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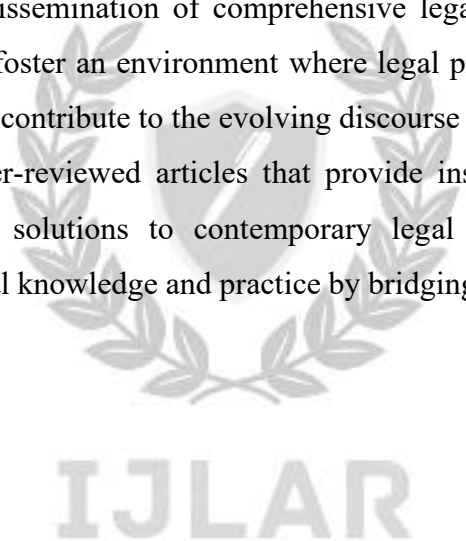
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## **Introduction**

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.



## **Preface**

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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## **Description**

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

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## **THE CASES THAT INDIA FORGOT,**

**BY CHINTAN CHANDRACHUD, JUGGERNAUT BOOKS 2019, P-**

**ISBN- 978935345083, E-ISBN- 9789353450930, PAGES- 229. RS. 599.**

AUTHORED BY - RASHMI NIKAM

### **● PREFACE**

The book begins with the title of the book on the first page. The next page consists of the name of the author as **Mr. Chintan Chandrachud** with the title of the book. The contents of the book have divided cases into **four parts**, which include **political, gender, religion and national security**. There are **ten cases** under the heading of the above four parts. The book has received an appreciation from legal luminaries such as Ms. Zia Mody, Senior Counsel Fali Nariman and Mr. Harish Salve etc.

On reading 'Preface' of the book, it can be understood that what would be the intention of the author for writing this book and the reason for choosing those particular 'forgotten' cases for the purpose of writing this book.

### **● PART ONE- POLITICS.**

**Part 1** of the book consists of judgments related to "**Politics.**" The first case is judgment<sup>1</sup>, where the largest number of judges decided the case in a High Court or that of the Hon'ble Supreme Court at that time. The bench of twenty-eight judges along with Chief Justice of Allahabad High Court, Chief Justice Desai was allocated to hear this case. The chapter involves discussion about '*parliamentary privileges and freedom of speech.*' It also seeks to state how searchlight case<sup>2</sup> was overruled.

Next case is a landmark judgment of the constitutional law. It attempted to elucidate how judicial review is considered as the basic structure of the constitution by Hon'ble Supreme Court. Author has aptly focused on the importance of this case in the democracy of India. The case goes on from the controversy which arose due to enactment of 42<sup>nd</sup> amendment till the Hon'ble

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<sup>1</sup> In The Matter Of: Under Article 143 vs Unknown on 30 September, 1964, **AIR 1965 SC 745**

<sup>2</sup> Pandit M. S. M. Sharma vs Shri Sri Krishna Sinha And Others, 1959 AIR 395, 1959 SCR Supl. (1) 806

Supreme Court held judicial review as basic structure of the constitution. Author has also mentioned about advocacy of advocates who argued this case<sup>3</sup>.

Elections are considered as festivals of Indian democracy. But this festival also has darker side of defection of MLA's/ MP's. As floor test is essential to established stable government. The instance of formation of Bihar government in 2005 has achieved the place of being landmark judgment in Indian politics as well as in constitutional law. An attempt to unfold the judgment of more than one hundred and fifty pages in simple and concise words can be said to have successful. The common man will be enlighten about know-how to judiciary's role in protecting democracy and people from legal fraternity will understand political drama happened in abovementioned case before coming to the Hon'ble Supreme Court<sup>4</sup>.

## ● **PART TWO- GENDER.**

**Second part** of the book deals with cases related to **gender** stereotypes. Author has selected very important and appropriate cases which have impact on the society of India, laws related to women and feminist movement in India. Author has selected case which are instances, which appropriately reflect mindset of Indian society towards women, whether higher class or lower class, irrespective of being rich or poor.

**First case** was decided by Hon'ble Supreme Court in 1979, tells the story of girl named Matura, an Adivasi teenager, who was raped by two policemen in police station, knocked the doors of lower court for justice, which ruled against her in 1974 and acquitted the accused. The author has rightly pointed out "the judgment of the Sessions Court reaffirmed the beliefs of those thousands of women who chose not to pursue proceedings against their assailant." However Mathura preferred an appeal in the High Court. In appeal, Bombay High Court convicted accused. On appeal by accused in Hon'ble Supreme Court, the Apex Court rejected reasoning of High Court and interpretation of law and acquitted accused in 1978. The author has very aptly showed how in the reasoning of Hon'ble Supreme Court was erroneous while deciding the case. Further author has expounded how Matura's case<sup>5</sup> lead to changes in rape laws in India judicial system.

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<sup>3</sup> Minerva Mills v. Union of India, (1980) 3 SCC 625.

<sup>4</sup> Rameshwar Prasad V. Union Of India, AIR 2006 SC 980.

<sup>5</sup> Tukaram v. State of Maharashtra, (1979) 2 SCC 143.

**Second case in Gender Part** selected by author is one of the landmark judgment which lead to development of laws related to sexual harassment<sup>6</sup>. The case aptly described how case of Rupal Deval Bajaj, a bureaucrat, for outraging modesty of women against K.P. S. Gill ended with confirmation of conviction of K. P. S. Gill by Hon'ble Supreme Court in 2005. However, it should be noted that the alleged incident was happened in 1988 and justice was served in 2005. Author has very efficiently unfolded the events from happening of incidence till the conviction.

### ● **PART THREE- RELIGION.**

India is a country of many religions, many languages and many cultures. Thus **Religion is the subject of Part Three of the book.** Reservation is the policy of the government, which has been debated for long time. It has been frequently put as 'battle over admissions to higher education is as old as independent India'<sup>7</sup>. The case selected by an author is decision given by Hon'ble Supreme Court in less than eighteen months of India becoming republic state, whereby Hon'ble Supreme Court struck down Communal G.O., which prescribed ratio for allocation of government jobs to non-Brahmin, Brahmin, Muslims, Anglo-Indians and Christian. The government's attempt to overturn the decision of Supreme Court and the reason behind enactment of First Amendment to the Constitution of India has been elucidated in very simple and understandable words. The attempt to provide knowledge beyond law and making common man of the country aware about legal intricacies can be said to have accomplished its goal.

**Next case of Part Three** is a case decided by Bombay High court, after 18 months of enactment of the Constitution of India<sup>8</sup>. The case can be called an exception to all cases of the book because all other cases discussed in the book are judgment rendered by Hon'ble Supreme Court. The case has continued to influence on 'religion' and 'personal law' in India. An Act<sup>9</sup> was enacted by British government which made bigamy as an offence. The law was challenged on the ground that it is violating Art. 25 of the constitution. The bench consisted of Chief Justice Chagla and Justice Gajendragadka held that 'law in force' did not include personal law, whether under Art. 13 or Art. 372 and Bombay High Court upheld Bombay Prevention of

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<sup>6</sup> Rupal Deval Bajaj v. K. P.S. Gill, AIR 1996 SC 309

<sup>7</sup> State of Madra v. Champakam Dorairanjan, AIR 1951 SC 226.

<sup>8</sup> State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84.

<sup>9</sup> Bombay Prevention of Hindu Bigamous Marriage Act, 1946.

Hindu Bigamous Marriage Act, 1946. As a consequence of this decision, ordinary law pertaining to any subject (including religion) could be challenged because it violates fundamental rights, uncodified personal law was effectively free from scrutiny in the court.<sup>10</sup>

## ● PART FOUR- NATIONAL SECURITY.

**Part Four** of the book is **National Security**, which consist of cases pertaining to TADA, AFSPA and Salwa Judum. **First case** in this Part is related to constitutionality of the **Terrorists and Disruptive Activities Act** enacted in 1985<sup>11</sup>. The chapter covers history of TADA and unfolds how TADA violates fundamental right of citizens. Further the chapter seeks to explain arguments of both sides and reasons given by Hon'ble Supreme Court for upholding TADA as constitutional. The Chapter effectively covered reactions of people to the decision of Supreme Court, which definitely help to understand public opinion at that time.

**Next case** selected is dealing with the constitutionality of **Armed Forces Special Powers Act**. The chapter covers reason behind enactment of the Act, effect of AFSPA on the life of Northeast people, plight of petitions challenging AFSPA and decision of the Apex Court. The chapter also covers post- decision actions of government and reactions of scholars, human right organization as well as public opinion, which effectively help novice in law field and common man to understand gravity of this enactment affecting fundamental rights of citizens<sup>12</sup>.

Establishment of **Salwa Judum In Chhattisgarh**, as counter –insurgency movement and public interest litigation filed in 2005 by Nandini Sundar, Ramachandra Guha and E.A.S. Sarma for violating fundamental rights of citizens in promoting Salwa Judum and recruiting Special Police Officers (SPOs) for counter- insurgency operations and reasons given by two judge bench is declaring the establishment of Salwa Judum unconstitutional and order of its immediate disbandment. The chapter further expound the way of implementation of Supreme Court's decision, its failure to achieve the object of disbandment of Salwa Judum and role of media in democratic states<sup>13</sup>.

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<sup>10</sup> Page 140 of the book.

<sup>11</sup> Kartar Singh V. State of Punjab, (1994) 3 SCC 569.

<sup>12</sup> Naga People's Movement of Human Rights v. Union of India, (1998) 2 SCC 109.

<sup>13</sup> Nandini Sundar v. State of Chhattisgarh, AIR 2011 SC 2839

● **POSTSCRIPT, NOTES AND ACKNOWLEDGEMENT.**

The book has postscript<sup>14</sup> written by an author and notes of the cases<sup>15</sup> given after postscript and it ends with acknowledgement. The postscript includes reasons for selecting these case laws for writing this book. It can be said that author's intention to leave reader not only with something to remember, but also much to reflect on and question has been fulfilled after reading this book, because these cases have not been given enough attention and have not been sufficiently deliberated which attention and deliberation these cases need because of the issues raised in these cases and sometimes astonishing decision of the Court and reaction of the society. Wisely, these cases can be called as "The Cases That India Forgot."



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<sup>14</sup> Page number 201.

<sup>15</sup> Page number 205.