**CASE ANALYSIS**

**RAMKRISHNA DALMIA v. JUSTICE TENDOLKAR**



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**BACKGROUND OF THE CASE**

A notification on December 11 1956, was published in the gazette of India by the Central Government. This notification contained that large number of companies or firms controlled or promoted by Sarvarshi Ramkrishna Dalima, Jaidayal Dalmia, Shanti Prasad Jain, Sriyans Prasad Jain, Shital Prasad Jain and others who were either relatives, employees or basically were connected to these people, large amounts of money were subscribed by the investing public in the shares of these companies. In this due process gross irregularities have been identified. These people have been misusing the invested public shares for personal benefits due to the which the investing public have suffered considerable losses. The central government through this notification appointed a Commission of Inquiry with Shri Justice S.R. Tendolar, Judge of the High Court of Bombay as the Chairman. 11 clauses were mentioned upon which the commission was asked to inquire and report. Name of the defaulting companies was mentioned upon which the inquiry would be done. The central government had published this notification in the exercise of the powers conferred on it by Section 3 of the Commissions of Inquiry Act 1952. Infuriated by this the defaulting persons filed case alleging mainly that the notification has gone beyond the act and the Act itself is ultra vires the constitution. This suit was filed in ta division bench of the High Court of Bombay under article 226 of the constitution against the central government. The high court ruled in favour of the government except a change in the clause 10 of the notification. Then the government appealed in the Apex court questioning the Bombay High Court’s decision of amending the clause 10 of the notification.

**BRIEF FACTS OF THE CASE**

Six several appeals were directed against a common judgement and order pronounced by a Division bench of the Bombay High Court in three miscellaneous applications under article 226 of the Constitution. In those applications the petitioners pleaded for an appropriate direction or order under 226 for quashing and setting aside the notification published on 11 December 1956, issued by the Union Of India in exercise of powers conferred on it by Section 3 of the Commissions of Enquiry Act 1952. The high court by the aforesaid judgement and order discharged the rules and dismissed the applications and held the said notification to be legal and valid except as tot the last part of clause 10 of the notification and modified it.

The Union of India as filed application complaining of the part of the judgement of the high court which adjudged the last part of clause 10 to be invalid.

**PETITIONER’S ARGUMENTS**

* The notification has gone beyond the Act i.e. Commissions of Inquiry Act 1952, this argument is given support by mentioning Article 14 of the constitution. The conduct of an individual person or company cannot possibly be a matter of public importance.
* The act itself is ultra vires the constitution in two ways. Firstly, that it was beyond the competency of Parliament to enact a law conferring such a wide sweep of powers and secondly that the inquiry is neither for any legislative nor for any administrative purpose, but is a clear usurpation of the functions of the judiciary.
* Though the commission may find facts but it cannot be asked to suggest any measure to be taken by the government.
* The appropriate government has failed to exercise its discretion properly on the basis of a reasonable classification. The attack against the notification is that the government has not properly implemented the policy or followed the principle laid down in the Act and has consequently violated the bounds of the authority delegated to it.
* The government has discriminated the petitioners and their companies by singling them out as no other company which might also be a defaulter have been taken into its operation. The government has arbitrarily applied the Act.
* The government has taken no differentia into differentiating the petitioners and their companies from other persons and their companies.
* The notification is bad as the action of government in issuing it was mala fide and amounted to an abuse of power and also as it violates Article 23 of the constitution.

**RESPONDENT’S ARGUMENT**

* The notification does not go beyond the Act as powers have been conferred on the appropriate government by Section 3 of the Act. The conduct of an individual or a group may assume a dangerous proportion and may affect the public well-being and this will amount to a matter of public importance and be taken under inquiry.
* The Act is not ultra vires the constitution as, the Parliament was acting well within its powers while enacting the act under Article 246 of the constitution. No inquiry has itself been undertaken neither by the Parliament nor the Government for it to be called the usurpation of the judicial functions. The judicial functions have not been usurped also because the commission can only make recommendations which are not enforceable proprio vigore.
* If the commission cannot suggest any measures then the whole objective and exercise of setting up a commission or a separate body for inquiry goes in vain. Inquiry are of great importance for the government to eradicate evil and implement beneficial objectives.
* While Article 14 forbids class legislation it does not forbids reasonable classification for the purposes of legislation. The Act has given this discretion for classification to the appropriate government and they are presumed to act in good faith till the malice is not proved as the onus of proof lies on the one who questions it. Hence the petitioners and their companies have not been arbitrarily singled out but reasonable separated on the basis of the facts collected against them.
* The notification isn’t bad in any of its perspectives and also to question it under Article 23 is rather premature at this stage.

**THE NEED FOR ADMINISTRATIVE INQUIRY**

Any measure is taken merely for two reasons one is when the need arises that some situation has occurred and hence it is essential to take the measure and the other being when the future aspects are anticipated and they are felt to be acted upon for the sake of prevention.

The same can be applied to the enactment of the Commission of Inquiry Act 1952. As before the enactment of Commissions of Inquiry, Act, 1952, the government ordered public inquiry either by executive notice under the Public Service Inquiries Act, 1850 or by making add hoc legislation.

There were two broad categories of inquiry. One is Statutory Inquiry and the other is Ad hoc Inquiry as mentioned above.Many administrative and quasi-judicial authorities exercising statutory powers are required to make some preliminary inquiry as a condition precedent to the exercise of such power, e.g. hearing objections at a local inquiry before making an order of compulsory acquisition of land under the Acquisition of Land Act, 1946, in England, or under S. 5A of the Land Acquisition Act, 1894, in India. The need for statutory inquiry, broadly speaking, is to collect the views of the parties to be affected by the exercise of the statutory power, along with the relevant facts, and to place them before the government or other authority for its consideration in exercising the power, though, of course, the statutory authority is not bound to act according to the inquiry report but must exercise its independent view. The procedure to be followed at these inquiries is laid down in the statute itself or in the statute rules. Generally speaking, the party affected by the resulting statutory order must be given notice of the inquiry. Whereas in Ad Hoc inquiry, ad hoc is to make some investigation in regard to any administrative matter of public importance, in order to enable the Government to obtain facts and other materials involved in such matter. In England, such inquiries are not governed by the Tribunals and Inquiries Act, 1958.

To meet the ever-growing need for ever-increasing demand for public inquiries by independent and impartial authority this procedure adopted by the government was found to be cumbersome and inadequate. Hence the need was felt that a suitable legislation be brought out on the subject, resulting in the introduction of the Commissions of Inquiry Bill, 1952 in the Parliament.

**ARTICLE 14**

Article 14 of the constitution gives Right to Equality to its citizens. It states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." In the present case the petitioners contended that their right to equality has been violated. They questioned the validity of the notification and principally grounded their argument for the same on article 14. Through the notification it is clear that the petitioners and their companies have been segregated and are being treated as a group/class.

In the Indira Sawhney[[1]](#footnote-2) case Article 14 has been taken under the basic structure doctrine, it is also a basic fundamental right and in no circumstance apart from national emergency can these rights be taken away form the citizen of this country otherwise the whole fundamental basis of democracy would get grossly violated. But it should be taken into consideration the underlying principle of this article which is “The Principle of equality is not uniformity of treatment to all in all respects, it only means that all persons similarly circumstanced shall be treated alsike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another.” The principle then implies that people who are under the same circumstances or face the similar situation or have alike factors among them should be treated equally among one another and for this it can be considered to group them together to consider them to be a class but it has to be reasonably done with rational justification. Equality before the law, also means that amongst equals should be equal and equally administered and that like should be treated alike.

In the case of Budhan Choudhary v. State of Bihar[[2]](#footnote-3) the true meaning and scope of Article 14 was given citing various other cases namely Chiranjit Lal Choudhari v. Union Of India[[3]](#footnote-4), State of Bombay v. F.N. Balsara[[4]](#footnote-5) and many more and it was established that “ while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation”.

Then the question arises what classifies to be a reasonable classification, as the classification however must not be “arbitrary, artificial or evasive”. To achieve this purpose, a test of permissible classification[[5]](#footnote-6) has to be passed which requires two conditions to be fulfilled, namely, first that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and second that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The expression “intelligible differentia” means difference capable of being understood. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

**ARTICLE 246 AND SEVENTH SCHEDULE**

The Seventh Schedule under Article 246 of the Constitution deals with the division of power between the Union and the States. Article 246 of the Constitution demarcates the powers of the Union and the State by classifying their powers into 3 lists, namely Union List, State List and the Concurrent List.

The petitioners contended that the Act was ultra vires the constitution. The validity of the act was called in two ways one was to question the legislative competence of the parliament. This was done by reading into the Entry 94 of List I and Entry 45 of List III mentioned under the seventh schedule. They said that the parliament may make a law with respect to inquiries but cannot under these entries make a law conferring any power to perform any function other than the power to hold an inquiry. But it can be seen that the words” for the purposes of” indicate that the scope of the inquiry is not necessarily limited to the particular or specific matters enumerated in any of the entries in the list concerned but may extend to inquiries into collateral matters which may be necessary for the purpose, legislative or otherwise, of those particular matters. Hence scope of inquiry is not limited to the future legislative purposes only.

**SEPARATION OF POWERS**

Separation of powers is a [doctrine](https://www.law.cornell.edu/wex/doctrine) of constitutional law under which the three branches of government ([executive](https://www.law.cornell.edu/wex/executive_branch), [legislative](https://www.law.cornell.edu/wex/legislative_branch), and [judicial](https://www.law.cornell.edu/wex/judicial_branch)) are kept separate. This is also known as the system of [checks and balances](https://www.history.com/topics/us-government/checks-and-balances), because each branch is given certain powers so as to check and balance the other branches. Each branch has separate powers, and generally each branch is not allowed to exercise the powers of the other branches.

In this case the petitioners contended on this point also for proving the act to be ultra vires the constitution. They pointed out that clause 10 of the notification read “ any irregularities …… commission should be taken as and by way of securing redress or punishment or to act as a preventive in future cases” and it is clearly implied that the power of giving punishment is invested in the commission which is clearly a judicial power and hence this is usurpation of judicial function by the executive. This reasoning found ground and hence clause 10 was amended.

In Keshavanand Bharati case (1973)[[6]](#footnote-7)*,* the Supreme Court held that the amending power of the Parliament is subject to the basic features of the constitution. So, any amendment violating the basic features will be held unconstitutional. This scheme cannot be altered by even resorting to Art.368 of the constitution. In Raj Narain v. Indira Nehru Gandhi (1975)[[7]](#footnote-8) case, the Supreme Court held that adjudication of a dispute is a judicial function and parliament cannot even under constitutional amending power is competent to exercise this function.

It is well known that the provision of separation of powers in the constitution is taken from the U.S. constitution. But the British system of parliamentary form of government was adopted, it was thought it would be better to avoid adopting complete separation of powers as in the American system.

Independence of Judiciary guarantees fair and neutral judicial system without the interference or influence by the executive and legislative branches of the government. The concept of independence of judiciary was derived from the England. The Hampden’s case (1637)[[8]](#footnote-9) and Coke’s case (1616)[[9]](#footnote-10) helped to secure judicial independence. Executive control of judiciary will breach the rule of law and result may be that the rights of the citizens may be compromised. Article 50 of the constitution puts an obligation over the state to separate the judiciary from the executive. Independence of judiciary has been made as a basic structure of the constitution. This was observed in the S.K. Gupta v. President of India (1981)[[10]](#footnote-11) case.

In India, there exists tug of war between the Judiciary and Legislature on certain issues. Judiciary has strike down certain laws passed by the Legislature terming them ultra vires*.*The Legislature, for its part has objected to the concept of Judicial Activism and sometimes frames fresh piece of legislation to circumvent the objection raised by the judiciary.  It is generally held that the concept of judicial activism outs the doctrine of separation of powers.

In many instances in the past, the courts have issued laws and policies through their judgments. This was seen in the case of Vishakha v. State of Rajasthan[[11]](#footnote-12) where the Supreme Court issued guidelines on sexual harassment, in 2010, it directed the government to distribute food grains. Recently, it also appointed a Special investigation Team (SIT) to replace the High level Committee constituted by the government for investigating the issue of black money deposits in Swiss Banks.

There are also instances of the legislature reversing the outcome of some of the judgments.  For instance, in the Commissioner of Customs vs. Sayed Ali in 2011 case[[12]](#footnote-13),imposition of some duties retrospectively by the Customs Amendment and Validation Bill, 2011 was challenged in the Supreme Court. The Supreme Court struck down the levy of duties. In order to circumvent that judgment, the Parliament passed Customs Bill, 2011 and amended the provisions to levy duties retrospectively even in those which was earlier struck down by the Supreme Court. Similarly*,* Essential Commodities (Amendment) Ordinance, 2009 was passed by the Parliament to overrule the Supreme Court’s judgment regarding the purchase of sugar by the government from the mill.

Taking all the possibilities into the picture as the doctrine of separation of powers is not codified in the constitution, there is a necessity that each pillar of the State to evolve a healthy trend that respects the powers and responsibilities of other organs of the government.

**JUDGEMENT IN A GLANCE**

* The notification was well within the act except the last part of clause 10 which read “by way of redress or punishment” which was deleted and then read as “and the action which in opinion of the Commission should be taken… to act as a preventive in future cases”.
* No other changes were made and all the appeals were dismissed.

**OVERVIEW OF THE JUDGEMENT**

The order of the Apex Court upheld the high court’s decision after a structured scrutiny of the facts and the laws applied and also a thorough screening of the arguments from both the sides that is the petitioners which were the defaulters and the respondents being the central government.

The Commissions of Inquiry Act 1952 was made to enable the central government to set up commission for inquiring on certain matters which it deems fit are of public importance. The primary purpose of this technique is to collect information with a view to decide upon a further course of action to meet a given situation, or to find correctives to a given problem. The functions of the commission are neither judiciary nor quasi-judiciary but only assistive in nature.

A change was made in the last part of clause 10 of the published notification which later read “and the action which in the opinion of the Commission should be taken…. To act as a preventive in future cases”. The words “by way of redress and punishment” were removed as it was held that the Commission of Inquiry is merely set up for inquiring information and giving it to the central government on matters of public importance only and can suggest measures for future improvement and make recommendations which are also not enforceable. Otherwise it would then be a gross violation of the doctrine of separation of powers and usurpation on the functions of the judiciary, if the commission would be equipped with powers for punishing.

In this judgement it is said that when the constitutionality of a statute is questioned then the onus to prove it lies on the one who questions it. If the statute does not contain well defined provisions for its implementation but it provides the appropriate government with discretionary powers then also the act is valid and constitutional. Bare possibilities are presumed that the powers may be misused or abused, so it is expected of the court to not deny the powers presuming these bare possibilities. The discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the Government and not in a minor official. Through this it can be noticed that the parliament and the judiciary have a presumed level of trust in the functioning of the government, that if any actions are taken by it, they would be done without malice and in good faith and would be carried with the ultimate purpose of greater good of the society.

Taking the view of Article 14, right to equality does include equal treatment but equal treatment of alike, equal treatment of the similarly circumstanced people and for this that it does not forbids classification done reasonably. There should be a nexus in the classification of the people with the objective which it seeks to achieve. There should a rational justification behind the classification.

Thus, while concluding it can be said that a rigorous thought process goes behind the making and enactment of a statute. The Government and Parliament are well aware of their actions as they are expected to not take arbitrary actions and work towards the eradication of the evil from the society and sustainable well-being of the people. But the Constitution being that of a democratic nature does confide its citizens with powers to question upon the functioning of the executive and the legislature, so it is also expected from the citizens to not make baseless accusations on the authorities just to release themselves form any defaulting liability. But the apex court being the guardian of justice through its efficient functioning is adept on identifying who brings on malice.

**ANALYSIS**

On analysing this case and judgement it can be said that the Act which is circumventing this case i.e. Commission of Inquiry Act 1952is legal and not ultra vires the constitution. But the crux of the discussion held on deciding this particular case was the constitutionality of an act, that all the aspects which the constitution guarantees need to be taken into consideration while making the laws and also while they are being enacted. Also if the constitutionality of an act is brought to question in front of the court the one questioning should be able to prove it and the onus lies on him.

**CONCLUSION**

Through this judgement it can be concluded that there is a necessity of careful scrutiny and analysis of the laws legislated by the parliament. The legislature has to consider all the aspects of social welfare and make sure whether the laws made conform to the constitution or not. As the constitution is emulated for impartiality and justice. Albeit if someone tries to question the legality or constitutionality of any legislature the onus of proof lies on himself. The first impression of the law made is considered to be unbiased and constitutional as it is made not just by anyone but people of high stature. It is made by ones who very well understand the meaning of good conscious and justice and the laws before enactment go through an exhaustive process of refinement and criticism.

**REFERENCES**

*Indira Swahney v Union of India,* [1993] AIR 477 (SC).

*Budhan Chowdhary v State of Bihar,* [2015] SCC OnLine 7657 (Pat).

*Chiranjit lal choudhari v Union of India,* [1950] AIR 41 (SC).

*State of Bombay v F.N. Balsara,* [1951] AIR 318 (SC).

*State of W.B. v Anwar Ali Sarkar,* [1952] SCR 284.

*Keshavanand Bharati v State of Kerala,* [1973] 4 SCC 225.

*Raj Narain v Indira Nehru Gandhi,* [1972] 3 SCC 850.

*R v Hampdens,* (1637) 3 State Tr 826.

*Thomas Bonham v College of Physicians,* (1610) 8 Co Rep 114.

*SK Gupta v President of India,* [1982] AIR 149 (SC)*.*

*Vishakha v State of Rajasthan,* [1997] 7 SC 384.

*Commissioner of Customs v Sayed Ali,* (2011) 3 SCC 537.

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1. *Indira Swahney v Union Of India,* [1993] AIR 477 (SC). [↑](#footnote-ref-2)
2. *Budhan Chowdhary v State of Bihar,* [2015] SCC OnLine 7657 (Pat). [↑](#footnote-ref-3)
3. *Chiranjit lal choudhari v Union of India,* [1950] AIR 41 (SC). [↑](#footnote-ref-4)
4. *State of Bombay v F.N. Balsara,* [1951] AIR 318 (SC). [↑](#footnote-ref-5)
5. *State of W.B. v Anwar Ali Sarkar,* [1952] SCR 284. [↑](#footnote-ref-6)
6. *Keshavanand Bharati v State of Kerala,* [1973] 4 SCC 225. [↑](#footnote-ref-7)
7. *Raj Narain v Indira Nehru Gandhi,* [1972] 3 SCC 850. [↑](#footnote-ref-8)
8. *R v Hampdens,* (1637) 3 State Tr 826. [↑](#footnote-ref-9)
9. *Thomas Bonham v College of Physicians,* (1610) 8 Co Rep 114. [↑](#footnote-ref-10)
10. *SK Gupta v President of India,* [1982] AIR 149 (SC). [↑](#footnote-ref-11)
11. *Vishakha v State of Rajasthan,* [1997] 7 SC 384.

12 *Commissioner of Customs v Sayed Ali,* (2011) 3 SCC 537. [↑](#footnote-ref-12)
12. [↑](#footnote-ref-13)