

## **Book review- 10 Judgements that Changed India**

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### **Introduction**

The book “10 judgments that Changed India” authored by Zia Mody explained those 10 cases in detail which had an ever lasting impact on the Indian Judicial system. These cases not only have legal importance but also create various societal and moral values. The books tries to clarify the demarcations between the judiciary and the executives by making a reference to the *KeshvanandaBharti case* in which the Supreme Court restricted the powers of the Parliament in regards to the amendment of the basic structure of constitution and in the *Supreme Court Advocates on record Vs. UOI* the clarifications were to the appointment, promotions and impeachment of the judges of the Supreme Court and the High Courts and while there were also cases in which the Supreme Court tries to uplift certain societal and moral values along with legal spirit as in the *Maneka Gandhi case* in which the modesty of a woman is protected under the Right to Life also in *ArunaShanbaug case* the author sympathizes with the extreme painful life of the patients in Permanent Vegetative State. There were cases in the book which enumerate about the safeguard of rights of divorced Muslim Woman to seek maintenance from his husband beyond Iddat, *Mohammed Ahmed Khan v. Shah Bano Begum*(1985) and also protection of a woman against the sexual harassment at the work place in *Vishaka v. State of Rajasthan* (1997). The author justified in calling them those ten judgments that changed India.

Indian constitution is one of the lengthiest constitutions of the world containing a long list of fundamental rights and duties, mechanism for their safeguard and also detailed demarcation of functions to be performed by the three tiers, namely, the executive, the legislature and an independent judiciary. Each of the tiers has a specific function to perform- the legislature makes the laws, the executives’ implements such laws and the judiciary interpret them. The judiciary has played a crucial role in safeguarding the rights of the citizens if they are being infringed by anyone through its various mechanism such as the precedents, judicial activism etc. Here the author highlights ten such judgments which had an ever lasting impact on India

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as the title itself suggests "10 judgments that changed India" such as the "KeshvanandaBharti case" which limits the power of the Parliament to amend any part of the Constitution except for its basic structure which is also known as the Doctrine of Basic Structure and the ArunaRamachandraShanbaug case which allowed for the legalization of passive euthanasia also the author tries to convince her views to the reader by giving references of various other cases.

The book "10 judgments that changed India" starts with a foreword written by her father Soli JehangirSorabjee, former Attorney General of India. The book has 10 chapters titled by the case names. However, in each chapter, the author discusses some cases that led to the title judgment, so eventually one ends up reading more than 10 judgments. The genre of the book is Academic and professional and was published by Penguin Publisher in 2013 and only one edition.

### **About the Author**

Zia Mody (born 19 July 1956) is an Indian legal consultant. Recently, she is also a member of the Securities and Exchange Board of India's Standing Committee on Mutual Funds, and of the Capital Market Committee of the Federation of Indian Chambers of Commerce and Industry. She has been listed as one of the 25 most powerful business women in India several times from September 2004 through 2011 by Business Today. She is a recipient of the Financial Express Knowledge Professional of the Year Award. She was also named one of India's 100 Most Powerful CEOs by The Economics Times in 2004 and 2006.

### **Summary**

The book opens with the landmark "KeshvanandaBharti case". The author has described very well and the main purpose for taking this case as a first chapter of this book because it solves the conflicts between judiciary and parliament related to the amendment power of constitution. It was the only case in India where a bench of 13 eminent judges of Supreme Court where each of them had a different opinion while deciding the important questions that were been raised by Swami HH Sri KesavanandaBharati, to challenge the Kerala government's attempts, under two state land reform acts, to impose restrictions on the management of its property in February 1970. The basic structure doctrine propagated as a safeguard against the usurpation of Constitution

The second case was the *Olga Tellis Vs. Bombay Municipal Corporation*, the Supreme Court ruled that it was the state's responsibility to provide shelter to pavement dwellers rather than displacing them. This helps the reader understand the importance of the right to livelihood in the right to life. The case is about the expanding the meaning of right to life and personal liberty. The Olga Tellis case in the book brought in a new perspective of whether a person who has a right to live has a right to livelihood also.

*Vishaka v. the State of Rajasthan*,<sup>2</sup> is the third case of the book which focuses on the increased cases of sexual harassment of women at the workplace with the introduction of globalization in 1990s. 'Bhanwari Devi versus society' was the original case in which the woman who wanted to make this society a better to live in by abolishing child marriage in Rajasthan was sexually harassed and later gang raped by the men of his own village. Today, the guidelines given by Vishaka forms the very basis of the human resource policy in every company as Article 141 says that decisions by the Supreme Court are the 'law'.

The decision of the Supreme Court of India in *Maneka Gandhi v. Union of India*<sup>3</sup> was an 'inflexion point' in the court's movement towards a broader interpretation of the fundamental rights guaranteed by the Constitution. The circumstances that set the stage for the Maneka Gandhi judgement in 1978 are important and reference was made by citing the case of *ADM Jabalpur v. Shivkant Shukla (ADM Jabalpur)*. With its decision in Maneka Gandhi, the Supreme Court attempted to restore the citizens' faith in the judiciary. It went beyond its immediate mandate to make some striking assertions, which went on to become the bedrock of the protection of human rights of the aamaadmi in the years that followed. The case marked the beginning of a golden era of human rights jurisprudence in India—a period in which the Supreme Court transformed itself into an 'institutional ombudsman of human rights.

The next case was of *Union Carbide Corporation v. Union of India*,<sup>4</sup> popularly known as the Bhopal tragedy casewhere under the Bhopal Act, on 8 April 1985, the Central government filed a complaint against UCC for the negligence on the part of the owner of the factory because of which there poisonous gases got leaked in the whole city cause death and serious health issues to the people. The settlement sanctioned by the Supreme Court was widely condemned. A few years after its 1989 settlement order, the Supreme Court clubbed several

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<sup>2</sup> Vishaka v. the State of Rajasthan, AIR (1997) 6 SCC 241.

<sup>3</sup> Maneka Gandhi v. Union of India, AIR (1978) SCC 597.

<sup>4</sup> Union Carbide Corporation v. Union of India, 1989 SCC (2) 540.

petitions filed against the order and in its judgement dated 3 October 1991, the court finally recognized the legal sanctity of the order recording the settlement between UCC and the Union of India. The court also emphasized the need to grant speedy justice to the victims—by its own calculation, the full adjudication of the suits relating to the Bhopal disaster would have taken till 2010.

In *IndraSawhney v. Union of India*,<sup>5</sup> which is the next case of this book, the author portrays the history and various other consequences of having reservation system in India. These precursors to the Indian Constitution which entered into force in 1950, laid the foundation for an intricate reservation framework. 10 Although Article 14 of the Constitution gives to all people the right to equality before the law, Article 16(4) allows the state to make ‘any provision for the reservation of appointments or posts’ in favour of backward classes not represented adequately in services under the state. Article 46, a directive principle of state policy, 11 sets out that the state must promote the educational and economic interests of SCs and STs.

The next case was the *NilabatiBehera v. State of Orissa*,<sup>6</sup> where the author depicts the rights of those persons who have been unlawfully detained to seek compensation for non-compliance to produce them lawfully before the judges. For the first time the Supreme Court recognized the right to seek compensation via a habeas corpus petition in the *Khatri v. State of Bihar* cases, better known as the ‘Bhagalpur blinding’ cases where the prisons were poured acid into their eyes and awarded the compensation.

*Mohammed Ahmed Khan v. Shah Bano Begum*,<sup>7</sup> the chapter explains how vote-bank politics ensured that a landmark judgment was overruled legislatively and reveals how a Muslim woman can seek for divorce and maintenance beyond Iddat even in the absence of a Uniform Civil Code either under Section 125 of Cr.P.C. or under the Muslim Women (Protection of Rights on Divorce) Act, 1986. The law aimed to bring swift relief to the women who were economically dependent on their husbands; it was a ‘benign provision enacted to ameliorate the economic condition of neglected wives and discarded divorcees

The ninth case is *Supreme Court advocates-On-Record Association v. Union of India*<sup>8</sup> this case deals with issue of judicial appointments that has been a see-saw battle between the

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<sup>5</sup> *Indra Sawhney v. Union of India*, (1992) SCC (3) 217

<sup>6</sup> *Nilabati Behera v. State of Orissa*, 1993 SCR (2) 581.

<sup>7</sup> *Mohammed Ahmed Khan v. Shah Bano Begum*, 1985 AIR 945.

<sup>8</sup> *Supreme Court Advocates-On-Record Association v. Union of India*, AIR (1993) SCC 352.

legislature and the judiciary for primacy. The case deals with the crucial question of who holds the power to appoint judges to the Supreme Court and the High Courts which is still unanswerable even after 70 years of Independence.

Most of the most sympathetic case for the whole nation was the *Aruna Ramachandra Shanbaug v. Union of India*<sup>9</sup> which is the tenth case of the book. The author is not convinced of the verdict on accepting passive euthanasia as being constitutional and says “depriving a patient of food and antibiotics is far more merciless than administering an instant and painless dose of death.” The author shows a sympathetic as well as a practical view for the patients under the Permanent Vegetative State (P.V.S.). She strongly supports active euthanasia over passive euthanasia by citing case such as *Gian Kaur vs. State of Punjab* and many other relevant cases.

### **Analysis**

The book ‘10 judgments that changed India’ by Zia Mody is a most inspiring for law scholars. Lucidly written, the purpose of writing this book ‘that learning a law background of India’ by author has been completely fulfilled. It has selected the top most famous landmark judgements which have indeed changed Indian constitutionality through various cases. The *Keshvanandabharti* case, has beautifully summarized but now there will be a more important judgement which helps the constitution to make it better that Parliament vote cannot undermine the fundamental rights granted by Constitution and also to safeguard his interest<sup>10</sup>.

Similarly, in the *Vishaka v. state of Rajasthan*, in this the safety, security, rights of women have shown and described in a working place but it has not that much beneficial as the women nowadays has started misuse such rights against men for their monetary income. The Supreme Court in a judgement said that no women shall misuse any rights under the various section if it so then there will be a punishment for it<sup>11</sup>.

The author in” *Indra Sawhney & Ors. Vs. Union of India & Ors*” “focuses on the establishment of a commission for investigating the conditions of the socially and educationally backward classes and making recommendations as contemplated by the Supreme Court”<sup>12</sup>; is of great

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<sup>9</sup> *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454.

<sup>10</sup> *I.C. Golaknath & ors. Vs State of Punjab & Anrs*, 1967 A.I.R. 1643.

<sup>11</sup> *Preetigupta & anrs. Vs State of Jharkhand & Anrs*, A.I.R. (2010) S.C. 3363.

<sup>12</sup> *Agrawal Kanu, The Grounds of Affirmative Action* (April 05, 2018, 11:20P.M.) <https://swarajyamag.com/politics/the-grounds-of-affirmative-action>.

importance as it will help in the fair opportunity to every citizen in the Government jobs. However, the reservation policy must no longer be supported as many are taking undue advantage of the same.

In *Olga Tellis v. Bombay Municipal Corporation* (1985) the author's sympathetic views were somewhere similar to the journalist who file petition against the displacement of the slum dwellers in monsoon that "they were not living in the difficult slum conditions out of pleasure or choice – they had not come to Bombay drawn by the big city lights or Bollywood. They were economic migrants caught up in the iniquitous economic policies of various state governments."<sup>13</sup>

*Nilabati Behera v. State of Orissa* (1993) In this case the author supports the decision of the Supreme Court where "the son of the petitioner was taken in police custody from his home and was later found dead with bodily injuries on a railway track the next day. The deceased was aged 22 years and his monthly income was between Rs. 1,200 and 1,500 in 1987. The Supreme Court, while directing the State of Orissa to pay a sum of Rs. 1,50,000 as compensation to the Petitioner and Rs. 10,000"<sup>14</sup> was not an adequate relief as the loss of a person's life cannot be equated by the sum of money.

### **Conclusion and Suggestions**

After reading and analyzing the whole book it could be easily concluded why these cases were titled as the landmark judgements since they highlighted those disputed yet immensely important factors which required to be immediately addressed. In *Keshvanandabharti* case it was taken as a landmark judgement because it has shown the difference between of judiciary and parliament and also it was the first case in which 14 eminent judges have given their opinions and judgement. Similarly, in the *shah bano* case, the judgement of Supreme Court to give maintenance to a divorced Muslim woman from her husband beyond iddat under section 125 of Cr.p.c. which was helped a lot of Muslim women to live a happy life. All other cases have some important changes which tend to a better life for Indian which described it in an understandable manner. Author has described all cases and shown the reason for choosing

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<sup>13</sup>*Thirty years after a landmark Supreme Court verdict, slum dwellers' rights are still ignored*(April 05, 2018, 11:24 P.M.)<https://scroll.in/article/776655/thirty-years-after-a-landmark-supreme-court-verdict-slum-dwellers-rights-are-still-ignored>.

<sup>14</sup>*Dedicated to the cause of providing insights into law's whys and how's*(April 05, 2018, 11:20P.M.),<http://legalperspectives.blogspot.in/2010/04/compensation-for-wrongs-of-state-to.html>.

this landmark judgement in her book. But it seems better when their will add some more supporting cases in it.