been applied to their impact for a long time. Others have essentially never been executed, or scarcely made due for quite a long time before being quickly relegated to the archives.

ABOUT THE AUTHOR

Chintan Chandrachud is well known for his book 'Balanced Constitutionalism: Courts and Legislatures in India and the United Kingdom'². Chintan Chandrachud was born into a legal family with a long history. Yeshwant Vishnu Chandrachud, India's 16th Chief Justice, is his grandfather. He is the son of Dhananjaya Chandrachud, who is now a Supreme Court justice and is the next in line to become Chief Justice. He is a partner at the London office of Quinn Emanuel Urquhart and Sullivan LLP. Chintan joined chambers in July 2021, following the fruitful finish of his pupillage. He is fostering a wide work, covering business cases, discretion, charge prosecution, and public regulation suit.

Chintan burned through four years as a specialist at Quinn Emanuel Urquhart and Sullivan LLP before moving to the Bar. His eminent portrayals remembered representing a Ukrainian business bank for PCA mediation procedures under the Russia-Ukraine Bilateral Investment

¹ *Kesavananda Bharati Sripadagalvaru & Ors v State Of Kerala Writ Petition (Civil) 135/1970*

² Chintan Chandrachud, *Balanced Constitutionalism: Courts and Legislatures in India and the United Kingdom* (1st edn, OUP 2017)

Treaty, representing a gathering of mutual funds in a case of offer cost control on Indian securities exchanges at the Commercial Court, and representing a British mining combination in the biggest at any point charge question (USD 200 billion) against the Tanzania Revenue Authority. He was recorded by 'Chambers and Partners' as a 'partner to watch', and by Legal 500 as a 'key attorney', for charge prosecution. He holds a Ph.D. from the University of Cambridge, UK.

ANALYSIS OF THE BOOK

The book starts with how choosing 10 landmark cases out of a zillion can be an exhausting task. The author goes on to say that the cases in the book are from different genres and cut across caste, class, and community. He has chosen diverse cases representing every important facet of democracy. The author looked at the cases through several lenses and divided them into four categories. They are – "Politics, Gender, Religion, and National Security".

A. Politics

1. The Keshav Singh Case

Who would have thought that a pamphlet distributed by a local politician would paralyse administrative machinery, strain relations between state institutions, and provoke a constitutional crisis? This is precisely what happened in 1964³ In this case, the creator broke down the conflict for power between the Judiciary and the Legislature. For this situation, Keshav Singh had been detained because of disdain against the Uttar Pradesh get-together. It was fought that the confinement was unlawful, based on which two appointed authorities of the High Court allowed him bail. The Uttar Pradesh gathering then gave a request to those adjudicators as well concerning the backer on the charges of disdain against the house.

The gathering additionally requested for Keshav Singh to be arrested. The creator proceeds to examine how the council doesn't have the position to start procedures against an appointed authority. Likewise examined how the adjudicator passes a request given a specific request that

³ Chintan Chandrachud, *The cases that India forgot* (1st edn, Juggernaut 2019)

challenges the council's organization and isn't committing hatred of the law-making body. This case is utilized as an instrument by the creator to reveal insight into the tussle of force between the Courts and the State Legislative Assembly and remarks on the sacred obligation of the legal organ.

2. Minerva Mills v Association of India⁴

Minerva Mills is one of the main decisions of time that keeps on holding significance right up to the present day. The Parliament had limitless abilities to revise the constitution through the 42nd Amendment Act 1986⁵. In light of a legitimate concern for safeguarding the Basic Structure of the Constitution, the Apex Court struck down those segments for this situation. The creator paints the story and setting in which this choice occurred for a reasonable comprehension of the judgment.

In the Minerva Mills case, the Supreme Court provided key clarifications on the interpretation of the basic structure doctrine. The court ruled that the power of the parliament to amend the constitution is limited by the constitution. Hence the parliament cannot exercise this limited power to grant itself unlimited power. In addition, a majority of the court also held that the parliament's power to amend is not a power to destroy. Hence the parliament cannot emasculate the fundamental rights of individuals, and also includes the right to liberty and equality (which is not a fundamental right but considered a basic structure of the Constitution). The ruling struck down clauses 4 and 5 of the Constitution (Forty-second Amendment) Act, 1976 enacted during the Emergency imposed by Prime Minister Indira Gandhi.⁶

3. Rameshwar Prasad v Association of India⁷

The following case considered in this book offers a powerful mix of high political show and critical inquiries of protected regulation. The Rameshwar Prasad case and the conditions encompassing it, include something like two state elections, noon calls to Moscow, two Supreme

⁴ *Minerva Mills Ltd. & Ors vs Union Of India & Ors* (1981) SCR (1) 206

⁵ 42nd Amendment Act 1986

⁶ Chintan Chandrachud (n 2)

⁷ *Rameshwar Prasad & Ors vs Union Of India & Anr* Writ Petition (civil) 257/2005

Court judgements renunciations and close resignations, and hideouts in Jamshedpur. The Election Commission of India in the year 2005 conducted an election in the state of Bihar whose results were declared on 4th March 2005. There was a total of 243 seats in the state legislative assembly of Bihar and to form a majority in the assembly, the party needs to win 122 seats. The seats won by the parties were divided in the following way:

National Democratic Alliance Party (NDA) - 92 seats, Rashtriya Janta Dal Party (RJD) - 75 seats & others - 9 seats. Consequently, no party independently won the political decision and couldn't cross the larger part stamps. As a result, no administration could be framed in Bihar so President's rule was forced in the state. The sacred legitimacy to break down the Assembly was tested in the appeal. This is viewed as an exceptional case as before this case all cases depended on the disintegration of the Assemblies in light of the ground where the gatherings lost trust in the House. This case accentuation where before the underlying gathering of the discussion, was coordinated to break up because an attempt is being shaped to devise status by untrustworthy ways and set forward a declaration to frame the greater part of government and if such attempts have proceeded, it would interfere with the sacred arrangements.

The end of the gathering under article 356⁸ of the constitution can be permitted on the satisfaction that an issue has come where the public authority of the state can't fill in according to the established arrangements. Such fulfillment can be shipped off to the president as a report by the lead representative. It is likewise prudent to end even without the lead representative's report in a circumstance where there is some other substantiating proof accessible to the president cherished under article 356⁹. A governor and a state government were casualties during this episode. The President -, among India's most respected and popular Presidents - escaped only narrowly.¹⁰

⁸ Constitution of India 1950, art. 356

⁹ *Ibid*

¹⁰ Chintan Chandrachud (n 2)

B. Gender

1. *Tukaram v State of Maharashtra*¹¹

For this situation, the creator brings up the dangerous and man-centric ideas dug into the decision. The book investigates the Supreme Court's choice to clear an assault charge, exclusively as a result of the casualty's past sexual history. A supposed assault that happened in police authority shouldn't have been managed along these lines. It is a perilous disappointment of the Courts since it clears the way for additional sexist choices to be made that connect more prominent disgrace, shame, and injury to the assault casualties and deter them from approaching. The creator draws a line up with the Nirbhaya case, where the normal public soul was constrained into requesting the change.

2. *R.D. Bajaj v K.P.S. Gill*¹²

In *R.D. Bajaj v KPS Gill*, the creator makes sense of how an instance of inappropriate behaviour happened for north of seventeen years basically because the blamed was a 'Supercop' and had level political associations and honour. *RD Bajaj v K.P.S. Gill* is a notable 'Butt Slapping Case' and was perhaps the most censured and perceived case. Mrs. Rupan Deol Bajaj, an official of the Indian Administrative Services (I.A.S.) individual from the Punjab Cadre. The complaint alleged the commission of offences under Sections 341¹³, 342¹⁴, 352¹⁵, 354¹⁶, and 509¹⁷ of the "Indian Penal Code" by Mr. K.P.S. Gill, the Director-General of Police, Punjab, towards her on 18 July 1988 at an evening gathering. The last decision came in 2005, which eventually lessen the punishment to probation.

¹¹ *Tuka Ram And Anr v State of Maharashtra* (1979) SCR (1) 810

¹² *Mrs. Rupan Deol Bajaj & Anr v Kanwar Pal Singh Gill & Anr* (1995) SCC (6) 194

¹³ Indian Penal Code 1860, s 341

¹⁴ Indian Penal Code 1860, s 342

¹⁵ Indian Penal Code 1860, s 352

¹⁶ Indian Penal Code 1860, s 354

¹⁷ Indian Penal Code 1860, s 509

C. Religion

1. State of Madras v Champakam Dorairajan¹⁸

The writer uses this case to clear up for the peruser how the State figured out how to pass the First Amendment of the Constitution to allow position-based reservations. In any case, the Supreme Court obstructed the advancement of the regressive classes simultaneously, by expressing that reservations were an exemption for, as opposed to a piece of, the key right to correspondence. This built up the twofold love in the discussion of 'reservation versus merit'.

2. State of Bombay v Narasu Appa Mali¹⁹

This is the main case in the whole book that was not settled by the Supreme Court of India. Here, a vital judgment of the Bombay High Court helps answer the sacred inquiry of who holds matchless quality in contention between religion-based individual regulations and Fundamental Rights.

D. National security

1. Kartar Singh v State of Punjab²⁰

This part dissects how the State will in general utilize the affection of National Security to expand its freedoms and pull off bad behaviour. While National Security keeps on being of principal significance and frequently empowers legitimized government strategies, likewise a device can be abused to smother. This case comprehends the direction of the Terrorists and Disruptive Activities Act and what prompted its non-restoration. 'Threats to national security, whether real or imagined, are often a trump card for governments around the world. 'National security' is a shield that protects legitimate government action, but it can often be a cover for a

¹⁸ *State of Madras v Champakam Dorairajan* (1951) SCR 525

¹⁹ *State of Bombay v Narasu Appa Mali* AIR (1952) Bom 84

²⁰ *Kartar Singh v State of Punjab* (1994) SCC (3) 569

multitude of sins. When governments defend their conduct citing national security concerns, courts tend to freeze.’²¹

2. Naga People's Movement of Human Rights v Association of India

Additionally, this case likewise gives one more occasion of how the public authority utilizes 'Public safety' to excuse crucial privileges. The disappointment of the Courts to consider the State responsible is their inability to monitor the Constitution, which prompted the disappointment of individuals in the North East.

3. Nandini Sundar v State of Chhattisgarh²²

In the last instance of the book, the writer utilizes an arresting way of writing to convey the impediments of the Court's impact. The consistence with the judgment happened exclusively on paper, as in actuality there was no stop put on the state-endorsed equipped non-military personnel development.

CONCLUSION

Not at all like different books by legitimate writers, this book doesn't attempt to extol the tradition of the Supreme Court of India yet rather presents an understanding of the thoughtless activities, disappointments, and impulses of the Court to give a sensible picture as opposed to selling an idealistic dream. That new point of view permits the peruser to observe the limits and shortages of the decisions and gives them a rude awakening about how courts are not generally the watchmen of the Constitution. “The book exhibits how, eventually, it falls on common society, Parliament, and privileged organizations, for example, the National Human Rights Commission to seek after the course of equity when the court’s fizzle. For example, public outcry at the outcome of the Mathura judgment prompted the Law Commission prescribing changes to assault regulations to address parts of assent given under tension. Moreover, the NHRC mediation in 1994 and the activation of political help to cease TADA past 1995, prevented that

²¹ Chintan Chandrachud (n 2)

²² *Nandini Sundar v State of Chhattisgarh* Writ Petition (Civil) No 250/2007

regulation from being upheld.”²³The book is a must-read for anyone with any interest in parts of regulation and legislative issues in the country. The creator has made a fine showing of clarifying the idea that the courts are definitive watchmen of the Constitution.

²³ Neha Singhal, ‘UAPA should go the way of TADA & POTA: IPC has more than enough provisions to deal with cases of terror and unlawful associations’ (*The Times of India*, 6 July 2021) <<https://timesofindia.indiatimes.com/blogs/toi-edit-page/time-to-scrap-uapa-an-octogenarian-suffered-state-aided-harassment-made-possible-by-a-set-of-repressive-rules/>> accessed 04 January 2023