

BOOK REVIEW: LANDMARK JUDGEMENT THAT CHANGED INDIA

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INTRODUCTION

When we talk about Constitution, we often refer to it as the “backbone of a country’s autonomy”. But what is Constitution in the first place? The answer to that can be as precise as one sentence or it can be extended to a whole book. “Constitution is a set of rules that can present the ideals and practices of a state”, but this is not it. If we really want to understand what is Constitution we really have to dive right into the history of how a particular state’s Constitution came into existence.

This book does not enlighten us much about the history of how the Indian Constitution came into existence but it does give a briefing of how it all started with a constitutional struggle which led to a change we see in our society today. This book has provided insiders into some of the landmark judgements that forced not only our judicial system but also our legislative system to transform the country that we are seeing today.

In the preface of the book, the author mentioned a very acceptable and widely covered definition of the Constitution by A. King and i.e. “[A Constitution is]The set of the most important rules and common understandings in any given country that regulate[s] the relations among that country’s governing institutions and also the relationship between those governing institutions and the people of that country.”¹.

This book put emphasis on how Constitution shouldn’t have to be an alien concept for the people but rather is a most important aspect of the governance of a country and also appreciated the independence of the judiciary that our Constitution has provided.

This book is a full fledge guide to some of the judgments which transformed India and gives insights into how deep our constitutional roots are, through those judgements.

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¹Anthony King, The British Constitution, (Oxford University Press, 2009), p.3.

ABOUT THE AUTHOR

Justice Asok Kumar Ganguly is a well-known name in the legal fraternity. He started his legal career in the year 1972 at Hon'ble Calcutta High Court. In 1994, he was appointed as a permanent judge in the same high court but later got transferred to Hon'ble Patna High Court, and remained there as a judge for six years. After that, he again got transferred to Calcutta High Court where he became the senior most puisine judge for five years. He has functioned his duty twice as acting Chief justice of Calcutta High Court. Later he got transferred to the Orissa High Court and in the year, 2007 he took oath as Chief Justice of Orrisa. In 2008, he joined Madras High Court as Chief Justice. Later he got elevated to the Supreme Court of India in the year 2008, where he remained for three years before getting retired on 3rd February 2012. Lastly, he worked as a guest faculty at the National University of Juridical Sciences, Kolkata, and also went on to be the Chairperson of the West Bengal Human Rights Commission.²

Some of the notable cases he dealt with 2G spectrum, The Emergency, the President's power of pardon, etc.

ANALYSIS OF THE BOOK

CHAPTER WISE SUMMARY

Chapter 1: The basic structure doctrine evolved to protect core constitutional values

This chapter, as the name suggests, revolves around the concept of basic structure and how it helped to protect the core values of the Constitution without jeopardising the public welfare. Justice Ganguly has discussed six judgements that are crucial for anyone who wants to have an insight into how the judicial mind operates. The core controversy which was talked about in this chapter was Parliament's power to amend the Constitution and the Apex Court's power of judicial review of those amendments.

Those six judgements were:

1. Shri Shankari Prasad Singh Deo v. Union of India³
2. Sajjan Singh v. State of Rajasthan⁴

²Asok Kumar Ganguly (Wikipedia, the free encyclopedia, 1 June 2023 https://en.wikipedia.org/wiki/Asok_Kumar_Ganguly assessed 18 June 2023

³ AIR 1951 SC 458

3. I.C. Golaknath and Ors v. State of Punjab and Anr⁵
4. KesavanandaBharatiSripadagalvaru and Ors v. State of Kerala and Anr⁶
5. Indira Nehru Gandhi v. Shri Raj Narain and Anr⁷
6. Minerva Mills Ltd and Ors v. Union of India and Ors⁸

Chapter 2: Dissent in the last court, changing constitutional values

One of the reasons ADM Jabalpurv. Shivkant Shukla etc. etc.⁹ case is famous, not only the intent of this case but also the monumental dissent of Justice Hans Raj Khanna. This chapter deals emergency which was imposed on our country. This judgement also led to Maneka Gandhi v. Union of India and others¹⁰because of this case, which resulted in 44th Constitutional Amendment Act, 1978. But various objection was raised in Apex Court and on this the highlight was Justice Khanna's dissenting opinion, which was:

- Article 226 empowers the High Court to issue the writ of habeas corpus which was an integral part of the Constitution and no power has been conferred by the Constitution to any authority to suspend this power of the High Court during an emergency.
- Presidential power under Article 359 (1) could suspend, during an emergency, the right to move any court for the enforcement of fundamental rights mentioned in the order. But rights under statute, being not fundamental rights, could be enforced during the Emergency, despite the Presidential Order.
- Article 21 can't be the sole repository of the right to life and liberty, even without this article, the state possesses no power to deprive a person of his life and liberty without any authority

Chapter 3: From Gopalan to Gandhi:

This chapter shows the shift from A.K. Gopalan v. State of Madras¹¹ to Maneka Gandhi v. Union of India and Ors¹². All we can say is that it took practically 28 years from one approach to another.

⁴ (AIR 1965 SC 845)

⁵ (AIR 1967 SC 1643)

⁶ ([1973] 4 SCC 225)

⁷ (1975 Supp SCC 1)

⁸ (AIR 1980 SC 1789)

⁹ (1976) 2 SCC 521.

¹⁰ (1978) 1 SCC 248.

¹¹ AIR 1950 SC 27

¹² (1978) 1 SCC 248

In Gopalan, the validity of the Preventive Detention Act, 1950, was challenged, mainly on two grounds:

- Whether the act violated the guarantee under Article 21?
As it doesn't stand the test of procedure established by law.
- Whether the act fell foul of the freedom guaranteed under Article 19?
As it mainly talked about the inter-relationship between Articles 19 and 21.

But in Maneka Gandhi v. Union of India and Ors., it was a detailed overview of the doctrine of reasonableness and non-arbitrariness.

Chapter 4: Strengthening The Roots Of Democracy In India And Ensuring A Free And Transparent Election Process:

In this chapter, the discussion was on S.R. Bommai and Others v. Union of India¹³. The nine-judge bench discussed the interpretation of Article 356 of the Constitution of India.

Chapter 5: Access to Education and its denial by the fallacious dictum

In this chapter, **T.M.A. Pai Foundation v. State of Kerala**¹⁴ held that the right to establish an educational institution, whether for charity or for profit, if it is an occupation, is a fundamental right under the purview of Article 19(1)(g). Apex Court also held that the imposition of the quota of seats in the state in an unaided professional institution is a serious encroachment on the rights and the autonomy of the private and professional colleges, they are not saved under reasonable restrictions under Article 19.

Chapter 6: Affirmative State Action And Protection Of Reverse Discrimination By Courts

The chapter deals with the Supreme Court's decision Indra Sawhney v. Union of India¹⁵ which talks about the reservation of Schedule Castes and Schedule Tribes and upliftment for them.

¹³ (1994) 3 SCC 1.

¹⁴ (2002) 8 SCC 481.

¹⁵ (1992) Supp 3 SCC 217.

Chapter 7: The Rarest Of Rare Doctrine

This chapter deals with the rarest of the rare doctrine which is also known as the death penalty or we can say capital punishment regarding this two cases were discussed which is:

- Jagmohan Reddy v. State of Uttar Pradesh¹⁶: this is dealing with the provision of Section 302 of IPC and how it violates Article 14.
- Rajendra Prasad v. State of Uttar Pradesh¹⁷: this basically, examined the depth of the 35th Law Commission's Report.

Chapter 8: Powers Of The President And The Governor To Grant Pardon And Remission

This chapter deals with the case of Maru Ram Etc. Etc. v. Union of India and Another¹⁸ and how it is conflicting with SwamyShraddananda.

Chapter 9: Fast-Changing Social Perspective

And last but not least Vishaka v. The State of Rajasthan¹⁹, this case was related to gender equality and the right to a safe and secure working place is a part of fundamental right under the Constitution of India.

CONCLUSION

Overall this is quite a remarkable book, having all the right judgements in sequence to get an insight into how elaborated our constitution is with all the necessary measure which needs to be taken care of and put under the purview of a holistic view.

When thinking about the title of this book, it speaks for itself. "Landmark Judgement That Changed India", the title chosen by Justice Asok Kumar Ganguly is self-explanatory and as you are going through this book, it includes all the major judgements that the audience can think of. And the most important aspect of this book is Justice Ganguly was actually present in all these judgements and witnessed them with his own eyes.

¹⁶(1973) 1 SCC 20.

¹⁷ (1979) 3 SCC 646, para 18, p. 659.

¹⁸ (1981) 1 SCC 107.

¹⁹ (1997) 6 SCC 241.

Through this book, Justice Ganguly has made a hand guide whose content is readable not only to lawyers but to everyone who wants to have structured insight into our constitutional development without going into too much history.

