CHAPTER 9
ARGUMENTS AGAINST PRECEDENT
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The Law must be stable but it must not be stand still.[99]
Roscoe Pound (1870 - 1964). [An Introduction to the Philosophy of Law.]

9.1 Introduction

There are many things which change according to the need of the time. The binding force of the age-old customs practically vanished in the 20th century. In the same way, the binding force of precedents has also been criticized by the leading jurists like Lord Denning, Lord Upjohn, Joseph Raz, & HLA Hart. They all have upheld the discretionary powers of the judiciary & the protection of the inherent powers of the court. Recording for them the precedent narrows the scope of the liberty of the judges. The age-old precedents may cause injustice. The great jurist Dr Hans Kelsen, the Father of the Austrian Constitution, had strongly argued against the precedents & has openly praised the civil law system where there is no binding force of precedents.

9.2 Practical Application of Law under Article 141

The practical application of the Law declared by the Hon'ble Sup. Co. of India under Art 141 [Art 212 of the old Government of India Act 1935] is kept with illustrative cases in this part along with critical studies for academic purposes only. Albeit second-rate courts are bound in principle by predominant court point of reference, by & by a judge may trust that equity requires a result at some change with point of reference, & may recognize the actualities of the individual case on thinking that does not show up in the coupling point of reference. On request, the redrafting court may either embrace the new thinking, or turn around on the premise of point of reference. Then again if the losing party does not advance the lower court choice may stay in actuality, in any event with regards to the individual gatherings.

Take note of those mediocre courts can't dodge restricting point of reference of predominant courts, however a court can leave from its own particular earlier choices. Courts may obey point of reference of worldwide purviews, however this is not a use of
the precept of gaze decanis, in light of the fact that remote choices are not authoritative.
Or maybe, a remote choice

MEANING OF RIGHTS & HUMAN RIGHTS

Rights are those conditions of social life without which man cannot be at his best. They expression of his personality & are essential for the full development A right is a claim recognized by society & enforced by the state. the external Rights are necessary conditions for the greatest possible development conditions of the capabilities of an individual. The greatest possible idea of human rights is bound up with the idea of human dignity. Thus all those rights, which are essential for the maintenance of human dignity, are called human rights. Human rights include those areas of individual or group – freedom that are immune from Governmental interference because of their basic contribution to human dignity or welfare & are subject to Governmental Guarantee, protection or promotion.

D.D. Basu characterizes human rights as "those base rights, which each individual must have against the State or other open expert by temperance of his being an individual from human family, regardless of some other thought.”.

Equity V. R. Krishna lyer composes:-

Human rights are those irreducible minima, which have a place with each individual from mankind when set against the State or other open experts or gathering or packs & other harsh groups. Being an individual from the human family, he has the privilege to be dealt with as human, once he takes birth or is alive in the womb with a potential title to Personhood. Once the idea of a higher law official on human specialists was advanced, it came to be stated that there were sure rights front to society, which too were better than right made by the human experts which were of widespread application to men of any age & all climes, & should have existed even before the introduction of political society. These rights proved unable, hence, be damaged by the State.

Wellsprings of Modern Human Rights [100]
1) The Universal Declaration of Human Rights.

2) The International Covenant, on common & Political Rights.

3) The International Covenant on Economic, Social & Cultural Rights

4) The Constitution of India.


6) The choices & judgments of the Sup. Co. what's more, State Hi. Co.s.

7) Annual Reports & Orders of the National Human Rights Commission.

a) Human Rights in the Constitution of India

a) Freedom of discourse &expressions;

b) Freedom of get together;

c) Freedom of affiliation;

d) Freedom of development;

e) Freedom of living arrangement & settlement; and

f) Freedom of profession, occupation, trade or business.

f) The Human rights 1948 in universal declaration

The Second War ended in 1945. It devastated approximately five crores of lives of the human beings. The United Nations Organization was established in the same year. Its main objective is they protection human rights throught out the world. Because of the cultural diversity in different countries, it is sometimes
difficult to formulate a set of rights accepted by all people as human rights. So to solve this problem & to protest against the terrible atrocities, which had occurred during World War II, members from 14 nations representing all political systems & geographical areas of the United Nations (herein after referred to as UN) Met together in 1948 to write the Universal Declaration of Human Rights (Hereinafter referred to as U.D.H.R.) This group was called the commission on Human Rights, & the declaration, which they wrote was adopted by the UN Assembly in 1948.

The Nations & the people of the world the U.D.H.R. with the hope that human rights abuse like the genocide of six million Jews by the Nazis would never happen again. The U.D.H.R. stated the basic hopes & aspirations that are common to all humanity living in the developed & developing communities.

The U.D.H.R. accepted by the General Assembly on 10th December 1948, constituted a historical event on the first magnitude. It’s a beacon call to all the states to respect some of the basic rights. It enumerates the political civil, economic, social & cultural rights of man. It defines various human rights in thirty articles. It is a manifesto of man’s inalienable rights & fundamental freedom.

Articles 1, 2, and 3 deal with fraternity, equality & liberty. Articles 4 to 13 enlarge the basic principles of liberty mentioned in Article 3. They deal with slavery, torture & inhuman punishment, equality before law, right to effective treatment by competent domestic tribunal, arbitrary arrest or detention, right to fair & public hearing, presumption of innocence, privacy & home, freedom of movement respectively. Articles 14 to 20 deal individually with various rights such as right to asylum, nationality, marriage, property, freedom of thought & religion, freedom of assembly. Articles 28 to 30 deal with rights & duties of individual in relation to the community. In the words of the General Assembly In its Thirty Articles the U.D.H.R. sets forth man’s inalienable rights in civil, personal economic, social & cultural fields. Its special character lies in the combination of the classical rights. i.e. the civil, & political rights, with modern rights, i. e. social & economic rights of the individual.

The universal Declaration as already stated sets forth a wide range of right, including rights relating to political participation, individual liberty, & social welfare. In
order to give greater specificity to the principles established by the Universal Declaration & to provide an instrument which individual states could ratify, the United Nations proceeded to develop a Covenant on Human Rights. The original concept was a single covenant covering all the rights set forth in the Universal Declaration.

However, to give more binding legal effect to the U.D.H.R. United Nations General Assembly adopted three other Covenants & legal instruments which defend & guarantee the protection of human rights. They are the Covenants are treaties binding on the States, Which ratify them.

As observed, it substantially took eighteen years to convert the Declaration into Convention. This delay was due to various reasons.

Firstly, it was necessary to accommodate deep differences between democratic libertarian & socialist revolutionary States their differences in fundamental conceptions about the relation of society to the individual, about purpose of Government, about individual rights. For western states civil & political rights were only human rights, economic, social rights were nor rights but were aspirations or plans whose realization depend on economic resources. The socialists insisted on economic & social rights, which were real rights for them.

Secondly, many new States emerged at that time & all joined the process, which slowed down the negotiations.

Thirdly, delay was also due to differences between declaration & a binding covenant. Some states wanted it to be only a Declaration a formal announcement or statement. But States wanted a clear legal obligation with legal consequences.

Lastly, delay was also due to compromises required for differences over some particular rights like right to self-determination & sovereignty over national resources.

However, though late, it culminated in two covenants namely Civil & Political Covenant, 1966 & Economic social & Cultural Covenant, 1996.

On a, India selects worldwide level a "non-obstruction strategy of in inside issues of nations" different. However India is occupied with advancing strength & in Afghanistan human rights, US$2 vowing about billion for the nation's restoration & reproduction endeavors, supporting instruction of young ladies, giving some police preparing, & allowing shelter to various activists escaping Taliban dangers. Let us have short
glimpse of the Development of the Human Rights in India. The Role of the Sup. Co. in their protection is highly important. It will follow after the Illustration Chart

This case is well known as a Searchlight Case. It pulled in Arts 19 & Art. 194 Sharma was the proofreader of an everyday in patna, known as searchlight. Sharma distributed, on May 31, 1958, in his paper, a report of the procedures of Bihar State Legislative Assembly. The report incorporated a bit of the procedures which the Speaker had requested to be canceled from the procedures. Thus, a benefit board was named by the House to consider the topic of the break of benefit by Sharma. The Committee called upon Sharma to go to the gatherings of the Committee,. It was asked, for the benefit of Sharma, that he had the essential appropriate to discourse & expressions, which incorporated the flexibility of press under Art. 19(1) (an), & thusly, he was qualified for distribute the procedures of the Bihar State Legislative Assembly. For the benefit of Shri Krishna Sinha, the respondent & others, it was encouraged that the erased divide did not shape some portion of the procedures by any stretch of the imagination. Additionally, there was no privilege even to the press to distribute the procedures of the House. Distribution of procedures without then specialist of the house was a rupture of its benefits & all things considered the house had a privilege to make suitable Move against the defaulters. Article 194 (3) was depended upon in bolster conflict.

9.5 ILLUSTRATION Outline OF IN INDIA HUMAN RIGHTS

act of sati1829-The was annulled formally by Governor General William Bentick following quite a while of crusading by Hindu change developments, for example, 1929- Child Marriage Restraint Act is passed
1947- India wins Freedom
1950-The Father of the Constitution of India Dr. B R Ambedkar & his team builds up a sovereign popularity based republic with widespread grown-up establishment. Section 3 of contains a Bill the Constitution of Rights enforceable Fundamental by the Sup. Co. & the Hi. Co.s. It likewise accommodates bookings for already burdened segments in instruction, business & political portrayal.


Badly handled the Sikh difficulties & their problems. The Indian Military entered the sacred Golden Temple. A massacre took place in which even some of the saints & priests too assassinated. Gross Violation of human rights. Assassination of Mrs. Indira Gandhi & unfortunate Anti- Sikh Riots, a blot over 2006 Extrajudicial Indian Democracy. Innocent Sikh brothers killed. Punjab by the police 1985-86- vanishings in

2002-Unfortunate Riots in Gujarat

2005- Right to Information Act is passed

Here the Researcher aims to study certain important decided cases from the Sup. Co. in which the fundamental human rights have been upheld.

The State has given directions for land reforms in India.

Equal Remuneration Act has been passed

The State is constantly trying to protect the interest of weaker sections.

The State is also trying to promote International & Security.

The Sup. Co. has become successful in providing proper directions to the Union as well as the State Governments in India.

Legal in each nation has a commitment & a Constitutional part to ensure Human Rights of subjects. Recording for the command of the Constitution of India, this capacity is doled out to the prevalent legal to be specific the Sup. Co. of India & Hi. Co.s. The Sup. Co. of India is maybe a standout amongst the most Active Courts when it comes into the matter of insurance of Human Rights. It has extraordinary notoriety of freedom & validity. The introduction of the Constitution of India exemplifies the targets of the Constitution-producers to construct another Socio-Economic request where there will be Social, Economic & Political Justice for everybody & equity of status & open door for all.

This essential target of the Constitution orders each organ of the State, the official, the governing body & the legal working concordantly to endeavor to understand the destinations concretized in the Fundamental Rights & Directive Principles of State Policy. The legal should thusly embrace an innovative & purposive approach in the
understanding of Policy Fundamental Principles of State Rights & Directive exemplified in the Constitution with a view to propelling Human Rights statute. The advancement & assurance of Human Rights is relies on the solid & autonomous legal. The principle concentrate here would be given wide scope to the utilitarian part of the legal & perceive how far the Apex legal in India has made progress in releasing the overwhelming obligation of protecting Human Rights in the light of our Constitutional order. The real commitments of the legal to the Human Rights statute have been two crease: (1) the substantive development of the idea of Human Rights under Article 21 of the Constitution, & (2) the procedural advancement of Public Interest Litigation. Sexual Violence India is unfortunately becoming the home of the sexual violence. Around 53/.Manhandle of kids have the been subjected type sexual of to some. In 2012, India presented the Protection of Children from Sexual Offenses Act (POCSO) to manage instances of youngster sexual mishandle. Be that as it may, it took two years to record the principal cases under the law & there are immense crevices in its usage with the conviction rate under the demonstration being just 2.4%.

Constrained Labour
India has the most elevated number of individuals living in states of servitude, 14 million, a large portion of whom are in fortified work.

Kid work
India has the biggest number of kid workers less than 14 years old on the planet with an expected 12.6 million kids occupied with risky occupations.

Human trafficking
Human trafficking Asian business nation felonious at the statesman when captured in city, Asian International field carry a mother & her high schooler nation for trying kid to Canada, identification on his political. her kid were The Mother desperate to companion be part of her WHO was ate unlawful vagrant in Canada, & had paid living as associ Katara regarding $70,000 USD abubhai Khimabhai. beforehand been over & the woman had a visa by the government once more denied Canadian t. that even a couple The approach of people with strategic from parliament edges is for such objects drawn nearer is a Pandora's viewed as gap instrumentality the
Indian political framework on debasement within (See Operation likewise Duryodhana). from his gathering & stripped He was suspended of his parliament for this offense. Religious seat within the Violence seen spiritual gatherings (for the foremost half Shared clashes betw amongst Hindus & Muslims) are pervasive in Asian nation since round the season of its freedom from British Rule. Riots ,the 1987 Hashimpura The 1984 Anti-Sikh mobs in Meerut, slaughter mutual Riots,2002 Gujarat riots. T1992 metropolis he 2002 Gujarat harshness —, quite one hundred within the latter, 2,500 people were injured Muslims were dead non-lethally, & accounted for missing. 223 additional were completely assess that up to two, different sources 1000 Muslims died.[25] there have been occurrences of assault, children being scorched alive, & across the board plundering &. The Chief Minister around then, devastation of property Narendra Modi, has been blamed for starting & approving the savagery, as have police & government authorities who purportedly coordinated the agitators & gave arrangements of Muslim-possessed properties to them. The explanation behind the assault considered by somewhere in the range of a Muslim horde assault on a prepare loaded with Hindu travelers in the Godhra Train Burning, where 58 Hindus were executed. A few analysts, nonetheless, that the assaults had hold the view been arranged, organized, & that were very much the assault on the prepare was an "arranged trigger” really planned viciousness for what was.

Recording tor a report Standing Problems by, "Davits& indigenous people groups Human Rights Watch (known as Tribes Scheduled or adivasis) keep on facing separation, rejection, & demonstrations of common viciousness. Laws & arrangements embraced by the Indian government give a solid premise to security, however are not being steadfastly executed by nearby specialists."

Denotified tribes of India, alongside numerous migrant tribes on the whole 60 million in populace, keep on facing social disgrace & monetary hardships, regardless of the reality Act 1871, Criminal Tribes was the administration in 1952 &revoked by supplanted Offenders Act (HOA) by Habitual (1952), as adequately down positioned to In 2014 India was 140th (score of 40.34 out of 105) however around the world notwithstanding one of the best scores in the locale this remaining parts.
Constitution, The Indian while not saying "accommodates press",

M.S.M SHARMA vs SHRI KRISHNA SINHA  (A.I.R 1959 S.C. 395)
This case is famous as a Searchlight Case. It attracted Arts 19 & Art. 194
Sharma was the editor of a daily in patna, known as searchlight. Sharma published, on
May 31, 1958, in his paper, a report of the proceedings of Bihar State Legislative
Assembly. The report included a portion of the proceedings which the Speaker had
ordered to be expunged from the proceedings. Hence, a privilege committee was
appointed by the House to consider the question of the breach of privilege by Sharma.
The Committee called upon Sharma to attend the meetings of the Committee,. It was
urged, on behalf of Sharma, that he had the fundamental right to speech &expressions,
which included the freedom of press under Art. 19(1) (a), & as such, he was entitled to
publish the proceedings of the Bihar State Legislative Assembly. On behalf of Shri
Krishna Sinha, the respondent & others, it was urged that the expunged portion did not
form part of the proceedings at all. Moreover, there was no right even to the press to
publish the proceedings of the House. Publication of proceedings without then authority
of the house was a breach of its privileges & as such the house had a right to take
appropriate Action against the defaulters. Article 194 (3) was relied upon in support
contention. Thus Court was right to the freedom of called upon to decide whether press
of Fundamental Rights was superior to the privileges of the legislature or whether the
privileges of the legislature would prevail over the Fundamental Rights. On a proper
contraction of art . 194(1),(2) & (3), the Sup. Co. came to the conclusion that the
provisions of art 19(1)(a) which are general, must yield to art (194)(1), & the latter part
of its clause (3) which are special. Hence ,the houses of legislature in india have the
privilege under art 194(3) to prohibit the publication of their proceedings.

THE OFFICIAL SECRETS ACT [OSA]
THE SABARIMALA CASE[HAJI ALI/SHANI MANDIR ISSUES]
Recently the Sup. Co. has heard a final argument on the question of whether
women between the ages of 10 & 50 can be excluded from the Sabrimala shrine – an
issue that has gained a degree of notoriety in the last few years. On the constitutional
thinks that the arguments of question the researcher exclusion were based upon entirely
non-religious, or even non-customary bases. They are against the spirit of the
Constitution of India. There is a need of Right of Religion & Right to Equality. The issues
involved in the demand of the women organizations in relation to the entry of them on
the threshold of the sacred Shani Maharaj Temple situated in famous Shani Shingnapur
area of Ahmednagar District of the State of Maharashtra are more or less same hence
are aptly referred here.
This is particularly stark in the present case, because matters of conscience, religious
belief, & religious practice, are among the deepest & most personal issues for
the individual. There seems to be something rather strange in one person agitating for
the religious rights of a completely different person. A PIL is a singularly appropriate
remedy for this kind of a claim.

9.10. THE RIGHT TO PRIVACY AS A DOMINENT HUMAN RIGHT IN INDIA

The public/private divide largely disappeared during feudal times (the manorial
households, in a sense, came to embody characteristics of both spheres), & then made
a reappearance after the Enlightenment & the revolutionary era. The modern era –
Arendt argues – saw economic activities & market transactions taken out of the domain
of the private sphere, which was now defined as the site of intimacy, or intimate
relationships. At this time, as Seyla Benhabib records, the American & French
Revolutions had brought into public consciousness the ideas of basic rights, & the idea
of autonomy. Quoting the philosopher Lawrence Stone, she observes that:
“from the beginning there were tensions between the continuing patriarchal authority of
the father in the bourgeois family & developing conceptions of equality & consent in the
political world. As the male bourgeois citizen was battling for his rights to autonomy in
the religious & economic spheres against the absolutist state. Unlike the Ancients, who
accepted that the private sphere was essentially in egalitarian, the moderns held that it
was simply not subject to the claims of equality. Benhabib further points out that “power
relations in the ‘intimate sphere’ have been treated as though they did not even exist.” It
is this idea of privacy that culminated in judicial holdings in the 20th century that viewed
privacy as a question of a space of seclusion, a space that the State could not enter. After Warren & Brandeis wrote their famous article at the end of the 19th century, viewing the right to privacy as a right to seclusion, or a right to be let alone, the American Sup. Co. held that the right extended to “areas” where there was a “reasonable expectation of privacy.” It was this spatial concept of privacy that was strongly criticized by feminist legal scholars over the second half of the 20th century. In light of the fact that the “private sphere” is itself a hierarchically structured space, Martha Nussbaum points out that a classic example of this is the marital rape exception which deems that forcible sexual intercourse within the marital relationship does not amount to rape.

T. SAREETHA V T. VENKATA SUBBAIH [A P HI. CO./REVERSED BY SUP. CO.] On July 1, 1983, Justice which allowed the Court to pass an order for ‘restitution of conjugal rights.’ In simple language, if the Court was convinced that either a then it could decree that the defaulting spouse was required to go back to the company of their partner – a decree that could be enforced by attaching the defaulter’s property. Justice Chuddar held that Section 9 violated the rights to equality & privacy under the Constitution, & was accordingly void. Within five months, the Delhi Hi. Co. handed down a judgment disagreeing with this conclusions. & a little over a year later, the Incomparable Court asserted the judgment of the Delhi Hi. Co., wrapping the lawful discussion up.

Sareetha remains as a footnote in family law courses, a passing reference in discussions’ about the restitution of conjugal rights. This is a pity. Sareetha was one of those rare cases in Indian constitutional history where a Court understood the Constitution as a radically transformative document, & struck out in a direction that was unfamiliar, bold, & creative – while remaining constitutionally tethered. Its interpretations of equality & privacy anticipated similar developments in other jurisdictions by years, or decades; & in some respects, it is still ahead of the time. Quite apart from the actual decision, it is its reasoning that constitutional lawyers should not forget; because even though the Sup. Co. overruled the judgment, & perhaps closed off the window to a certain kind of legal change, Aretha’s reasoning remains a template for other cases that
might attempt to shape equality & privacy in an emancipator& progressive direction. The Sup. Co. of India has greatly contributed the sacred Institution of Marriage by reversing the judgment of the Andhra Pradesh Hi. Co..

Notice, however, that the law itself does not require sexual intercourse. It only authorizes a decree for cohabitation, which can be enforced through attachment of property. This is why Justice Choudary spoke of the consequences of enforcing a decree – & it is here that we see the first major break with traditional conceptions of privacy. Because Justice Chuddar was not content simply to end his enquiry at the point of cohabitation – but to go further, to find that given the deeply unequal structure of the family, & given the myriad pressures – not simply physical, but of every other kind – that could be brought to bear upon a woman who is shorn from the protection of her own family, a decree for cohabitation would, in all likelihood, lead to compelled intercourse. Taking the example of a Madhya Pradesh Hi. Co. decoction where a woman called Tarabai was required by decree to go back to her husband, Justice Choudary observed

The two impotant words-"Communist" & "Common" in the Second Line of the Preamble were added by the 42'nd Amendment to the Constitution of India. Essentially "Respectability" was likewise included by a similar Amendment affected from 1976. It doesn't imply that India was not a communist mainstream nation before 1976. In expressions of famous mastermind Karl Marx Socialism is equivalent appropriation of the monetary resources of a nation. The Socialist nations must join together & make 'A Global fellowship' by snare or evildoer. In history the main best Socialist Pattern showed up in the tremendous Russin Empire after vivacious communist killed the about entire House of Romenov including the Russian Emperor Czar Nicholas II, Czarina Alexandra, Czarevich & Princesses of tenderages. Numerous privileged people too were slaughtered. Their colossal properties were reallocated. The Commune were built up. The Indian culture depends on the lessons of Lord Mahaveera. Master Buddha, to wrap things up Mahatma Gandhi. They have confidence in advancement & not in transformation. The Indians through the developmental tranquil strategies instructed by Gandhiji have accomplished what the Russians have accomplished through progressive fierce techniques. Today there are no Kings, Queens & Nawabs in India. The feudalism
took its last inhale when the Tenancy & Ceiling on Holding Regulations were passed by the diverse State Governments in India.

And for a women, who would be the one to conceive, Here, for the first time, we see a vition of privacy that focusses upon a combination of bodily integrity &decisional autonomy. Soon afterwards, Justice Choudary cited Gobind, & then focused on one particular line in Gobind:

Latch ing upon the concept of privacy-dignity (and dignity, it will be noticed, speaks to the individual), This is a crucial observation, since it completely rejects the view that the site of privacy claims are social institutions, such as the marriage or the family, & accepts, instead, the opposite claim that the right-bearer is the individual. Privacy, therefore, is to be understood not as an exalted space within which the State cannot enter (no matter what happens within that space), but as a right accorded to each individual, which guarantees her autonomy in all fundamental editions concerning her body.

Justice Choudary’s last argument was with respect to Article 14. Section 9, of course, was facially neutral: the remedy, in theory, was open to both husbands & wives. But, Justice Choudary held, On this blog, we have often discussed the question of whether, to prove discrimination, once must show that the law was intended, or had a motivation to, discriminate; or is it adequate to show that the law, although neutral in its terms, has a disproportionate impact upon a certain group of people. The former views discrimination as a result of a discrete, intentional act; the latter, as the result of long-standing structures & institutions. The former understands social realities as independent of law, providing a neutral background within which law operates; the latter insists that these social realities are always constructed by, & complementary to, the legal system – & that therefore, laws which reproduce or endorse such social realities are equally suspect (or, in the words, of Justice Albie Sachs, the purpose of a Constitution is to transform “misfortune to be endured into injustice to be remedied”). In his analysis of the differential effects of Section 9 based upon a social reality that placed the cost of child-bearing & rearing disproportionately upon women, Justice Choudary firmly endorsed the latter, more nuanced understanding, of equality.
The Indian people are now in a position to understand the full extent to which Sareetha was a transformative & radical judgment. The judges were looking ahead of their times. In specifically applying Article 14 to the private sphere, Justice Choudary repudiated the privacy of the Ancients, Recording tor which equality was a value only in the public sphere. In specifically invoking the power hierarchies & inequalities in the private sphere to justify his decision, he repudiated the spatial conception of the privacy of the moderns, that turns a blind eye to the realities of domination & subordination within the home. In invoki ng Justice Brandeis, he brought the idea of maintaining an egalitarian balance of power between State & individual into private relationships, & took a small step towards the democratization of the private sphere. & in finding an Article 14 violation, he advanced a view of equality that was grounded in structures & institutions, rather than individual acts. One may disagree with his final conclusion – & in fact, Flavia Agnes, among others, has made arguments defending S. 9 – but the reasoning remains powerful, & a clarion call for a progressive vition of privacy & equality. Soon after Sareetha, the Delhi Hi. Co. came to the opposite decision.

MANIFOLD HUMAN RIGHTS OF THE PRISONERS-

The Sup. Co. has interpreted the Right to life in relation to accused & the prisoners. Now they must have full Freedom from torture. Their hands & feet must not be in chains. They have full Right to Legal Aid. Getting bail & having Speedy Trial are their fundamental rights. They must not be publicly hanged etc.

In India the Father of the Constitution Dr B R Ambedkar has advised the judiciary to be strict over this rotten practice.

IN DEENA [AIR 1983SC1155] V UNION OF INDIA

For the case of a Gaoler ordered to take labours from the prisoners. The remuneration was also not given to them The Sup. Co. of India stated that it was a clear violation of the Art.23

RIGHT TO A FAIR & SPEEDY TRIAL
The point of the privilege is to guarantee the correct organization of equity. As a base the privilege to reasonable trial incorporates the accompanying criminal proceedings reasonable trial rights in common &.

IN STATE OF MAHARASHTRA V CHAMPALAL [AIR 1981 SC 1675]

The Right to Fair Trial includes The Right to Speedy Trial. They are two sides of the same coin. A long pre trial detention is nothing but a tyranny on the part of the State. It is fully violative of Art. 21 read with Art.19

FREEDOM OF THOUGHT, CONSCIENCE & RELIGION

Freedom of thought, conscience & religion are closely related rights that protect the freedom of an individual or community, in public or private, to think & freely hold conscientious beliefs & to manifest religion or belief in teaching, practice, worship, & observance.

THE SUP. CO. OF INDIA & SECULARISM

Is to be noted that the Sup. Co. of India had already delivered it’s historic judgment in the world famous constitutional matter of high importance in St. Xavier’s College Case. For the first time in 1974, long before the 42 nd Amendment of 1976 has declared the minute secular aspects of the Indian Secularism.

ST. XAVIER’S COLLEGE V STATE OF GUJARAT[AIR 1974 SC 1389]

In this case Sup. Co. of India observed that ‘There is no Mysticism in the Secular character of the State. Secularism[In India]. The Sup. Co. of India further declared that the State will not make any differences between the religion of the majority & the religion of the minority.

It is to be noted that the provision of the Written as well as Unwritten Constitutions of the Sixteen Commonwealth Realms under the House of Windsor including thee UK, Australia, Canada, New Zealand or the Constitution of Saudi Arabia as well as the Constitution of Bhutan are quite different from that of Constitution of India- both before & after the 42 nd Amendment of 1976. The Royal House of Windsor is the staunch follower of the Anglicanism. However the House has fully provided religious freedom in all parts of their Realms under their Sovereignty. It cannot be invoked as a matter of right in any of the Royal Courts from the Assizes to the Judicial Committee of Her Majesty’s Most Honorable Privy Council, the Sup. Co. of Appeal for all these Sixteen
Realms. In Saudi Arabia the privation of the Constitution declare the whole peninsula as an Islamic State. The Holy Quran is the dominant source of law. The Ijma & the Sunna are other important sources after the Holy Quran. The Royal House of Ibn-Saud has gratiously granted the freedom of religion strictly under the directions of the Holy Quran. Thus the Non-Islamic population including the emigrants can get the ‘Huquq-e-Jimmi’. In the Kingdom Bhutan, the last surviving monarchy on the Indian peninsula, the King Wangchuk has recently granted a written Constitution of Bhutan to his subjects. The Royal Decree declares Therawada Buddhism to be the State Religion. The King has gratiously guaranteed full religious freedom throughout his Kingdom. The Constitution of Italy declares the Republic as ‘Secular’ however a special protection is to be given to Roman Catholicism.

The Sup. Co. of India has clearly expected the amendment to the Preamble of the Constitution of India. The Indian Legislation as well as the Indian Executive is the sensitive organs respecting the directions of the Judiciary with utmost care & caution.

In 1976, the then Prime Minister Mrs. Indira Gandhi had declared the National Emergency. She had a great magnetic personality & a great impression upon the Indian masses. The Constitution was finally amended & the the two most impotant words- ‘Socialist’ & ‘Secular’ in the Second Line were added by the 42’nd Amendment – 1976. It is clear that the Legislation must have considered the judgment of the The two impotents words- ‘Socialist’ & ‘Secular’ in the Second Line of the Preamble were added by the 42’nd Amendment to the Constitution of India in the St. Xavier’s College.

Recording tor some eminent jurists like Hon. Adv. Nani Palakhiwala, the Power of the Legislation to amend the Constitution of India under the Article 368 cannot cover the Preamble which does not have an Article number. In other words the Senior Advocate Hon. Plakhiwala opined that the Preamble is not technically a element of the creation. Thus Recording tor him the the Constitution of India can be amended from the first to last Article but not essentially the Preamble. Law afterall is called a ‘Lawyer’s Paradise’ by the eminent jurist Hon.Sir Julius Stone. Recording tor the opinion of a Senior Advocate & eminent jurist of the contemporary age Hon.Adv.M C Setalvad, the Indian Parliament can amend any part pf the Constitution of India including the Preamble.
9.4 THE SUP. CO. OF INDIA & SOCIALISM

The two impotant words- ‘Socialist’ & ‘Secular’ in the Second Line of the Preamble were added by the 42’nd Amendment to the Constitution of India. Similarly the word ‘Integrity’ was also added by the same Amendment effected from 1976. It does not mean that India was not a socialist secular country before 1976. In words of eminent thinker Karl Marx Socialism is equal distribution of the economic assets of a country. The Socialist countries must unite & create ‘A Global brotherhood’ by hook or crook. In history the first most successful Socialist Pattern appeared in the vast Russian Empire after spirited socialist assassinated the nearly whole House of Romenov including the Russian Emperor Czar Nicholas II, Czarina Alexandra, Czarevich & Princesses of tenderizes. Many aristocrats too were killed. Their prodigious properties were confiscated. The Communs were established. The Indian society is based upon the teachings of Lord Mahaveera. Lord Buddha, last but not least Mahatma Gandhi. They believe in evolution & not in revolution. The Indians through the evolutionary peaceful methods taught by Gandhiji have achieved what the Russians have achieved through revolutionary violent methods. Today there are no Kings, Queens & Nawabs in India. The feudalism took its last breathe when the Tenancy & Ceiling on Holding Regulations were passed by the different State Governments in India. All this is done for the equal distribution of economic assets of the country among its people. It was not done in a day but it took at least half a century after our Freedom from the British Yoke.

HIS HIGHNESS MADHAV RAO SCHINDIA V UNION OF INDIA[AIR 1971]

After the Imperial Parliament had passed the Indian Independence Act 1947, the Royal Forces under the command of Lord Louis Mountbatten, the last Vice-Roy of British India, were to depart up to 1948. Lord Mountbatten was the grandson of Queen-Empress Victoria. He was the Duke of Burma. He proposed to partition the British India into two separate Dominions-[1]The Dominion of India and[2] The Dominion of Pakistan. The 500 small princely States under the Suzerenty of the House of Windsor were left to decide their own fate. They had option to choose - The Dominion of India OR The Dominion of Pakistan. They had also their last option to remain aloof from these Dominions & to establish new relations with the British Crown. Apart from them there were also five considerably bigger Princely States- Hyderabad, Gwalior, Mysore,
Kashmir & Bhopal. In those times Gandhiji’s disciple Pandit Nehru & Sardar Patel were working as the Team of Jurists under Dr. B R Ambedkar was engaged in drafting a bulky Constitution of India for good governance in the ages to come. The Instrument of Accession was signed between the Princely States & the Government of India. The Princely States were ready to merge their area in India. They were given Official Dignity & Privy Purses [Royal Pention] for their expenses. Dr. Ambedkar had divided the into Parts A, B & C. Bombay, Madras were A-States while Hyderabad, Mysore, Kashmir & Gwalior were B-States. Andaman was a C-State. ‘B’ States had the Raj-Pramukhs instead of the Governors. They were appointed from the respective local Royal Houses. In 1971, the President of India declared the intention of the Government to abolish the Princely Titles & the Privy Purses. His Highness Madhav Rao of Gwalior challenged the edition of the government. Other Heads Princely States supported him. The Ruler of Gwalior had appointed eminent jurist & Senior Advocate S S Dadachanji as his counsel to fight a heavy legal battle in the Sup. Co. of India. He worked hard & shew the Court that the Instrument of Accession was signed between the Government of India, then a British Dominion & the Rulers of the Princely States. Thus, Recording tor him it was an international document. It cannot be revoked unilaterally. The side of the Government of India was represented by the eminent jurist & Senior Advocate M C Setalvad. Recording tor him the Government of India was capable enough to abolish the Privy Purses because it has the responsibilities of the Ex-British Dominion under the Doctrine of State Succession. The Hon. Mr. M. Hidaytullah, Then the privations of the Constitution Chief Justice of India carefully interpreted of Indiaand declared his world famous judgment. Recording tor him the the Government of India had no authority to abolish the Privy Purses & the Royal Titles

THE CONSTITUTIONAL AMENDMENT - A STEP TOWARDS SOCIALISM

The Government of India had lost the legal battle. The then Prime Minister Mrs.Indira Gandhi effected the amendment to the Constitution in 1971 by which the Government of India was given full authority to abolish the Privy Purses & the Royal Titles. Thus Shri Madhav Rao & all other Ex-Rulers permanently lost their Special Cadre[under CPC], Privy Purses & the Royal Titles. They all now have become the common Citizens of India. Let us study the landmarks consecutive judgments of IC Golaknath, R C Cooper,
Keshavananda Bharati & Minerva Mills’ case which clearly suggested to amend the Constitution under the light of socialism. I C GOLAKNATH Vs. STATE OF PUNJAB (A.I.R 1967 S.C. 1643) [Art.368]

In this case, the seventeenth Amendment to the Constitution, which limited or restricted certain Fundamental Rights, was challenged on the the Parliament ground that had no Rights topower Fundamental Constitution in of amend the the such a way as to curtail, deprive any restrict, limit or. The matter was earlier decided by an unanimous decition of the Sup. Co. in Shankari . ,(1952) Union of India Prasad vs.c.p.89.in this case, it was held were no that there the power of the restrictions on o amend the Parliament to, & therefore Constitution, it could also amend part III, dealing with Fundamental Rights. The matter was again reopened in v. S(1965) tate of Rajasthan Sajjan Singh I.S.C.R.933. However, in this case, the judgment of the Sup. Co. was not unanlmous. Therefore, in Gokulnath’s case, a full Bench of the Supreme C . of eleven Judges was constituted.

The majority of six Judges held that the Parliament had to power to amend part III of the Constitution so as to restrict or limit the rights guaranteed therein. Subba Rao. c. j. speaking for himself & four others, came to the conclusions that the seventeenth Amendment (which was in question) was void as it abridged Fundamental Rights, but at the same time he further held applying the doctrine of prospective overruling that the decision should not affect the validity of the amendments made to the date of judgment, though thereafter, the Parliament would have no power to restrict, abridge, or limit Fundamental Rights. Hidayatullah C.J also came to the conclusion that Parliament had no such powers, but held the impugned Act to be valid, as he the Constitution was the opinion that Article 31(A) of, though invalid, had stood as a part of the Constitution as the validity of the Article was acquiesced for a long time.

The majority judgment in Golaknath’s case has been profusely criticized both in India & abroad. It is pointed out that it was wrongly held that Art.368 prescribed merely the procedure for amendment & does not confer any power on the Parliament.]Again, the
majority judgment traces the Parliaments Constitutions in the residuary power of power to amend the legislation, a view which, it is submitted, is very difficult to hold. Further, Art.368 does not expressly bar the Parliaments power to amend any part of the Constitution. On the contrary, it speaks of the amendments of “this Constitution. Again the majority judgment while not discussing whether part III of the Constitution (which deals with Fundamental Rights) could be amended, suggested that the residuary power to legislation may be availed of to ” convene afresh constitute Assembly, which in turn could abridge the Fundamental Rights. This reasoning again, is not sound, because if Parliament cannot, in law. Amend part III, surely it cannot authorize another body to do that very thing.

Lastly, the American doctrine of prospective invalidity, which was invoked by the majority judgment, is clearly not applicable to our Constitution. It has generated enough difficulties in the U.S., & even there, its validity is highly doubted.

The edition in Golaknath’s case was, for all practical purposes, overruled by the Sup. Co. in Swami Kesavananda Bharti’s case. In the Golak Nath v. are Punjab instance of 1967 Condition of, the Sup. Co. decided that the State of the Fundamental Rights ensured by the essential structure regulation. Punjab couldn't limit any of. Routine of calling, for this situation Degree of land & proprietorship, were held to be a key right. Punjab case was in the long run upset the decision of the Golak Nath v. Condition of with the endorsement of the 24th Amendment in 1971.


Under the Banking Companies (Acquisition & Transfer of Undertakings) statute of 1969, declared on July 19, 1969, the Government of India nationalized 14 noteworthy Indian Banks. On February 10, 1970, the Sup. Co. gave its judgment & held that-S.15 (2) of the said Act was unconstitutional on the ground that there was hostile discrimination against the 14 banks, in as much as they were prohibited from carrying on not only banking businesses, but virtually any non banking business also.(ii) The majority (Ray J dissenting) held that Articles 19(1)(f) & 31(2) of the Constitution are not
mutually exclusive. Thus any acquisition must satisfy both these Articles viz., there must be a public purpose & the restriction must be reasonable. (iii) The compensation under Article 31 should be just compensation. The Court will interfere if no method of valuation of the undertaking is laid if such method is not reasonable. As the Act in question adopted irrelevant principles of valuation (by omitting important items), the Act was liable to be struck down as contravening Art.31 (2) of the Constitution.

9.6 Lord Denning’s Mission to curtail precedent from judicial process

Lord Denning was a great lover of books he had no bar of any subject or faculty. He loved cricket. He believed in the philosophy of Lord Jesus Christ & once quoted- “Without religion no morality. Without morality no Law”

Lord Denning peacefully died on 5th March 1999 (aged 100) at the Royal Hampshire Hospital, U.K. Lord Bingham (The Lord Chief Justice) described him as the best known & the best loved judge in history. This substantive part of the Thesis deals with five major chapters based on the following five selected & allotted classics in Christmas series which form the separate Chapters of the thesis. Lord Denning had greatly contributed to every branch of substantive & the procedural law. In the famous case Sykes v Director of Public Prosecutions (1962 AC 528), he heard an appeal & declared “It has always been an offence for the last 700 year, Misprition of Felony. It has been the duty of everyman who knows that a felony has been committed, to report to the proper authority”.


9.7 Criticism of precedent
There are disservices & points of interest of restricting point of reference, as noted by researchers & legal scholars.

lawful advisor In a 1997 book, archangel over-dependence by yankee Trotter faulted authority and attractive attorneys for knowledgeable, advantages of this case, rather than the as a the increasing rate of basic issue behind amidst the 20 th century. He fought that courts need to authentic expenses of influential purpose boycott the reference of read from outside their area, amongst a sort with 2 one cases:
(1) The surface territory's Cases subject of the wherever law is that the case, or

(2) The foremost basic a attorney arrangements to Instances wherever request court from confining perspective, must imply cheap perspective to numerous the ward to topple and consequently show a case in domains.

Be a part of its steadfastness, The irritates of the motivation look devises of learning law, the partitions cases could also be between many shut, all in all, to be senseless, nothing and seem and therefore the fast movement or to the law that require progressive changes real update.