

CHIEF JUSTICE'S COURT
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

COURT NO.1
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Appeal No. 1012/2002

PROPERTY OWNERS ASSOCIATION & ORS

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ORS

Respondent(s)

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1 **CHIEF JUSTICE DY CHANDRACHUD:** Before we begin, the usual announcement by the
2 Chief Justice. 'In the 75th year of its existence, the Supreme Court of India launches a small
3 initiative which has the potential to have a big bang impact. WhatsApp Messengers is a
4 ubiquitous service in our daily lives and has taken a role of a powerful communication tool to
5 strengthen the right of access to justice and enhance transparency in the judicial system. The
6 Supreme Court announces integration of WhatsApp messaging services with its IT services.
7 Now advocates on record, parties in person will receive automated messages regarding,
8 1) Electronic filing,
9 2) Cause lists, and,
10 3) Orders and judgments.

11

12 The automated messages through WhatsApp will be received on successful filing of cases.
13 Notification about objections being marked by the Registry in the cases filed and registration
14 of cases. All members of the Bar in the Registry officials will receive causes, as and when
15 published by the Registry. In addition to accessing orders, judgments through the website,
16 now, all stakeholders, including members of the Bar, will receive them on their mobile devices.
17 The Supreme Court of India's official WABA Number is 87676 87676.' There's a caveat here.
18 'This number transmits one way communication. In short, it is neither a callback nor reply
19 back number. This facility and service will bring in a slight change, a significant change in our
20 daily work habits, but we go a long way in saving paper and our planet earth.'

21

22 **TUSHAR MEHTA:** It's one more revolutionary step.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Till now, we get cause lists on our cell phones.
25 We don't have printed cause lists which are sent to the Judges in their offices anymore.

26

27 **TUSHAR MEHTA:** Obligated, Your Lordship.

28

29 **ZAL ANDHYARUJINA:** My Lord, just picking up from where we left off yesterday... My
30 Lord, I have prepared a short note, because I did notice that much of what I said orally, forced
31 You Lordship to put it down in hand. So, My Lord, I have taken the opportunity. A very short
32 note, My Lord, putting everything down, so it's by hand for Your Lordships and Your
33 Lordships don't have to...

34

1 **CHIEF JUSTICE DY CHANDRACHUD:** We will have to pull out the hard copy or you...
2 soft copy?

3

4 **ZAL ANDHYARUJINA:** I've circulated the soft copy with Your Lordships also. And, My
5 Lord...

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** This one is volume - 'Note on the context of
8 leading to the conclusion...'

9

10 **ZAL ANDHYARUJINA:** Yes, My Lord. So, My Lord, it's VII onwards. VII onwards. And it's
11 actually part of what I argued yesterday. I just want to show you, Your Lordship, that I've
12 recorded it in a note, so that it's clear to you.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Your pagination is in continuation with the
15 earlier note.

16

17 **ZAL ANDHYARUJINA:** It's in continuation. So, My Lord, we've checked all of that, and I
18 don't think Your Lordship will have any difficulty with that. And, My Lord, just as by way of
19 testing that out, if Your Lordship just sees Note 7, but this is how I had tried to formulate the
20 question for Your Lordships, and I've added one or two more thoughts to that. So that's at Page
21 93.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Yes. Now let's read the note.

24

25 **ZAL ANDHYARUJINA:** Page 93. It's Note VII. My Lord, I've actually formulated the
26 question, if Your Lordships, My Lord, find this acceptable - 'The issue in the present case...' If
27 all Your Lordship...

28

29 **JUSTICE HRISHIKESH ROY:** Yes. Just let us get the House in order. It's not in order.

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31 **ZAL ANDHYARUJINA:** Please... Please do, My Lord. The only thing with the electronic
32 record is that it's a little more difficult to navigate than paper. I have been a great proponent
33 of the same, My Lord, but the only thing - It's a little difficult to navigate. It is a little difficult
34 to look at two things at once. Or that's what I find. Those are the two difficulties. Sorry, My
35 Lord?

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37 **JUSTICE RAJESH BINDAL:** Fingers at five six places.

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ZAL ANDHYARUJINA: Yes, My Lord. Great peril to the trees. It still remains a more convenient formula. But a balance is a good idea, if I know, what is bulky is here... what is not is here.

CHIEF JUSTICE DY CHANDRACHUD: You can do everything now in the electronic form, so...

ZAL ANDHYARUJINA: Your Lordship's example, My Lord, I hope is followed by every High Court. Because I am coming from a High Court where we are struggling still with digitization.

CHIEF JUSTICE DY CHANDRACHUD: It is all in the mind actually. Judges just have to... Look at my colleagues. Such senior colleagues who have... here in the Supreme Court....

ZAL ANDHYARUJINA: My Lord, I am full of appreciation. It's amazing.

JUSTICE HRISHIKESH ROY: One of the selling point of the Chief justice is that if you use a digital device, as you use more and more, you will look younger and younger.

ZAL ANDHYARUJINA: It has taken effect. But not only that, My Lord.

TUSHAR MEHTA: Incentive, My Lord. That's the incentive.

ZAL ANDHYARUJINA: But not only that. I, as an infrequent visitor of the Supreme Court, the transcription is brilliant. My Lord, the video conference system is absolutely brilliant.

CHIEF JUSTICE DY CHANDRACHUD: You argued for such a long-time post lunch.

ZAL ANDHYARUJINA: Absolutely brilliant.

CHIEF JUSTICE DY CHANDRACHUD: There was not even a moment where we felt we had lost the voice... or that we are not able to follow what you are saying.

ZAL ANDHYARUJINA: It is absolutely brilliant. And because this is a National Court and people have difficulty traveling to the Court, the cost expense... It is a wonderful initiative, My Lord. Long may it continue.

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CHIEF JUSTICE DY CHANDRACHUD: [NO AUDIO] that more and more lawyers from the High Court will have access to our digital courts.

ZAL ANDHYARUJINA: It should be so. And I'm sure Your Lordships are aware that...

CHIEF JUSTICE DY CHANDRACHUD: Remote areas also... people coming from remote districts.

JUSTICE B. V. NAGARATHNA: District courts.

ZAL ANDHYARUJINA: Internet is available now almost everywhere.

CHIEF JUSTICE DY CHANDRACHUD: Not just the significant Constitutional cases, but simple cases involving citizens.

ZAL ANDHYARUJINA: It's a remarkable movement forward.

CHIEF JUSTICE DY CHANDRACHUD: In fact, what we have now done, I can share with you, I mean, for those who are tech geeks, that we are migrating all our services into what is called a MeghRaj Cloud 2.0, which is the cloud infrastructure created by the National Informatics Centre. So, we've already migrated most of the applications of the Supreme Court. And all the eCourts project also. Almost 200 VMs have been have been migrated. So, with the Cloud infrastructure now, all courts can really go online. Earlier, we had some limitations because of the capacity. But with this all of us have now moved into the Cloud infrastructure and these are managed services. You don't have to maintain a building, we don't have to maintain whole team of... a whole cadre of technical personnel...

ZAL ANDHYARUJINA: Of course, My Lord.

CHIEF JUSTICE DY CHANDRACHUD: It's all managed for you. And the data is all preserved on servers in India. There's no problem of data going outside India or anything like that.

ZAL ANDHYARUJINA: My Lord, the only suggestion that I would make, because I know Your Lordships are at the forefront of this, is uniformity. Your Lordship's system is so perfect.

1 I wonder why other courts don't adopt the uniform system and the Tribunals don't adopt it
2 also.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** In fact, I've got a matter where I've issued notice.
5 I pointed, I think two or three amicus, and that should come up probably in... once before we
6 close for the vacation. Just to monitor what the High Courts have been doing. Some High
7 Courts, for instance, said -'If you want to have video conferencing links, you must tell us 48
8 hours in advance.' Some High Courts said -'You can get a video conferencing link, only if you
9 are above the age of 60.' We had to pass a judicial order that what's this... why are you... and
10 the link should be in the cause list. Why should we apply two days in advance for a link? Why
11 should we tell people that you will be... only if you are a senior citizen you'll get a link. It's
12 agnostic to age. Technology has nothing to do with age. So monitoring it and passing some...

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14 **ZAL ANDHYARUJINA:** My Lord, I feel a few words from Your Lordship will iron out a lot
15 of creases at the High Court level, because of course, my great... my experience is actually at
16 the High Court level.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Also, it was the question of creating
19 infrastructure. Now, what has happened, fortunately, was that Government has sanctioned a
20 budget of almost... not almost, actually 7000 Crores for phase three of the eCourts project.
21 And we've got the High Courts also, now on the eCourts project. And between November and
22 now, 31st of March, we had to expend about 850 Crores, which was the first branch, which was
23 meant that we're creating infrastructure for the High Courts in the District Judiciary. So, High
24 Courts spent almost 94% of that amount. So hopefully, with that, now the infrastructure in the
25 High Courts will really be upgraded, so that these problems which they faced, in sort of having
26 a robust IT infrastructure, will now disappear completely .

27

28 **ZAL ANDHYARUJINA:** I hope it all works out, My Lord.

29

30 **TUSHAR MEHTA:** My Lord, I've also taken instructions from the Government, so far as our
31 role is concerned. And there is a direction from the Honourable Prime Minister, to give first
32 priority to digitization, because access to justice to the common man, is possible only when
33 there is a digitization. You may not have to travel all the way to the High Court or to the
34 Tribunal, as my learned friend says, and he can access lawyers, local lawyers, those who are
35 practicing in the District Courts. So, that's the priority of the Government, too.

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** Simple things, like for criminal trials. Trials don't
2 have to be adjourned because the IO is now posted or transferred elsewhere. So, we are
3 ensuring that we'll have video conference equipment in the... not only in the District Courts,
4 but in the jails... enhancement of that equipment... in the forensic science laboratories, in the
5 hospitals. So, where medical evidence is to be given, why does the doctor has to come to...

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7 **TUSHAR MEHTA:** To the court.

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9 **CHIEF JUSTICE DY CHANDRACHUD:** To the court to prove a dying declaration. The
10 doctor is there. I mean, imagine what a loss of productive time for medical personnel who will
11 have to travel in large states to the centre of the...

12
13 **TUSHAR MEHTA:** I don't wish to go into that, but the new law also takes care of that.
14 Electronic evidence would be... electronic in the sense, that a deposition given electronically,
15 would be treated as an evidence, valid evidence.

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17 **CHIEF JUSTICE DY CHANDRACHUD:** We're moving very rapidly by pushing the High
18 Courts to upgrade their infrastructure and the financial backing is there. I mean, otherwise,
19 what happens is, there are State Governments who are good with finances, other State
20 Governments don't give even a farthing to the judiciary for IT. So, it's now, money goes straight
21 from the Government of India through the committee of the Supreme Court, to the High Court.
22 So, there's no issue of, you know, of the money not being actually allocated by the State
23 Governments.

24
25 **ZAL ANDHYARUJINA:** No, it has been a huge, huge improvement with regard to the access
26 to justice also, for many, many people.

27
28 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, Mr. Andhyarujina, lets...

29
30 **ZAL ANDHYARUJINA:** If Your Lordships have the note now. I have just formulated the
31 question, if it pleases Your Lordship to look at this. 'The issue....' Do all of Your Lordships have
32 the note? 'The issue in the present case specifically concerns the constituent power to vary a
33 provision of the Constitution by substituting existing language by new language. The issue is,
34 the effect of the court declaring a substituted provision of the Constitution and/or the
35 Constitution Amendment Act bringing about the substitution unconstitutional on the ground
36 that it is beyond constituent power of Parliament to amend the Constitution.' My Lord, forgive
37 me for using the technical language, but I thought to formulate before, Your Lordships, we

1 should use the correct technical language with regard to constituent power. My Lord, briefly
2 stated, what happens when the court declares a substituted provision to be unconstitutional?
3 That is the question which presents itself before Your Lordships. I've just illustrated the three
4 types of Legislative constituent activity by extracting 368 for Your Lordship's consideration.
5 'The power of Parliament to amend the Constitutional procedure, notwithstanding anything
6 in this Constitution, Parliament may exercise its constituent power,' How? My Lord, in three
7 ways. 'by way of addition, by way of variation or repeal. Any provision of this Constitution in
8 accordance with the procedure laid down in this Article.' So, there are three types of
9 constituent activity, which is provided for addition, variation and repeal. 'Article 368(1)
10 provides for Parliament's constituent power to amend by addition, variation, or repeal.
11 Variation can be in many forms, including by way of substitution.' So, variation is a little
12 different, as I see it from substitution. It may include deletion as well, but it could include
13 substitution. 'The effect of the declaration of unconstitutionality on a substituted provision is
14 different from the effect of such a declaration on either an addition or a repeal.' I've dealt with
15 that in a separate note, so I've referenced it. 'and the effect of Parliament itself repealing a
16 Constitutional provision or a part of the Constitutional provision is also different from a
17 declaration of unconstitutionality by a court of a Constitutional provision.' So, I will a little
18 later address Your Lordship very briefly on what is the effect of Your Lordship's declaration of
19 unconstitutionality. But briefly stated, it doesn't actually remove the provision from the statute
20 book, but it renders it void, as I will show Your Lordship. And it has a peculiar effect, My Lord,
21 on a substituted provision. So, this is just to frame the question before Your Lordships. I just
22 want to pick up on one thing I had said yesterday to Your Lordship, and I wonder if I was too
23 fast in going through that. We've already witnessed in the context of 31C, these three activities,
24 or at least two of the three activities. My Lord, the 20th April 1972 insertion by the 25th
25 Amendment Act was a Legislative addition. So, that falls into the addition part of 368. The
26 18th December '76, 42nd Amendment was a substitution, which is what...

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Can you just tell us again?

29

30 **ZAL ANDHYARUJINA:** Sorry, My Lord. The three types of Legislative activity are actually
31 demonstrated through...

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** Addition, variation, or repeal.

34

35 **ZAL ANDHYARUJINA:** Right. So, 20th April '72 was the 25th Amendment addition,
36 addition of Article 31C. Now on 18th December '76, we have a substitution of the narrow
37 language with the broader language, what brought about by the 42nd Amendment. And My

1 Lord, on 30th August '79, Your Lordship will recall that movement through the Lok Sabha and
2 the Rajya Sabha, by the 44th Amendment, we have a deletion, which was the deletion of Article
3 31. So, we have already seen in this brief period with regard to Article 31C itself, these various
4 type of Legislative activities. I've just also, done this analysis for Your Lordship, if it helps Your
5 Lordship in five, to give Your Lordship five dates of the relevant orders. My Lord, 9th May
6 1980 are the orders in **Waman Rao** and **Minerva**. My Lord, 31st July 1980 is the **Minerva**
7 judgment. 13th, sorry... 13th November 1980 is the **Waman Rao** judgment and actually, on
8 the same day again, My Lord, we have a coincidence of same day. On 13th November 1980, is
9 also the **Bhim Singh** judgment. And we have two other judgments. My Lord, on 10th
10 December 1982, we have **Sanjeev Coke**, and on 13th March '86, we have the **Basanti**
11 judgment. Your Lordship will find all of this, My Lord, in my Legislative history, but just by
12 way of in summary form, not in a nutshell. But this is how the important dates lie.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Now **Minerva** on 31st July 1980... I guess, 9th
15 May 1980... it strikes down 31C, as expanded by the 42nd Amendment.

16

17 **ZAL ANDHYARUJINA:** Yes, My Lord.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Right? But then **Waman Rao** holds that the
20 unamended Article 31C is valid because it was validated, it was declared to be Constitutional
21 in **Kesavananda Bharati**.

22

23 **ZAL ANDHYARUJINA:** For that and for another reason.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Judgement in **Waman Rao**, is on 13th
26 November, 1980.

27

28 **ZAL ANDHYARUJINA:** Yes, My Lord.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Which is after the recent judgment in **Minerva**
31 is pronounced on 31st July 1980. So conscious of the fact that **Minerva** had been pronounced
32 in terms of its reasons on 31st July '80, in **Waman Rao**, the Court still comes to the
33 conclusion that 31C pre-amended by the 42nd Amendment is valid, because it has been held
34 to be valid by... Now, we must add one more factor to it, which is that once 31C was held to be
35 valid in its unamended form prior to the 42nd Amendment in **Kesavananda Bharati**,
36 except for that declaration, which we'll ignore for a moment, **Minerva** was not therefore,
37 couldn't have done something to the contrary, for the reason. and as they rightly say in that

1 paragraph, not only did Mr. Palkhivala make that concession, but they said - 'It was rightly
2 made and correctly made.' So, what we then have emerging is this, that the pre-amended 31C
3 is valid. The post amendment 31C, expanding the ambit of 31C, to include all the directive
4 principles, has been invalidated.

5

6 **ZAL ANDHYARUJINA:** Perfect. So perfect assessment. And I must grapple with the
7 problem posed by Your Lordships, at the close of yesterday, and what Your Lordship has
8 articulated today, which is what I have spent the time that I had between yesterday and today.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Does in a factual situation like this, does the pre-
11 amended 31C get obliterated, nearly by virtue of the fact that post amendment, the pre-
12 amended words of 31C were sought to be expanded, and when that part was held to be
13 unconstitutional?

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15 **ZAL ANDHYARUJINA:** That is the question viewed from the other side.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** That's the point which we have to answer. So
18 how do you address that?

19

20 **ZAL ANDHYARUJINA:** I address that, My Lord, principally through *Waman Rao*. And
21 that is why I take Your Lordship immediately to Note VIII. So, My Lord, I would like to take
22 Your Lordship through, *Waman Rao*, but shall I first...

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Let's get your note actually...

25

26 **ZAL ANDHYARUJINA:** Because I've summarized everything, because the judgment is so
27 long,

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Let's get your note because *Waman Rao*, there
30 are four paragraphs - 52, 53, 54, 55.

31

32 **ZAL ANDHYARUJINA:** Exactly. My Lord, I extracted all of that also.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Then, we'll see.

35

36 **ZAL ANDHYARUJINA:** Just come to my note.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

2

3 **ZAL ANDHYARUJINA:** But let me show, Your Lordship, the note, and then I'll show, Your
4 Lordship, the conclusions which I have drawn.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** No problem.

7

8 **ZAL ANDHYARUJINA:** So, page 94 for Your Lordships. Page 94. All of Your Lordships
9 have it?

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

12

13 **ZAL ANDHYARUJINA:** Just, if Your Lordships will note, this was the judgment which was
14 delivered by five-judges. 'The judgment involved a challenge to the Maharashtra Agricultural
15 Land (Ceiling and Holding) Act, No. XXVII of '61 and the Amendments thereto, vide a Civil
16 Amendment Act, collectively referred to as the '61 Act, which was brought into operation from
17 26th January '62. The validity of the Act was challenged in 2660 petitions before the Bombay
18 High Court.' I'm getting all these events from the majority judgment recitation. 'By a judgment
19 dated 13th August 1976, a division bench of the High Court of Bombay, sitting at Nagpur, repel
20 the challenge in **Vithal Rao's** case. The division bench held *inter alia* that - The 1961 Act and
21 the Amendments thereto, were not open to challenge, on the ground that they were
22 inconsistent with, or took away, or breached any of the rights conferred by Part III of the
23 Constitution. Since the Acts have been placed in the 9th Schedule, by the Constitution of
24 Amendment, 17th Amendment Act, and the Constitution 40th Amendment Act, 1976. Further,
25 on the ground that because of the promulgation of the emergency, the rights under Article 14
26 and 19 of the Constitution could not be enforced. The High Court also repelled the challenge
27 to the validity of 31B itself, on the grounds stated therein...' My Lord, the high court actually
28 said 31B furthers the principle of the Directive Principles of State policy. 'But appeals were
29 then filed against the decision of the Bombay High Court. The cause title there was the
30 **Dattatraya Govind Mahajan**. By a judgment dated 27th January, the Honourable High
31 Court dismissed.' Sorry, this Honourable Court, the Supreme Court dismissed the same. 'Upon
32 revocation of the proclamation of emergency, petitions were filed by the appellants praying for
33 a review of the judgement in the **Dattatraya Govind Mahajan's** case, *inter alia* on the
34 grounds, that the emergency had suspended several of their Fundamental Rights and grounds,
35 which were otherwise open to them and could not be made by reason of the emergency. Some
36 other fresh petitions were also filed in the Honourable Supreme Court. Accordingly, the matter
37 came to be considered by the Honourable Supreme Court. The majority judgment delivered

1 by Chief Justice Chandrachud, for himself and Justice Krishna Iyer, Tulzapurkar and A. P.
2 Sen, recorded the challenge before it in the following terms.' Now My Lord, I've extracted this.
3 'In these proceedings...' So My Lord, this was a direct challenge, is what I want to show Your
4 Lordships. To 31A, 31B, and 31C. 'In these proceedings, the main challenge now is to the
5 constitutionality of Article 31A, 31B, and unamended 31C of the Constitution. The various
6 grounds of challenge to the Principal Act and the Amending Acts, were met on behalf of the
7 Respondents, by relying on the provisions of these Articles, which throw a protective cloak
8 around the laws of certain description and variety, by excluding challenge thereto on the
9 ground that they were violative of certain Articles of the Constitution. The reply of the
10 Appellants and the Petitioners to the defence of the Respondents is, as it could be... could only
11 be, that the very provisions of the Constitution, on which the Respondent relies for saving the
12 impugned laws, are invalid, since these particular provisions of the Constitution, which were
13 introduced by later amendments, damage or destroy the basic structure of the Constitution,
14 within the meaning of the ratio of the majority judgment in **Kesavananda Bharati**.' So, the
15 challenge was a straightforward.

16

17 Basic structure challenge, as far as we are concerned, to 31C. 'From the above, it is evident that
18 the challenge as far as Article 31C is concerned, was to unamended Article 31C. It is also
19 relevant to note, that the judgment which had recently been delivered...' This is to My Lord,
20 the Chief Justice's point. '... in **Minerva Mills**, was also expressly noted by Chief Justice
21 Chandrachud in paragraph 9 and 15.' I've given the references to Your Lordships there. 'In
22 paragraph 9, the judgment was noted with regard to Section 55 of the Constitution, 42nd
23 Amendment Act, amending Article 368. And in paragraph 15 it was noted that **Minerva**
24 **Mills** struck down Section 4 of the Constitution 42nd Amendment Act. The challenge with
25 regard to 31C was considered and dealt with in paragraph 52 to 54.' As Your Lordship says,
26 there are only two really relevant paragraphs. 'That leads for consideration the challenge to
27 the Constitutional validity of the unamended Article 31C. As we have stated, at the beginning
28 of the judgment, Article 31C was introduced by the Constitution 25th Amendment Act '71,
29 initially it sought to give protection to those laws only, which gave effect to the policy of the
30 State towards securing the principle specified in Clauses (b) and (c) of Article 39 of the
31 Constitution. No such law could be deemed to be void on the ground that it is inconsistent with
32 or takes away or abridges the rights conferred by Article 14, 19 and 31. The concluding portion
33 of the unamended Article, which gave conclusiveness to certain declarations was struck down
34 in **Kesavananda Bharati**.'54. So, one plank of the reasoning was **Kesavananda**
35 **Bharati**, now the second. 'Apart from this,' So My Lord, in addition to that. 'If we are right in
36 upholding the validity of Article 31A on its own merits, it must follow logically that the
37 unamended Article 31C is also valid.' So, this was on parity of reasoning between 31A and 31C.

1 'The unamended portion of 31C is not like an uncharted sea. It gives protection to a defined
2 and limited category of laws which are passed for giving effects to the policy of the State
3 towards securing the principles specified in Clause (b) and (c) of Article 39. These clauses of
4 Article 39 contain Directive Principles which are vital to the well-being of the country and the
5 welfare of its people. Whatever we have said, in respect of the defined category of laws
6 envisaged by Article 31A must hold good, perhaps with greater force, in respect of laws pass
7 for the purpose of giving effect to Clause (b) and (c) of Article 39. It is impossible to conceive
8 that any law passed for such purpose can at all violate Article 14 and Article 19.' It's sentiment
9 expressed by the Chief Justice yesterday as well. 'Article 31 is now out of harm's way. In fact,
10 far from damaging the basic structure of the Constitution, laws pass truly and *bona fide* for
11 giving effect to the Directive Principles contained in Clauses (b) and (c) of 39 will fortify the
12 structure. We do hope that Parliament will utilize to the maximum it's potential to pass laws,
13 genuinely and truly related to the principles contain in Clause (b) and (c) of Article 39. The
14 challenge made to the validity of the first part of unamended 31C therefore appears.' My Lord,
15 just by way of summary. So, two grounds, one is ***Kesavananda Bharati*** has already upheld
16 it, but the second independent ground is that if we uphold 31A, agrarian reform and other such
17 similar laws then surely on parity of reasoning, we must also uphold 31C. And there, the very
18 important observations which I'll come to later on, where the learned Chief Justice says that
19 how could a challenge based on 14 and 19, succeed against a law which is truly towards the
20 purpose of 39(b) and (c). Something which My Lord Justice Dhulia sort of echoed in the
21 example and the discussion on 39(b) as well. If it's truly towards alleviating inequality, what
22 is your possible challenge under 14 and...?

23

24 **JUSTICE SUDHANSHU DHULIA:** 38.

25

26 **JUSTICE B.V. NAGARATHNA:** 38.

27

28 **ZAL ANDHYARUJINA:** 38. Sorry.

29

30 **JUSTICE SUDHANSHU DHULIA:** And in this, the reasoning is given that - 'It gives
31 protection to a defined and limited category of laws, which are passed for giving effect to the
32 policy of the State towards securing the principles specified in Clause (b) and (c) of Article 39.'
33 So because, it is specific...

34

35 **ZAL ANDHYARUJINA:** And limited.

36

1 **JUSTICE SUDHANSHU DHULIA:** Limited. It is not the entire Directive Principle.
2 Therefore it is valid.

3

4 **ZAL ANDHYARUJINA:** Your Lordship is perfectly correct.

5

6 **JUSTICE SUDHANSHU DHULIA:** So it is not just because 31A and 31B have been upheld,
7 therefore, we are doing it.

8

9 **ZAL ANDHYARUJINA:** No, My Lord. I would agree.

10

11 **JUSTICE SUDHANSHU DHULIA:** The reason is this.

12

13 **ZAL ANDHYARUJINA:** No, Your Lordship is correct.

14

15 **JUSTICE SUDHANSHU DHULIA:** 39(b) and (c) to get extend, fine. You should take the
16 entire Directive Principles, no.

17

18 **ZAL ANDHYARUJINA:** But for a specified purpose, namely...

19

20 **JUSTICE SUDHANSHU DHULIA:** Specified purpose are 39(a), (b) and (c).

21

22 **ZAL ANDHYARUJINA:** (b) and (c), My Lord, it passes muster. So, independent reasoning,
23 that's what I wanted to impress upon Your Lordship, not only *Kesavananda Bharati*, but
24 independent reasoning.

25

26 **ZAL ANDHYARUJINA:** But, some may say so far...

27

28 **JUSTICE HRISHIKESH ROY:** Look at the language. Just the sentence after that...

29

30 **ZAL ANDHYARUJINA:** Please, My Lord...

31

32 **JUSTICE HRISHIKESH ROY:** 'It gives protection', as my Brother just now read out,
33 'Protection to define a limited category of laws which are passed to give effect to the policy of
34 the State towards securing the principle specified in Clause (b) and Clause (c) of Article 39.
35 And these clauses of Article 39 contains Directive Principles which are vital to the wellbeing of
36 the country and the welfare of the people.' Just look at the brilliance of the articulation.

37

1 **ZAL ANDHYARUJINA:** There is no doubt...

2

3 **JUSTICE HRISHIKESH ROY:** Unmatchable, actually.

4

5 **ZAL ANDHYARUJINA:** I would say one thing, My Lord. I said it the other day also, this
6 was an age of masterful writing, My Lord. In particular, My Lord, some of these judgements.
7 But the Bar was set very, very high for all of Your Lordships. I attempted an analysis, My Lord,
8 in V and VI. 'From the concluding part of paragraph 53, it is clear that Article 31C was *inter-*
9 *alia* upheld, on the basis of the ratio of the majority judgments in ***Kesavananda Bharati***.
10 However, the fact that this was not the only basis, is also evident from paragraph 54, which by
11 its lucid reasoning, provides *inter-alia* that Article 31C gives protection to a defined and
12 limited category of laws.' My Lord, to both of Your Lordships' point - the lucidity as well as
13 the limited nature of 39(c). 'Passed for giving effect to the policy of State towards securing the
14 principles specified in Clause (b) and (c) of Article 39. That Article 39 was vital to the well-
15 being and to the welfare of its people. And whatever was said earlier in the judgement with
16 respect to defined category of laws envisaged by Article 31A, must hold good perhaps, with
17 greater force, in respect of laws passed for the purpose of giving effect to (b) and (c) of Article
18 39. The learned...' I should say 'the Chief Justice', I'm sorry, '...went on to state that it was
19 impossible to conceive that any law passed for such purpose could violate 14 and 19.' My Lord,
20 in paragraph 55, 'The judgment also clarified...', My Lord, this is a very interesting
21 clarification, actually and it actually occurred to me, it has great bearing on the ***Coelho*** point,
22 but I'll leave that for now. In paragraph 55 - 'The judgment also clarify that the individual
23 examination of laws...' My Lord, I have not extracted. Perhaps, I can read to Your Lordship,
24 'The individual examination of laws inserted into the 9th Schedule on/or after 1973, which
25 provided for earlier in the judgement against the basic structure of the Constitution, would
26 become otiose, if such laws fell within the scope of 31A or the unamended Article 31C. And
27 accordingly, it would become unnecessary to determine whether they receive the protection of
28 Article 31(b), read with the Ninth Schedule.' So, what the Learned Judge said was this - 'You
29 don't need to check whether the law, which is inserted into the Ninth Schedule, is violative of
30 14 and 19, if it is already covered by Article 31A and by Article 31C.' So, My Lord, some powerful
31 reasoning, My Lord, with regard to 31C. I've only mentioned overleaf. Just as a matter of fact
32 that there was a dissent in that judgement. 'Justice Bhagavati, after delivering a dissenting
33 judgment and reiterated...' Sorry. My Lord, 'Justice Bhagwati, delivering a dissenting
34 judgement and reiterated that he had already given his reasons for subscribing to the order
35 delivered earlier in his dissenting judgement in ***Minerva Mills***, and that the same should be
36 treated as forming a part of the present judgement. He expressly identified various portion of
37 ***Minerva Mill's*** judgement, as the reasons for making the order of 9th May '80 in the present

1 case.' Now, My Lord, since it's a dissent and in the interest of economy of time, we need not go
2 into it. So, it doesn't have any legal effect. Now, My Lord, my comment on **Waman Rao** is
3 as follows, and this may be taken as my submission on it. 'Comment on **Waman Rao**, in
4 relation to whether it can be regarded as having decided the question of revival of unamended
5 Article 31C. **Waman Rao** was concerned with the question of validity of the unamended
6 Article 31C. In **Waman Rao**, the Act of 1961 was being challenged, *inter alia*, on the basis
7 described in the judgment above. As is evident from what is stated above, the challenge in all
8 proceedings before the Bombay High Court and the Supreme Court, were in respect of matters
9 prior to the 42nd Amendment Act, taking effect on 3rd January 1977.' So, in terms of temporal
10 analysis, it was all before this Amendment took effect. 'It is submitted that paragraph 3 of the
11 Order of the Court, dated 9th May '80, which held Article 31C unamended, is valid to the extent
12 to which its constitutionality was upheld in **Kesavananda Bharati**, and does not damage
13 any of the basic or essential features of the Constitution, or its basic structure.' I paraphrased
14 the order. 'must necessarily be understood in respect to the challenge and grievances which
15 were raised in the proceedings before the Supreme Court.' My Lord, this is how I have tried to
16 deal with it. 'It is well settled, that judgments must be read as judgments, in the facts of the
17 case, and not in abstract. The principle applies to judgments on Constitutional Law as well. It
18 is further submitted, that the judgment in **Waman Rao**, must be understood in the context
19 of the Constitutional challenge that was made there i.e., a challenge that the unamended
20 Article 31C, was in breach of the basic and essential features of the constitution, and stroke out
21 the basic structure. This was the only challenge which was repelled, and the declaration of
22 validity of unamended Article 31C in the judgment, must be understood in this context. It is
23 submitted that a Constitution Amendment Act, or an article of the Constitution may be held
24 to be valid against a particular
25 challenge by repelling that challenge, but unconstitutional on another challenge by accepting
26 the grounds of the other challenge. The mere fact that the Constitutional provision is held to
27 be valid by repelling a particular challenge, does not confer upon its a Constitutional validity
28 in perpetuity, which safeguards it against future challenges of a different need.'

29

30 **JUSTICE SUDHANSHU DHULIA:** You'll have to elaborate on this. What are you trying
31 to say in this?

32

33 **ZAL ANDHYARUJINA:** My Lord. May I read it again, My Lord. This is my proposition to
34 Your Lordships. But I'll try to elaborate it a little further. May I just go through the note and
35 then deal with it extempore with Your Lordships. I'll try to actually deal with it further, because
36 this is the nub of my argument to Your Lordships. Illustratively, to My Lord Justice Dhulia's
37 point. This is how I've tried to explain it, because I understand that this requires some

1 elaboration. 'It is entirely possible that a Constitutional provision may be held valid against
 2 the challenge under Article 19, by repelling that challenge, and yet subsequently be held
 3 unconstitutional, against a challenge under Article 14 or 21. It is an admitted position and
 4 evident from the record, that the Honourable Supreme Court in **Waman Rao**, did not
 5 consider the validity of unamended Article 31C, on account of the judgment in **Minerva**
 6 **Mills**, holding Section 4 of the Constitutional Amendment Act, unconstitutional, on the
 7 ground that it damaged the basic structure of the Constitution.' So My Lord, this issue of
 8 revival was not present to the judges in **Waman Rao** at all. 'It is also evident from the record
 9 that Chief Justice Chandrachud, for the majority, repelled the challenge and upheld the
 10 validity of unamended Article 31C, solely on the grounds stated in paragraph 53 and 54. As
 11 such...' Now My Lord, this is my conclusion - '**Waman Rao** has no precedential value
 12 whatsoever, with regard to the present issue, and in fact, as from what is stated about
 13 demonstrates that the challenge was on an entirely different basis.' This is my attempt to
 14 grapple with the problem, which Your Lordships presented to me yesterday. Now My Lord,
 15 just a few comments on this. Stepping away from **Waman Rao**, et cetera, just as a general
 16 principle of Constitutional Law. The Constitutional provision may be challenged on various
 17 grounds.

18

19 Just illustratively, I've given you a Lordship, an example of 19, 14 and 21. Conceptually, I don't
 20 think, I could be said to be wrong, to conclude that one might succeed, and other might fail.
 21 My Lord, when one fails, or let us say, an Article 19 challenge, My Lord, the statement of
 22 validity by repelling that challenge is just that. It is to say that it is valid against that challenge,
 23 but not to say that it remains valid against other potential future challenges. So, My Lord, I,
 24 for one see little difficulty in accepting the conceptual position that an Article which survives
 25 an 19 challenge, may fall to a 14 challenge. There is another, more elaborate aspect to this also.
 26 If we accept what is undoubtedly true, that our Constitution is a living document, and that our
 27 Constitutional values change with time. My Lord, it is entirely possible that a challenge made
 28 under a particular Article of the Constitution, say 14 might fail in 1976 but may succeed in
 29 2024. The leading example of...

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** But then we have to reconsider that judgment.

32

33 **ZAL ANDHYARUJINA:** Your Lordship may have to, and therefore I come to that point that,
 34 I am free of that difficulty because I'm before nine of Your Lordships, and those were five. Yes
 35 My Lord, it is entirely possible, it may require a comment on that judgment.

36

37 **CHIEF JUSTICE DY CHANDRACHUD:** But we are again subservient to a decision of 13.

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JUSTICE B.V. NAGARATHNA: Yes.

ZAL ANDHYARUJINA: I have something to say. Your Lordship is right. So that *Kesavananda* problem is a problem... My Lord...

CHIEF JUSTICE DY CHANDRACHUD: You know, if both *Minerva* and *Waman Rao* particularly, was just based on a judgment of five, of course, we could have reconsidered it. But today *Waman Rao* admittedly, says that the validity of 31C, the unamended 31C has been upheld in *Kesavananda*, that stares us in the face. So the only point, then, which we have to consider it is, consider is this, that since *Minerva* struck down the entirety of Section 4 of the 42nd Amendment, which included 39(b) and (c) as well.

ZAL ANDHYARUJINA: That is a later part of my argument ... Yes.

CHIEF JUSTICE DY CHANDRACHUD: Does that part relating to 39(b) and (c) get revived? That's the only point.

ZAL ANDHYARUJINA: Your Lordship is right.

CHIEF JUSTICE DY CHANDRACHUD: Because reconsidering the, you know, reconsidering now *Waman Rao* that will not really foll.. because *Waman Rao* in turn follows, though of course, they've given additional reason, it follows *Kesavananda*. And irrespective of the additional reasons in *Waman Rao*, we are bound by *Kesavananda*.

ZAL ANDHYARUJINA: I accept what Your Lordship says and I didn't think Your Lordship would say anything to the contrary. Just by way of an interesting aside, one of the judgments, it has a fascinating analysis of the doctrine of precedent. This is not quite the precedential point, but it speaks about how the Normans always regard the older law as the better law. If I'm not wrong, once again, it's Justice Chandrachud's judgement.

CHIEF JUSTICE DY CHANDRACHUD: But, Mr. Andhyarujina, you are right, that a... one, that a Constitutional provision which has been upheld against a challenge on one particular Constitutional ground, the validity of that Constitutional provision can be considered by the Supreme Court itself.

ZAL ANDHYARUJINA: Of course.

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CHIEF JUSTICE DY CHANDRACHUD: On other grounds *aliunde*. High Courts can't do it.

ZAL ANDHYARUJINA: Exactly.

CHIEF JUSTICE DY CHANDRACHUD: The Supreme Court has held a Constitutional validity under 19, High Courts cannot say - Well, 14 was not considered, for another reason as well, but 19 and 14 are now no longer treated as silos. They all amalgamate with each other and after post *Cooper* and *Maneka*.

ZAL ANDHYARUJINA: Maneka Gandhi, they all bleed in each other. Your Lordships is right.

CHIEF JUSTICE DY CHANDRACHUD: But Supreme Court can certainly say that - Well, in that case, the challenge was on the ground of Legislative competence. We look at the Fundamental Rights challenge here. Second, a provision which is Constitutional and that applies to a Legislative provision, on the date when it was enacted, may cease to become Constitutional later on, which was the principal laid down in *Motor General Traders* by Justice Venkataramiah, the Lordship then was and followed in *Malpe*. Right? That's how *Malpe* said that - Look, this provision was valid when it was enacted in the Bombay Rents Act in 1947, but no longer valid now. Those two issues do arise. But now, in a way really, the narrow issue which we have to consider is this, what is the effect of the declaration of Section 4 of the 42nd Amendment as unconstitutional, will that, in that sense, affect the operation of the unamended Article 31C? Your point really is this, that unamended Article 31C was confined to 39(b) and (c), that was subsumed in the expansion. The entirety of the expansion is struck down. So, where is the question of revival? To which possibly the answer would be that - 'Look the reasoning in *Minerva* ', in that paragraph, if you come to a later part of your note... I was actually pre-empting you because I was reading ahead of you... That discussion in *Minerva*, is not in relation to the validity of 31C, in relation to Article 39(b) and (c). That discussion in *Minerva*, is actually about this wide expanse, now which has arisen that all provisions, if a law is passed in provision... in pursuance of any of the Directive Principles, it's impugned from 14 and 19 challenge. This, they said was not impugned. This, they said, was unconstitutional. But they were not for a moment, they couldn't have doubted... they couldn't have doubted *Kesavananda Bharati*. As soon as, they were purporting to doubt *Kesavananda Bharati*, they had to issue that declaration for the reason that there was no severability arising there. Because it was one omnibus provision, or are any of the principles in the

1 Directive Principles. I mean, [INAUDIBLE] take that, through honestly, in a matter like this...
2 they are too...

3

4 **ZAL ANDHYARUJINA:** That is arguable either way, of course. Always arguable either way.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** But... it's arguable either way. But then do we
7 strike them? Do we say that.... you know, this is a Constitutional history...that do we say that -
8 'Look, now 31C in entirety is effaced.'

9

10 **ZAL ANDHYARUJINA:** But, let me show Your Lordship there, the Constitutional
11 principles with regard to the declaration of unconstitutionality and on effect on substitution.
12 It's a separate...

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Now, you have finished with *Waman Rao* part.
15 We have to go to *Minerva*.

16

17 **ZAL ANDHYARUJINA:** I finished with *Waman Rao* and if Your Lordships have...

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Because then we can go into the heart of the...

20

21 **ZAL ANDHYARUJINA:** Yes, My Lord, straightaway. Now, My Lord, *Minerva* also, I've
22 tried a lot to do a little bit of extraction for Your Lordships' convenience.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Yeah. Actually, that's good, because that's really
25 the relevant part of *Minerva*.

26

27 **ZAL ANDHYARUJINA:** So, this is page 99 onwards.

28

29 **JUSTICE B.V. NAGARATHNA:** But the fact remains that in *Waman Rao*, whatever has
30 been stated is subsequent to the judgment in *Minerva Mills*.

31

32 **ZAL ANDHYARUJINA:** That is true.

33

34 **JUSTICE B.V. NAGARATHNA:** Challenges to a stage anterior to *Minerva mills*. The
35 Bench is conscious of what they have stated in.

36

1 **ZAL ANDHYARUJINA:** No, My Lady is right. That is a difficulty in my way. My Lord, I'm
2 trying to deal with it. That is actually the problem for me. But, which I'm trying to grapple
3 with, and deal with. But, would Your Lordships like to see *Minerva* for a second?
4

5 **CHIEF JUSTICE DY CHANDRACHUD:** Yes. Just see Paragraph 58 at internal page 10 of
6 your note.
7

8 **ZAL ANDHYARUJINA:** Yes, para 58 straight away? My Lord, can I come back to the rest a
9 little later? Straight at 58. I want to deal with that concession point also... To My Lord, Justice
10 Hrishikesh Roy's point.
11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Para 24. But you know, the thing is, that that
13 concession now, I think, is pretty clear.
14

15 **ZAL ANDHYARUJINA:** Very well.
16

17 **CHIEF JUSTICE DY CHANDRACHUD:** That they say - 'Mr. Palkhivala conceded that
18 the unamended Article 31C is valid.'
19

20 **ZAL ANDHYARUJINA:** He could not have done so otherwise.
21

22 **CHIEF JUSTICE DY CHANDRACHUD:** And this is rightly so, because of then they refer
23 to *Kesavananda Bharati*.
24

25 **ZAL ANDHYARUJINA:** My Lord, I'm content with that. Please come straight to paragraph
26 8. 'It is in this slide that the validity of amended Article 31C has to be examined.'
27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Just one second. Tell me page. Internal page.
29

30 **ZAL ANDHYARUJINA:** Page 101 and para 8. 101.
31

32 **JUSTICE B.V. NAGARATHNA:** 58 of *Minerva Mills*?
33

34 **ZAL ANDHYARUJINA:** Yes, ma'am. Now, this problem of pagination is a... It is a perennial
35 problem. I've been trying to solve it myself, but there's something called 'Bait's numbering',
36 which actually links it with the way that it is numbered in hand. I have not yet been able to
37 solve it entirely but I have been...

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CHIEF JUSTICE DY CHANDRACHUD: I tell you now. We don't want to break the flow of your argument. This is a perpetual problem. Now we have electronic files in the Supreme Court. What we find is that the page with the lawyers' side of the electronic file is not the same as our page.

ZAL ANDHYARUJINA: Yes, My Lord.

CHIEF JUSTICE DY CHANDRACHUD: So I said... There is a technological problem. Anything in technology can be resolved. So we've resolved it. The only thing is it requires a little discipline on the part of the lawyers.

ZAL ANDHYARUJINA: Arrangement. It's how you arrange it.

CHIEF JUSTICE DY CHANDRACHUD: You see, what happens is - The moment, say, an office report comes in. Our digital files are divided into three segments - Volume 1, is the original paper book. Volume 2, is what we call the additional paper book, which will contain the rejoinders, counters, rejoinders, interim application. Volume 3, is the record of proceedings. Now, when a new pleading is filed in Volume 2, the pagination of Volume 2 will change. When a new office report comes and pagination of Volume 3 will change. We email it to the lawyers automatically. They don't have to download it. It's in the lawyers' inbox. The trouble is, advocates in record, when they brief seniors, don't take the... they don't take the trouble of looking at the latest uploading. They will have something five or six days earlier. Now what...

Last night, I was sitting till late with my staff. I said -'What... how do we find this solution?' So, now we are coming out of the solution called versioning, so the lawyers copy will have, and our copy will have the date, the time and the precise... 14 hours, 23 minutes, 32 seconds, on such and such date So, we have to make sure that we are on the same version, as a Bar. So, it has a solution. It just requires a little bit of more discipline on the part of the Bar as well, to lift the latest versioning. Okay. I share it in the hope that this travels beyond the voices in the Court, and people all realize that this has been done now by the Supreme Court. The latest version.

ZAL ANDHYARUJINA: My Lord, paragraph 8. My Lord, paragraph 58, deals with the question of validity of amended Article 31C. 'It is in this light, that the validity of amended Article 31' Please...

1 **JUSTICE J.B. PARDIWALA:** The sentence starts, para 58... 'It is in this light...'

2

3 **ZAL ANDHYARUJINA:** Yes, My Lord.

4

5 **JUSTICE J.B. PARDIWALA:** Can you read paragraph 57, in Volume 5?

6

7 **ZAL ANDHYARUJINA:** Yes, of course.

8

9 **JUSTICE J.B. PARDIWALA:** Page 2079.

10

11 **ZAL ANDHYARUJINA:** Certainly, My Lord.

12

13 **JUSTICE J.B. PARDIWALA:** That may give us some certain more clarity.

14

15 **ZAL ANDHYARUJINA:** Certainly. That's always a peril of this...

16

17 **JUSTICE J.B. PARDIWALA:** Contrast with, 'It is in this light that the validity of the
18 Amended Article 31C has to be examined.'

19

20 **ZAL ANDHYARUJINA:** Allow me to read 57. And I am obliged Your Lordship. Would Your
21 Lordship mind if I read 56 only?

22

23 **JUSTICE J.B. PARDIWALA:** Okay.

24

25 **ZAL ANDHYARUJINA:** 56 onwards, My Lord. Because it's beautifully written again. 'The
26 significance of the perception, that Parts III and IV together...'

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Just one second.

29

30 **ZAL ANDHYARUJINA:** Yes, My Lord. That's at page 2079...2079. I am grateful to Your
31 Lordship, and I think it'll be much better if I read both of this to Your Lordships first.

32

33 **JUSTICE B. V. NAGARATHNA:** Yes.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

36

1 **ZAL ANDHYARUJINA:** May I? 'The significance of the perception that Part III and IV
2 together, constitute the core of commitment to social revolution, and they keep together other
3 conscience of the Constitution, is to be traced to a deep understanding of the scheme of the
4 Indian Constitution. Granville Austin's observation, brings out the true position, that Parts III
5 and IV are like two wheels of the chariot.' What My Lord the Chief Justice, put to me the other
6 day. 'One, no less important than the other. You snap one, and the other will lose efficacy. They
7 are like a twin formula, for achieving social revolution, which is the ideal, which the visionary
8 founders of the Constitution set before themselves. In other words, the Indian Constitution, is
9 founded on the bedrock of the balance between Part III and IV. To give absolute primacy to
10 one over the other is to disturb the harmony of the Constitution. The harmony and balance
11 between the Fundamental Rights and the Directive Principles, is an essential feature of the
12 basic structure of the Constitution.'

13

14 Then, 57. 'This is not mere semantics. The edifice of our Constitution is built upon the concepts
15 crystallized in the Preamble. We resolve to constitute ourselves into a Socialist State, which
16 carried with it the obligation to secure to our people justice - social, economic and political.
17 We therefore, put Part IV into our Constitution, containing Directive Principles of State Policy,
18 which specify the socialist goal to be achieved. We promised to our people a democratic polity,
19 which carries with it the obligation of securing to the people, liberty of thought, expression,
20 belief, faith and worship, equality of status and of opportunity, and assurance, that the dignity
21 of the individual will at all cost be preserved. We therefore put Part III in our Constitution,
22 conferring those rights on the people. Those rights are not an end in themselves. But a means
23 to an end. The end is specified in Part IV. Therefore, the rights conferred by Part III, are subject
24 to reasonable restrictions and the Constitution provides that enforcement of some of them
25 may instated uncommon circumstances, be suspended. But just as the rights conferred by Part
26 III, would be without a radar and a compass, if they were not geared to an ideal in the same
27 manner the attainment of the ideal set out in Part IV, would become a pretence for tyranny. If
28 the price to be paid for achieving the ideal is human freedoms. One of the faiths of our founding
29 fathers was the purity of means. Indeed, under our laws, even a dacoit who has committed a
30 murder, cannot be put to death in the exercise of the Right of Self Defence, after he has made
31 good his escape. So great is the insistence of civilized laws, on...' Sorry. 'civilized laws in the
32 purity, the pure purity of means. The goals set out in Part IV have therefore, to be achieved
33 without the abrogation of the means provided for in Part III. It is in this sense, that Part III
34 and IV together constitute the core of our Constitution, and combine to form its conscience.
35 Anything that destroys the balance between the two parts will *ipso facto* destroy an essential
36 element of the basic structure of the Constitution.' I'm deeply obliged, Your Lordships.

37

1 **JUSTICE J.B. PARDIWALA:** 'It is in this light...'

2 .

3 **ZAL ANDHYARUJINA:** No, no. I'm deeply obliged, Your Lordship, it's much better now to
4 read 58. 'It is in this light, that the validity of the amended Article 31C has to be examined.
5 Article 13(2) says, that the State shall not make any law, which takes away or abridges the
6 rights conferred by Part III, and any law made in contravention of that clause, shall to the
7 extent of the contravention, be void. Article 31C begins with a non-obstante clause, by putting
8 Article 13 out of harm's way. It provides for a certain consequence, notwithstanding anything
9 contained in Article 13. It then denudes Article 14 and 19 of their functional utility by providing
10 that, the rights conferred by these Articles will be no barrier against passing laws for giving
11 effect to the principles laid down in Part IV. On any reasonable interpretation, there can be no
12 doubt that by the amendment introduced by Section 4 of the 42nd Amendment, Article 14 and
13 19 stand abrogated, at least in regard to the category of laws described in Article 31C.'

14

15 **JUSTICE J.B. PARDIWALA:** You will have to elaborate this.

16

17 **ZAL ANDHYARUJINA:** I will. I'm obliged, Your Lordship. 'The startling consequence
18 which the amendment has produced is that, even if a law is in total defiance of the mandate of
19 Article 13, read with Article 14 and 19. Its validity will not be open to question, so long as its
20 object is to secure a Directive Principle of State Policy. We are disposed to accept the
21 submission, of the learned Solicitor General, considering the two charts of the case submitted
22 by him, that it is possible to conceive of laws, which will not attract Article 31C, since they may
23 not bear direct and reasonable nexus with the provisions of Part IV. But that, in our opinion,
24 is beside the point. A large majority of laws, the bulk of them can, at any rate be easily justified
25 as having been passed for the purpose of giving effect to the policy of the State, towards
26 securing some principle, or the other laid down in Part IV. In respect of all such laws, which
27 cover an extensive gamut of the relevant Legislative activity, the protection of 14 and 19 will
28 stand wholly withdrawn. It is then no answer to say, while determining whether the basic
29 structure of the Constitution is altered, that at least some laws will fall outside the scope of
30 Article 31.'

31

32 **JUSTICE J.B. PARDIWALA:** Go back to para 54 of *Waman Rao* and try to reconceive.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Before you go to *Waman Rao*...

35

36 **ZAL ANDHYARUJINA:** Yes, My Lord.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Can I just highlight three things in this particular
2 para?

3

4 **ZAL ANDHYARUJINA:** Please, My Lord.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Para 58, if you go to 2080.

7

8 **ZAL ANDHYARUJINA:** Yes, My Lord.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Okay, the last line on 2079.

11

12 **ZAL ANDHYARUJINA:** Yes, My Lord.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** 'It then denudes Article 14 and 19 of their
15 functional utility, by providing that the rights conferred by these Articles will be no barrier
16 against passing laws, for giving effect to the principles laid down in Article, in Part IV.' So, this
17 is that three observations in this para, which are very crucial. So, 'against will be no barrier
18 against passing laws for giving effect to the principles laid down in Part IV.'

19

20 **ZAL ANDHYARUJINA:** Yes, My Lord.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** So, now they are saying that you are giving an
23 immunity against a 14 and 19 challenge, on the ground that the law is giving effect to any of
24 the principles in Part IV. Second, now if you could just travel a little down, the startling
25 consequence, 'If the amendment produces is that even if a law is in total defiance of the
26 mandate of 13, read with 14, and 19' Now it could follow, 'its validity will not be open to
27 questions, so long as its object is to secure a Directive Principle of state policy,' that's the
28 second. They're looking at now the width of the amendment provision, that it gives effect to
29 any of the Directive Principles. Third, 'A large majority of laws, the bulk of them can, at any
30 rate be easily justified as having been passed for the purpose of giving effect to the policy of
31 the State towards securing some principle or the other laid down in part IV.' Three very critical
32 observations in this paragraph. So what they find as.. what they find is objectionable, is that,
33 there is a complete immunity to an Article 14 and 19 challenge, if the law has been enacted in
34 pursuit of any of the Directive Principles. Earlier, before the amendment, it was confined to
35 specific Directive Principles 39(b) and (c). Now they say, what is objectionable is, that canvas
36 of immunity is extended so long as it is in furtherance of any of the Directive Principles. These

1 three observations in para 58 are very crucial. Now, if you go down and travel to para 59 and
2 then 60 for a moment. 60 is very important.

3

4 **ZAL ANDHYARUJINA:** May I read, My Lord?

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Because 60 dwells on what is referred to in those
7 three sentences, 'any', 'one Directive Principle', 'some Directive Principle or the other'. Now
8 just see 60 for a moment.

9

10 **ZAL ANDHYARUJINA:** May I read 60 for Your Lordships?

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

13

14 **ZAL ANDHYARUJINA:** And I return to Your Lordship's point immediately after this. It
15 was repeatedly...

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Para 54 is *Waman Rao*.

18

19 **ZAL ANDHYARUJINA:** Actually what Your Lordship has said, I believe, as in one sense,
20 answered Justice Pardiwala's point. I believe Justice Pardiwala's point was, in 54, it was the
21 specificity, the point which was made also by Justice Dhulia, of 39(b) and (c), which allowed
22 31C to stand.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Right. So, what *Waman Rao* then says, we'll
25 go to *Waman Rao* in a moment, is that, so long as that the ambit of Article 31C is narrow
26 and tailored to Article 39(b) and (c), it passes muster. Though Article 14 and 19 *per se* are part
27 of the basic structure of the Constitution. Right? What was objectionable in... what was found
28 to be objectionable in the 42nd amendment in *Minerva* was that, as opposed to a narrowly
29 tailored immunity confined to laws in furtherance of 39(b) and (c), you are expanding it to the
30 entirety of the chapter on Directive Principles, namely part IV. Now, see Para 60 will make
31 that even clear.

32

33 **JUSTICE HRISHIKESH ROY:** Not make it clear.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** 60 makes it... But that's why I highlighted these
36 three...

37

1 **ZAL ANDHYARUJINA:** I'm obliged.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** Distinct parts in Para 58, where they refer to
4 'some article or the other', 'the entirety of part IV'. Now just see para 60.

5

6 **ZAL ANDHYARUJINA:** But can I say one more thing before I go to 60, if Your Lordship
7 permits me just a word. All the cases, My Lord, read 31A, B and C as one suite of provision.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Correct. One suite of provision.

10

11 **ZAL ANDHYARUJINA:** Or a gradient reform was the real driving purpose of 31A and B and
12 then came C. So it was always conceived as a very narrow balancing act that was done in favour
13 of Directive Principles against Fundamental Rights to your, My Lord Justices', to both points,
14 actually.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Let's see para 60.

17

18 **ZAL ANDHYARUJINA:** Now para 60. 'It was repeatedly impressed upon us, especially by
19 the Attorney General, that Article 38 of the Constitution is the kingpin of Directive Principles
20 and no law passed in order to give effect to the principle contained therein, can ever damage
21 or destroy the basic structure of the Constitution.' A point made by Justice Dhulia this
22 morning. 'That Article provides that the state shall strive to promote the welfare of the people
23 by securing and protecting as effectively as it may be a social order, in which justice, social,
24 economic and political shall inform all the institutions of national life. We are unable to agree
25 that all the Directive Principles of State Policy contend in Part IV, eventually verge upon Article
26 38. Article 38 undoubtedly contains a broad guideline, but the other Directive Principles are
27 not mere illustrations of the principle contained in Article 38. Secondly, if it be true that no
28 law passed for the purpose of giving effect to the Directive Principle contained in 38 can
29 damage or destroy the basic structure of the Constitution, what was the necessity and more so,
30 the justification for providing by a Constitutional Amendment that no law which is passed for
31 giving effect to the policy of the State, towards securing any principle laid down?'

32

33 **JUSTICE SUDHANSHU DHULIA:** [INAUDIBLE]

34

35 **ZAL ANDHYARUJINA:** Yes, My Lord. Perfect sense. Your Lordship is...

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** So, really Mr. Andhyarujina, what the court is
2 finding objectionable in *Minerva*, is this expansion beyond 39(b) and (c). So, neither
3 *Minerva*... And now, we'll go to *Waman Rao* para 54, to deal Brother Pardiwala's point. So
4 what is objectionable even in *Minerva*. *Minerva* is not reconsidering, assuming
5 *Kesavananda* was five-judges and not 13. I am just theoretically saying that. Then *Minerva*
6 could have possibly reconsidered the validity of 31C all over again. They couldn't have done
7 that in *Minerva*. But that apart, what *Minerva* is finding objectionable, is not original
8 Article 31C in its unamended form, but the amended provision which expands the canvas of
9 31C to cover all the Directive Principles of State Policy

10

11 **ZAL ANDHYARUJINA:** My Lord, with respect Your Lordship has perfectly articulated.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Now, if you come back to para 54 of *Waman*
14 *Rao*...

15

16 **ZAL ANDHYARUJINA:** And My Lord, when we see that... Your Lordship will see that
17 there's perfect symmetry between *Minerva* and *Waman Rao*. There is no asymmetry in the
18 two at all.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** There is perfect symmetry between the two.

21

22 **ZAL ANDHYARUJINA:** So My Lord, if we go back... If Your Lordships...

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Now we go back to 54.

25

26 **ZAL ANDHYARUJINA:** My note, my note... For My Lord Justice Pardiwala, I'll go back to
27 my note.

28

29 **JUSTICE J. B. PARDIWALA:** It's alright.

30

31 **ZAL ANDHYARUJINA:** But, in fact, My Lord, that was the very point expressed from the
32 *Waman Rao* point of view by Justice Pardiwala.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** You have quoted 54, right?

35

36 **ZAL ANDHYARUJINA:** It's at page 96, IV.

37

1 **JUSTICE B.V. NAGARATHNA:** See otherwise... may I say something?

2

3 **ZAL ANDHYARUJINA:** Please, My Lord.

4

5 **JUSTICE B.V. NAGARATHNA:** Because, if you see the other Directive Principles, it speaks
6 of village industries, cottage industries, animal husbandry, living... What is that? ...wages.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Living wage.

9

10 **JUSTICE B.V. NAGARATHNA:** Protection of monuments, then protection of
11 environment, all those laws will get immunity then. That is why it was struck down.

12

13 **ZAL ANDHYARUJINA:** To My Lady's point, My Lord that is actually, once again, another
14 aspect of this. The balance was lost. If you say that everything within Part IV will take primacy,
15 what about the earlier Part which says that the Constitutional tension is a part of the basics.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** The balance is preserved by 31C in its
18 unamended form.

19

20 **ZAL ANDHYARUJINA:** In its unamended form.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Now, once we accept that as the prevailing
23 doctrine, post *Kesavananda* and even post *Minerva* and *Waman Rao*. We'll go to para
24 54 in a moment. Then the only point which we have to dwell on, is, what happened about that...
25 slightly problematic area... it's not a clear area, of the entirety of Section 4 having been struck
26 down.

27

28 **ZAL ANDHYARUJINA:** My Lord, this only...

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** It's not a problematic area. But then...

31

32 **ZAL ANDHYARUJINA:** This only clears the way for that.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Do we then say that - Look, it is a problematic
35 area. Obviously, otherwise we would not be labouring this point and so many... three referral
36 orders. Then do we take a very strictly formalistic view of the law, by saying that the moment
37 Section 4 was struck down, the entirety of 31C is struck down? That would be a very formalistic

1 reading of the Constitution. I mean, we are a Constitutional Court. We have to pay due
2 deference to our peers and predecessors, who came in and said, look, 31C in its unamended
3 form is valid, in accordance with the social ethos. Then, we are only left with this point, 'What
4 is the effect of a substituted provision having been struck down?'

5

6 **ZAL ANDHYARUJINA:** Your Lordship is perfectly correct. And, all of this...

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** We should also bear in mind, this is not really an
9 absolute substitution. You were right when you said, it can be by way of an addition,
10 substitution, repeal. This was really a substitution coupled with an addition. But it was not a
11 total substitution. They just changed those three words. Article 39(b) and (c), and said all or
12 any...

13

14 **JUSTICE B. V. NAGARATHNA:** All or any of the Principles.

15

16 **ZAL ANDHYARUJINA:** I will try to deal with those issues also. And...

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Just read para 54.

19

20 **ZAL ANDHYARUJINA:** We can go straight to that point.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** You go to the last part. This is the heart of your
23 subject...

24

25 **ZAL ANDHYARUJINA:** Straight to that point, My Lord.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** And what is the effect of the declaration of
28 Section 4 is unconstitutional. Does that revive Article 31C?

29

30 **ZAL ANDHYARUJINA:** Yes. Very well.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** And perhaps the simple answer would be, that,
33 look once 31C, in its Amended form is declared to be null and void, subject to your caveat, that
34 it's not obliterated from the statute book, the Constitution, it's still retained, but it's always
35 there in item 5. It's in that sense, from the date of its enactment, unless it is made prospective,
36 from the date of its enactment or adoption, the Amendment to 31C, is rendered *non-est*. If it
37 is rendered *non-est* from the date of its adoption in 1976, then the prevailing position, which

1 operated up to the date of the adoption of the Constitution Amendment, is not obliterated.
2 Unless there was intrinsic evidence, that Parliament intended to obliterate, by the
3 Constitutional Amendment... the earlier position. In some cases, for instance, in some cases,
4 there may be a clear intent of Parliament, that, look, we want to obliterate a Constitutional
5 provision prior to the day, and completely substitute a new provisions. That is not the intent
6 of Parliament. Parliament wanted to extend the scope of the immunity, actually.

7

8 **ZAL ANDHYARUJINA:** I will address Your Lordships on that as well, but I have some
9 thinking on that My Lord. I will address Your Lordship. But we are also...

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Just show us para 54 and then you can go to that
12 last part.

13

14 **ZAL ANDHYARUJINA:** Perfect.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Then we'll call upon the other side.

17

18 **ZAL ANDHYARUJINA:** So, if Your Lordship will come straight away to paragraph 54. May
19 I read it for you, My Lord? 54? Should we?

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** 54, I think you have read down. 54 you have read.
22 Now go to the last line. That will take you just, the conceptualizing. We want the
23 conceptualization... not this. The law, the judgement....

24

25 **ZAL ANDHYARUJINA:** Just to complete this, just two words. The succeeding judgments,
26 *Bhimji's Sen's* judgment.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** *Bhim Singhji's* judgement.

29

30 **ZAL ANDHYARUJINA:** *Bhim Singhji's* judgement, sorry.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** By the way, Mr. Bhim Singhji used to come here,
33 he was unfortunately passed away... 2, I think, a couple of years ago in COVID or post COVID.
34 Singhji had filed a public interest litigation, which are allowed, where he said that the army
35 porters who serve in the border area, they have no security of tenure. They have nothing. If a
36 porter falls, if any of you have gone to Ladakh, and you see those porters just near the border
37 areas, they are with their mules and is very treacherous. And he said, there's nothing. The man

1 just falls, he's gone. There is nothing for his family. So we allowed his petition, asked the Army
2 to come out with a social welfare security net fall, thanks to Mr. Bhim Singh, a very puny sort
3 of a person, he used to come and make his point. [UNCLEAR]. And the first judgment saying
4 that compensation can be granted for a violation of fundamental rights is in **Bhim Singh**, it
5 was preceded by **Rudul Sah** or **Rudul Sah** was preceded by **Bhim Singhji**? where he was
6 detained in Jammu and Kashmir in those days and our Court awarded some compensation I
7 think to him. Then came **Rudul Sah, D. K. Basu** and everything. Yes?

8

9 **ZAL ANDHYARUJINA:** My Lord, just to complete that, the three judgments, **Bhim**
10 **Singhji, Sanjeev Coke** and **Basanti's case**, they did not deal with a direct challenge to
11 31C. They all proceeded on the basis that it is valid today and they were in a challenge to the
12 Urban Land Ceiling Act, a challenge to a part nationalization of Coal Mines Act and a challenge
13 to a different part of MHADA as well. And of course, the **Basanti** judgment was delivered by
14 Justice Venkataramiah as he then was. But then we don't have the...

15

16 **JUSTICE HRISHIKESH ROY:** MHADA, that is the 31?

17

18 **ZAL ANDHYARUJINA:** MHADA, **MHADA** judgement.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Let's see **Basanti**, because it deals with...

21

22 **ZAL ANDHYARUJINA:** It is actually easily distinguishable, but we can see it.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Because I think **Basanti**, because otherwise
25 they will cite it. We might as well look at it.

26

27 **ZAL ANDHYARUJINA:** Yes, My Lord.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** They can show us the relevant part they're
30 relying on.

31

32 **ZAL ANDHYARUJINA:** Pleased to. I noticed that we don't have the historical problem that
33 we have with Justice Chandrachud with My Lady.

34

35 **JUSTICE J. B. PARDIWALA:** Which volume?

36

37 **CHIEF JUSTICE DY CHANDRACHUD:** **Basantibai** is in which volume? Just tell us.

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ZAL ANDHYARUJINA: Volume 5.

CHIEF JUSTICE DY CHANDRACHUD: Just give us all the three, because you have given us earlier.

ZAL ANDHYARUJINA: Yes, I'll give Your Lordship all three.

CHIEF JUSTICE DY CHANDRACHUD: Which volume and which page? Volume 5?

ZAL ANDHYARUJINA: It's all in Volume 5, but give me just one moment. I'll tell Your Lordship what page is.

CHIEF JUSTICE DY CHANDRACHUD: Any of the juniors on your side also have the pages readily, can just tell us.

PETITIONER'S COUNSEL: 2427.

CHIEF JUSTICE DY CHANDRACHUD: *Bhim Singh* is 24..?

PETITIONER'S COUNSEL: ..27, *Basantibai*..

ZAL ANDHYARUJINA: *Basantibai* is at 2427. 2294 is *Sanjeev Coke* and 2192 is *Bhim Singhji*. Yes, 2427. My Lord, let me just show... Just help me. Where is it here? Just give me a moment, please. Just a minute.

CHIEF JUSTICE DY CHANDRACHUD: Which is a relevant para...

ZAL ANDHYARUJINA: Would Your Lordships just like to see the challenge in *Basantibai* first?

CHIEF JUSTICE DY CHANDRACHUD: Sure. The page is 2429.

ZAL ANDHYARUJINA: 2429. 'This appeal by special leave...' It was against the acquisition of certain lands in Lonavala under different provisions of MHADA.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

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ZAL ANDHYARUJINA: Yes, Chapter V. 'This appeal by special leave is filed against the judgment dated 8th November, 1983 in writ petition, by which the High Court declared Sub-Section 3 and Section 4 of Section 44 of MHADA to be void and gave certain ancillary directions.' The facts are then stated and then the question, Your Lordship will find in paragraph 5. Paragraph 5 is at page 2432. 'In the course of this appeal, the parties have not questioned the correctness of the decision of the High Court, as regards the facts which had been found against the Respondent. The arguments were confined to the Constitutional validity of Subsection(3) and (4) of Section 44 of the Act.' Then, if Your Lordship would kindly go straight away to the discussion on 31C at page 2441, paragraph 13.

CHIEF JUSTICE DY CHANDRACHUD: Para 13, 2441?

ZAL ANDHYARUJINA: 2441. 'Even granting for the purpose of the argument, that Subsections (3) and (4) of Section 44 are violative of Article 14 of the Constitution, we are of the view that the said provisions receive the protection of Article 31C. We shall proceed to test the validity of the argument keeping aside for the time being, the observation in *Sanjeev Coke*. Let us proceed on the basis of *Kesavananda Bharati* and *Minerva Mills*, Article 31C reads thus. Clause (b) of Article 39, which is relevant for our purpose.' So they proceed on the basis that was very much alive and well as Your Lordships see. 'States that the State shall in particular direct its policy towards securing that the ownership and control of material resources the community are so distributed as best to subserve common good. The High Court rightly observed, at the end of paragraph 14 of the judgment following *Sanjeev Coke*, that the expression material resources the community should not cover so and so, but however it aid thereafter in reaching the conclusion that Article 31C was not applicable to the case for the reason, that the act did not contain a declaration, that it was enacted to give effect to Article 39(b)(ii), by undertaking development of commercial centres, while providing housing accommodation. The authority was expected to make profits, and hence it followed that the power to acquire, was not conferred with a view to achieving the Directive Principles of Article 39(b).' That was an important criteria in the decision making of the High Court. 'And two, the object of enacting the Legislation, was obviously to provide wholesome civic life to the citizens, and not distribution of material resources. We are of the view, that each of these reasons is invalid and erroneous. First, Article 31C does not say, that in an Act there should be a declaration by the appropriate Legislature, to the effect that it is being enacted to achieve the object contained in Article 39(b). In order to ascertain, whether it is protected by Article 31C, the court has to satisfy itself about the character of the Legislation, by studying all parts of it. The question whether an Act is in... Sorry...

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JUSTICE B.V. NAGARATHNA: [NO AUDIO]

ZAL ANDHYARUJINA: Yes, exactly. Exactly. That is the point which is made. It's an entirely different point from the point which presents itself, before Your Lordships today, and it accepts axiomatically, 31C to be alive.

CHIEF JUSTICE DY CHANDRACHUD: If we follow **Sanjeev Coke** and **Ranganatha Reddy**. They followed Justice Krishna Iyer's dictum in **Ranganatha Reddy**, and that has now been adopted by a Constitution Bench in **Sanjeev Coke**.

ZAL ANDHYARUJINA: Perfectly put. My Lord, that is the significance of these judgements. My Lord, I have actually dealt with these three judgments.

CHIEF JUSTICE DY CHANDRACHUD: They cited the minority in **Ranganatha Reddy**, and say it was followed in **Sanjeev Coke** and therefore, they are now...

ZAL ANDHYARUJINA: Yes My Lord. **Sanjeev Coke** itself is a remarkable judgment, where more or less the minority reasoning is preferred over the majority.

CHIEF JUSTICE DY CHANDRACHUD: So now, the last part...

ZAL ANDHYARUJINA: So My Lord, that's it. Last part is all that that is relevant. I only want to point out, I've dealt with these follow up judgments at page... My Lord, there's, if Your Lordships will permit me, one beautiful line in **Sanjeev Coke**, where **Minerva Mills** is described...

CHIEF JUSTICE DY CHANDRACHUD: Rhetorical beauty is there.

ZAL ANDHYARUJINA: Rare beauty and pursued as if rhetoric. I have dealt with these follow up judgments in page 105 of my note, just for Your Lordship's convenience, it's there. Can I take Your Lordship now, straight away. All this was to clear the path to say that I can argue this point. My Lord, it is this point remains. Now, Your Lordship will assess the strength of this point. It is dealt with by my note, which I had given to Your Lordship earlier.

CHIEF JUSTICE DY CHANDRACHUD: 105 right?

1 **ZAL ANDHYARUJINA:** Note 3, yes.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** Oh, Note 3? Not in this, today's....

4

5 **ZAL ANDHYARUJINA:** No, My Lord, in the earlier compilation.

6 Yes, Volume 1B, I'm told. 'Whether Article 31C is a dead letter and whether unamended Article
7 31C stood revived.' Now, I'll just explain the note to Your Lordship in a second. There are two
8 parts to the note, the first is what is the effect of the declaration of unconstitutionality upon
9 the statute, that is the first part of the note. The second part of the note is dealing with this
10 peculiar type of Legislative activity namely substitution and what it involves. So, these are two
11 parts of the note. I'll just wait for all of Your Lordships to pick up that. Page 38.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** You said page... 38.

14

15 **ZAL ANDHYARUJINA:** But my learned friend, Mr. Devrajan draws to my attention that, I
16 hope, Your Lordships...

17

18 **JUSTICE B.V. NAGARATHNA:** We don't have I think anything beyond 37.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** 37. Note and then I have 38.

21

22 **JUSTICE B.V. NAGARATHNA:** It is there.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** 'Whether Article 31C is a dead letter'.

25

26 **ZAL ANDHYARUJINA:** Yes. Whether it's a dead letter and whether unamended or stood
27 revived. Now, if I take Your Lordships directly to paragraph 3, all of which is exactly what I've
28 been arguing. Once of the judgment in *Minerva*, declared Section 4 to be beyond the
29 amending power of parliament.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** You are saying that once Section 4 is declared
32 unconstitutional, that can't be revived.

33

34 **ZAL ANDHYARUJINA:** So, I'm saying two things. The effect of unconstitutionality by Your
35 Lordships is not to excise it from the statute book. It still remains a part of the statute book. It
36 requires Legislative intervention to then actually delete it and this is exactly what they tried to
37 do in the 44th Amendment Act, if Your Lordships recall, the part which was struck down by

1 **Kesavananda Bharati**, they actually moved to say delete it. But for whatever reason, that
2 motion didn't pass the Rajya Sabha. So, parliamentary practice...

3

4 **JUSTICE SUDHANSHU DHULIA:** No, this is 45th.

5

6 **ZAL ANDHYARUJINA:** 45th. Sorry, 45th, 45th Amendment Bill. It's a curious thing, but
7 it's the 44th Amendment Act. So, it seems that there was one bill which didn't become an Act.
8 But I have myself puzzled over that 44th Amendment bill was moved, that part which was
9 allowed, resulted in the 44th Amendment Act. So, one bill around the way, has got lost,
10 missing, didn't pass.

11

12 **JUSTICE J.B. PARDIWALA:** That part... don't pass.

13

14 **ZAL ANDHYARUJINA:** No, My Lord, Your Lordship has observed that problem. I have
15 myself noticed that. I tried to understand it. So, this first part... The argument is in two parts,
16 once *Minerva* declared Section 4 to be unconstitutional, what was its effect on the statute
17 book first? That's the first part of the argument. So if My Lady would kindly look at 3 onwards,
18 or 4 onwards. 'It is submitted that the declaration by this Hon'ble court did not and could not
19 receive the unamended Article 31C,' Sorry, could not revive, it should say, I'm so sorry, I
20 misspoke, 'Could not revive the unamended Article 31C, as stated and submitted below.' This
21 is the reasoning about that declaration of unconstitutionality. 'When Section 4 of the
22 Constitution was declared void, it cannot be said to mean that it was totally ineffectual and did
23 not at all have the effect of amending Article 31C, as contemplated in the 42nd Amendment.
24 The substituted words continued to remain as a part of the Constitution.' And here I've
25 illustrated. 'But see Article 368' My Lord, I've quoted. 'Thereupon the date of ascent, the
26 Constitution shall stand amended in accordance with the terms of the bill.' So once the bill is
27 passed, it effectively comes onto the statute book, and in the case of a substitution in the place
28 of the previous provision.

29

30 'There is a clear distinction on the effect of the statute when it is amended or repealed by a
31 Legislation and when it is struck down by a court for Constitutional violation.' So the two are
32 different. Repeal is entirely different from striking down, by Your Lordship's Court. 'The effect
33 of a Legislation on the statute is a physical change, an express repeal, removing the statute out
34 from the statute book.' Parliament repeals, it's gone, it's deleted. 'An amendment makes
35 physical changes in the statute but a judicial decision does not make any physical changes in
36 the statute.' Sorry, should say 'changes in the statute'. 'It only places a particular meaning on
37 it and leaves the statute on the statute book without any change. This difference is due to a

1 clear separation of the functions between the Legislature and the judiciary under our
2 Constitutional scheme.

3

4 Note 7 - 'No statute can go out of existence unless the Legislature repeals it. The courts do not
5 possess the power to make a statute or to repeal a statute. When a Court declares a statute as
6 unconstitutional, it is void. It is legally unenforceable, but factually its existence cannot be
7 wiped out by judicial declaration. In *State of Bombay vs F.N. Balsara*, the Honourable
8 Supreme Court had struck down Section 13 of the Bombay Prohibition Act 1949. This case
9 dealt with a Pre-Constitution Act, it was existing law on the date of the Constitution. The
10 question of the effect of its unconstitutionality as so declared, came up first before a three-
11 judge bench in *Pesikaka's* case, sorry, *Behram Khurshid Pesikaka vs State of*
12 *Bombay*. Justice Bhagwati, N. H. Bhagavati, held that the effect of the declaration of
13 unconstitutionality...' There was a slightly different view here. 'Was not to enact a statutory
14 provision or to alter or amend Section 13B of the Act.' So, one thing I hasten to act, now we are
15 speaking about its effect on ordinary statutes. One of the problems that we have had here,
16 there is very little material on this point. That has been noticed also in the *NJAC* judgment,
17 which, I will be making some submissions to Your Lordship, with regard to this effect on the
18 Constitution, is very little tried and decided, as I will show Your Lordship. But there is one or
19 two, in my respectful submission, persuasive indications.

20

21 **JUSTICE RAJESH BINDAL:** After the provision is struck down...

22

23 **ZAL ANDHYARUJINA:** Yes, My Lord

24

25 **JUSTICE RAJESH BINDAL:** Whether they are bound to carry out the amendment also,
26 deletion, addition, whatever it is.

27

28 **ZAL ANDHYARUJINA:** Well, Your Lordship has raised a very good point. They may allow
29 it to linger on, in the statute book, as has actually happened and commented on by Justice
30 Chandrachud, as he then was, to say it lives an italicized existence. So, when Your Lordship
31 finds in the statute books, many of the parts of the statute in italics, you will find a footnote
32 there, to say that actually, it was struck down by this. Parliament has not taken the necessary
33 step for actually...

34

35 **JUSTICE RAJESH BINDAL:** Actually Parliament is bound to do it.

36

1 **ZAL ANDHYARUJINA:** Parliament is not bound to do it. Parliament may do it, may not do
2 it.

3

4 **JUSTICE RAJESH BINDAL:** For a layman it is very difficult to understand.

5

6 **ZAL ANDHYARUJINA:** It is.

7

8 **JUSTICE RAJESH BINDAL:** The kind of argument being raised here.

9

10 **ZAL ANDHYARUJINA:** Yes, My Lord.

11

12 **JUSTICE RAJESH BINDAL:** That would earlier have revived.

13

14 **ZAL ANDHYARUJINA:** Yes.

15

16 **JUSTICE RAJESH BINDAL:** Nobody knows what was there, not there. Then will we
17 understand this situation.

18

19 **ZAL ANDHYARUJINA:** No, Your Lordship is perfectly correct. I would submit to Your
20 Lordship that for the orderly development of the law, Parliament must do one of two things.
21 It must either remove it from the statute book or it must remove the basis of its
22 unconstitutionality and revalidate it by a parliamentary motion. That would be the correct
23 parliamentary procedure. But I don't want to be misunderstood raising a very technical point,
24 but as I see it, this is an important point on the separation of powers between Parliament and...

25

26 **JUSTICE RAJESH BINDAL:** Statutes. Also provisions struck down...

27

28 **ZAL ANDHYARUJINA:** Many, many statutes. And I would venture to suggest that in
29 majority of them, Parliament has not taken the necessary sweeping up action. Sometimes, in
30 the 9th Schedule, what was happening was, that once it was struck down, it was immediately
31 inserted into the 9th Schedule to revalidate it.

32

33 **JUSTICE RAJESH BINDAL:** Yes.

34

35 **ZAL ANDHYARUJINA:** But there also, Parliament is fully conscious of the fact that it
36 requires parliamentary action for revalidation.

37

1 **JUSTICE RAJESH BINDAL:** [UNCLEAR] is there.

2

3 **ZAL ANDHYARUJINA:** It is always done, because striking it down leaves it hanging. But
4 what do we do with it? But may I just return to the note.

5

6 **JUSTICE B. V. NAGARATHNA:** Because very rarely there would be a question, that the
7 striking down was bad in Law at a future date.

8

9 **ZAL ANDHYARUJINA:** Quite right.

10

11 **JUSTICE B.V. NAGARATHNA:** Therefore they don't do anything about it, they accept it.
12 Unless they abrogate that judgment by removing the basis of the judgment.

13

14 **ZAL ANDHYARUJINA:** My Lady is perfectly correct.

15

16 **JUSTICE SUDHANSHU DHULIA:** Can I give you another example?

17

18 **ZAL ANDHYARUJINA:** My Lord.

19

20 **JUSTICE SUDHANSHU DHULIA:** Although it's not part of the Constitution, but Section
21 303 IPC. It has been declared as unconstitutional by the Supreme Court. It still exists in the
22 statute books. Ineffective.

23

24 **ZAL ANDHYARUJINA:** Yes, ineffective. Void, actually.

25

26 **JUSTICE SUDHANSHU DHULIA:** Similarly, is this post *Minerva*. The status of the 31C.

27

28 **ZAL ANDHYARUJINA:** Yes. It's still there.

29

30 **JUSTICE SUDHANSHU DHULIA:** You can put it in an Article somewhere...

31

32 **ZAL ANDHYARUJINA:** So My Lord, this requires a little... because the Courts and
33 Parliament always work in tandem. At least the Supreme Court and Parliament is to work in
34 tandem. What the Supreme Court does, it may be accepted by Parliament. Then you do your
35 way with it. You may not accept it. Change the basis of it, and revalidate it. But Parliamentary
36 inactivity, in my respectful submission, results in the situation that we are in today. And it is
37 difficult to see who can do it, but Parliament. So My Lord, as Chief Justice has put it to me, is

1 this a technical point? Parliament can easily revalidate it, of course it may. But Parliament in
2 2024 may take an entirely different view, with regard to the insertion of an Article which was
3 done in 1972. It may delete it. It may revalidate it. It may bring it back in some other form. But
4 these are all matters for Parliament to now decide. The baton, as it were, is handed over to
5 Parliament to do what it will. And the unsatisfactory consequence of this, that, yes, we are left
6 without the Article, is a logical sequitur, if we accept the fact that this is something which is
7 left for Parliament to do. I absolutely see the fact.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** What is the logical sequitur of what you're
10 arguing? If the declaration of unconstitutionality does not efface the provision from the
11 Constitution, it remains a part of the Constitution, but it becomes unenforceable. It becomes
12 void and unenforceable.

13

14 **ZAL ANDHYARUJINA:** Unenforceable. That takes me to step two.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** What is the step two, then?

17

18 **ZAL ANDHYARUJINA:** So step two is that, in the case of a substituted provision what is
19 remaining on the statute book is the unenforceable provision. That is... actually, I'm glad Your
20 Lordship asked... That is surely the logical consequence of it.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Say that again. In the case...

23

24 **ZAL ANDHYARUJINA:** But in the case of a substituted provision, which is declared
25 unconstitutional, the same remains on the statute book, but is ineffective and is, in fact, void.
26 And if Your Lordship were to push me a little further, I would have to say, that there is no
27 room for two provisions, one of which has replaced the other.

28

29 **JUSTICE RAJESH BINDAL:** What they are arguing is the effect of that.

30

31 **ZAL ANDHYARUJINA:** Exactly. What my learned friend...

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** No, really speaking what you are saying is this.
34 That when parliament substitutes in its constituent power a Constitutional provision, then the
35 effect of that is that the original provision is completely extinguished. That does not remain on
36 the statute book, because it's Parliament's power. But when the substituted provision is

1 declared to be unconstitutional by a Court, that substitution, that substituted provision still
2 remains on the statute book...

3

4 **ZAL ANDHYARUJINA:** Very much, My Lord.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Albeit it is unenforceable. So, the declaration of
7 the substituted provision as unconstitutional, by the Court will not revive the earlier provision,
8 because the Court does not enact a law.

9

10 **ZAL ANDHYARUJINA:** Your Lordship has put it perfectly. But if I were to slow Your
11 Lordships...

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** We can hear the other side on this.

14

15 **ZAL ANDHYARUJINA:** But if I were to slow Your Lordships' process down by just one
16 step, I would say that the declaration of unconstitutionality, My Lord, brings to an end Your
17 Lordship's examination of that Constitutional provision. Your Lordships cannot even say it
18 stands removed from the statute book. It is now handed over to Parliament, who must take
19 the necessary action on it.

20

21 **JUSTICE SUDHANSHU DHULIA:** And if it doesn't?

22

23 **ZAL ANDHYARUJINA:** My Lord, we have the situation which we have today. It's a dead-
24 end.

25

26 **JUSTICE SUDHANSHU DHULIA:** Will there not be something like an implied revival.
27 Something like that. No, your argument is actually very attractive philosophically,
28 theoretically, it's really like attractive. [NO AUDIO]

29

30 **ZAL ANDHYARUJINA:** No My Lord, I understand the pragmatic problem. I understand
31 the pragmatic problem that I'm faced with, and I understand the fact that it's viewed as a
32 technical argument.

33

34 **JUSTICE SUDHANSHU DHULIA:** [NO AUDIO] Liberal nexus between... [NO AUDIO]

35

1 **ZAL ANDHYARUJINA:** That point remains, whatever else is there, that point remains. But
2 let me try during the course of the argument to address that point once again, I have a separate
3 section, where I'm going to try to address that point once again, as well. Please Mr. Devrajan...

4
5 **H. DEVRAJAN:** I propose what fell from Your Lordships, My Lords. Today, by a process of
6 interpretation, they want Your Lordships to do something which Parliament said it won't do.
7 That may kindly be considered, My Lord. Parliament said -'It does not want 39(b) and (c) in
8 its old form.' That's why the 44th Amendment Act did not bring it in. Though the bill
9 contended, the Act did not come. So today, by process of interpretation they want Your
10 Lordships to bring in something which Parliament said it won't do, My Lord. My Lords may
11 consider this subject.

12
13 **ZAL ANDHYARUJINA:** I am very obliged to my learned friend actually.

14
15 **JUSTICE RAJESH BINDAL:** *NJAC* case for that.

16
17 **ZAL ANDHYARUJINA:** We are going to the *NJAC* case.

18
19 **JUSTICE RAJESH BINDAL:** You are relying on that.

20
21 **ZAL ANDHYARUJINA:** Yes, My Lord, I'm going to show Your Lordships the *NJAC* case.

22
23 **JUSTICE RAJESH BINDAL:** Just read the Article 31C. See now, what sense it makes?

24
25 **ZAL ANDHYARUJINA:** It makes no sense. Your Lordship is perfectly correct, if I may say
26 so.

27
28 **JUSTICE RAJESH BINDAL:** If the deletion is deleted, whatever struck down is ignored.

29
30 **ZAL ANDHYARUJINA:** It is actually completely emasculated.

31
32 **JUSTICE RAJESH BINDAL:** No sense here.

33
34 **ZAL ANDHYARUJINA:** The only way it can make sense is if the old revives. That is the only
35 way, it can make sense.

36
37 **JUSTICE SUDHANSHU DHULIA:** If we pick up the book.

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ZAL ANDHYARUJINA: Yes.

JUSTICE SUDHANSHU DHULIA: Then there is only Part IV.

ZAL ANDHYARUJINA: There's is only Part IV.

JUSTICE SUDHANSHU DHULIA: There is no 39(b), (c), as it was earlier.

ZAL ANDHYARUJINA: Your Lordship is right.

JUSTICE SUDHANSHU DHULIA: But then, we'll have to read it.

CHIEF JUSTICE DY CHANDRACHUD: And, your argument has a friction implicit in it, that you see, normally, when Parliament say substitutes an original provision, that substituted provision, ceases to be on the statute. Forget this particular case. When Parliament substitutes a provision in its constituent power,...

ZAL ANDHYARUJINA: Yes, My Lord.

CHIEF JUSTICE DY CHANDRACHUD: The original provision ceases to exist, it ceases to be on the statute book. When the Court declares or strikes down the substituted provision, it continues to remain on the statute book, albeit it is unenforceable, null and void. So, therefore, according to you, and that is following the doctrine of separation of power, that it is only Parliament which can efface a provision from the statute book. The Court can only strike it down as unconstitutional. So when the Court strikes down a provision as unconstitutional, that does not lead to the revival of a substituted provision, which is exclusively within the domain of Parliament.

ZAL ANDHYARUJINA: And there... Your Lordship once again has put it perfectly. But I would just add one or two, perhaps logical extensions to that.

CHIEF JUSTICE DY CHANDRACHUD: That's your argument, really.

ZAL ANDHYARUJINA: That is my argument, my learned friend, Mr. Devarajan raised an excellent point. Parliament may express its parliamentary intent at that stage. It may say that

1 -'I accept the advice given by the Courts. I accept the fact that, in fact, it should go and it is
2 unconstitutional.'

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** For the Court to revive a provision according to
5 you, is for the Court to exercise the constituent power.

6

7 **ZAL ANDHYARUJINA:** My Lord. This, in a nutshell, is exactly what I've been saying.

8

9 **JUSTICE SUDHANSHU DHULIA:** You were not here yesterday, Mr. Dwivedi was making
10 this point.

11

12 **ZAL ANDHYARUJINA:** I heard it.

13

14 **JUSTICE SUDHANSHU DHULIA:** It's just one exercise. it's not that, if the entire 39(b)
15 and (c) will not come, because it becomes void as an issue. And if it is void as an issue, then
16 39(b) and (c), will automatically come, as if it was there in the statute book.

17

18 **ZAL ANDHYARUJINA:** Yes, I heard my learned friend and I have got some way of dealing
19 with that. If Your Lordships permit, I'll just come to the conclusion of this. My Lord, I want to
20 deal with that in a separate way, about the effect of that unconstitutionality and the fact that
21 it relates back to the date of origin of that particular Constitutional provision. But I have some
22 thinking on that also, because I heard...

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** It goes back to the original.

25

26 **ZAL ANDHYARUJINA:** It is well settled when Your Lordships declare this void, it relates
27 back.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Functionality relates back to the date of the 42nd
30 Amendment.

31

32 **ZAL ANDHYARUJINA:** Yes, I accept that. But there are just two academic possibilities.
33 One is that it relates back to 1972. That's a possibility. That's all I'm saying. Because what has
34 happened is that it's a 72-provision amended from time to time because another problem is,
35 take the 44th Amendment Act, why should it not relate back to the 44th Amendment Act then?
36 Why only the 42nd Amendment?

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Now, the amendment of... the 42nd Amendment,
2 was it retrospective or it was prospective?

3

4 **ZAL ANDHYARUJINA:** Prospective. I think it has always been understood, that's what,
5 that's *Waman Rao*. That's exactly what *Waman Rao* says.

6

7 **JUSTICE B.V. NAGARATHNA:** Probably this void has been noticed by a fore sighting
8 *Waman Rao* and they fall back on *Kesavananda Bharati* to say that the unamended
9 provision was upheld in *Kesavananda Bharati* and therefore, they say, that it is still alive
10 and kicking.

11

12 **ZAL ANDHYARUJINA:** Well, I have had a similar thought about *Waman Rao* because I
13 wonder sometimes what was the contribution of *Coelho* because *Waman Rao* came so close
14 to saying that 14 and 19 is basic structure, it just didn't say it in a sentence. And that was in
15 1980. So, the contribution of *Coelho* of nine-judges in 2017, sorry, 7. What was adding, just
16 that one few more words to nail it to the mark.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Even if 14 and 19 are part of the basic structure,
19 as we will have to now proceed on the basis, of there being a part of the basic structure, that
20 does not still dilute the rationale of *Kesavananda Bharati*, which is, that it is not really a
21 widespread or total destruction of the basic structure.

22

23 **ZAL ANDHYARUJINA:** It's a balance.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** It's a balance, and therefore it is valid.

26

27 **ZAL ANDHYARUJINA:** It's a balance. And *Coelho* is still relevant, what I had mentioned
28 it to Your Lordship on that, that *Coelho* should not be read as an absolute proposition. To say
29 that the minute you come up against 14, it is something which will be struck down. 14 is a
30 nuance, at 14, 21 are nuanced. We must apply the essence of that to the question. So it's just
31 an oblique infraction, may or may not result in the statute being struck down, but to the pith
32 and the substance of 14.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Totally your argument, really your argument will
35 have to meet us in two steps. First, that when Parliament adopted the 42nd Constitutional
36 Amendment, the effect of the 42nd Constitution Amendment was, that original Article 31C
37 ceased to be on the statute book. Two, when the amended provisions of Article 31C was stuck

1 down by the Court in *Minerva Mills*, the provision does not get effaced from the statute
2 book. It remains on the statute book. But it is unenforceable.

3

4 **ZAL ANDHYARUJINA:** It is lingered on as a dead letter.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Third, the declaration of unconstitutionality by
7 the Court, will not lead to a revival of original Article 31C for two reasons, (1) The Court, by the
8 declaration of the substitution of the provision by Parliament in the 42nd amendment, has
9 effaced the provision from the statute book. And (2) The Court, being treated to have revived
10 the original provision will be again an act of a constituent power, which is not open to the
11 Court. I think that really is the logical [UNCLEAR]

12

13 **ZAL ANDHYARUJINA:** Your Lordship has perfectly encapsulated, just to consider. I am a
14 little adrift here, because I find no basis for one or the other, but when the court declares the
15 provision unconstitutional, it does so taking the provision as a whole, because that's the only
16 provision available to it. And therefore, to what point does the unconstitutionality relate back,
17 or that is how I was attempting to do it, my learned friend Mr. Dwivedi's argument. It is not
18 clear to me that it should go back only to the point at which the amendment made, because
19 that point is no longer a point of significance, because it has now become entirely a new
20 provision as of the date on which it was incorporated. There is only one provision. So what is
21 not clear...

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** There is only one provision which is left. That
24 31C post, the 42nd Amendment according to you.

25

26 **ZAL ANDHYARUJINA:** Exactly. But it is not like a...

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** The original provision was completely wiped out
29 when it was substituted and the... According to you, the declaration of unconstitutionality will
30 not amount to a revival of the original provision, for the reason, that has to be in the exercise
31 of the constituent power if the Court does not [UNCLEAR]

32

33 **ZAL ANDHYARUJINA:** The constituent power is the main point actually.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Read the point, should we call upon the other
36 side now?

37

1 **ZAL ANDHYARUJINA:** Shall I show you also the authority on the topic before lunch?

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** Quickly if you show us in five minutes,

4

5 **ZAL ANDHYARUJINA:** Quickly.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Then, we'll have to get to the other side, we have
8 to wrap up today.

9

10 **ZAL ANDHYARUJINA:** Yes, I fully understand, My Lord. Very quickly. But my learned
11 friend also want to say something.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Now we have to go to the other side.

14

15 **SAMEER PAREKH:** There's one additional issue. I get it. As little time.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Our link is also broken. Yes.

18

19 **ZAL ANDHYARUJINA:** I'll run through my notes.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** You have the authorities and then you can briefly
22 dwell on *Coelho* also. Briefly you can tell us. So that they have a full... Otherwise it will be
23 falling upon.

24

25 **ZAL ANDHYARUJINA:** Very well, My Lord. If Your Lordship just sees my note, I've
26 extracted it once again. Page 40.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Page?

29

30 **ZAL ANDHYARUJINA:** Page 40, My Lord. PDF 40. Just one authority, which was very
31 good, which is not there. I'll just show Your Lordships from the compilation. First, on the effect
32 of the declaration of unconstitutionality. Please see from paragraph 9 onwards. I'll finish this
33 in two or three minutes. Paragraph 9. 'In the Constitution Bench decision of *Behram*
34 *Khurshed Pesikaka*, Justice Mahajan for himself, and Justices Mukherjee, Hasan and
35 Bose, held as follows. The result, therefore, of this pronouncement, is that the part of the
36 section of an existing law, which is unconstitutional, is not law, and is null and void, for
37 determining the rights and obligations of citizens. The part declared void should be notionally

1 taken to be obliterated from the section for all interest and purpose, though it may remain
2 written on the statute book, and would be a good law when a question arises for the
3 determination of the rights and obligations, incurred prior to 26th January '50. Justice Das in
4 the minority, said this. No part of the section is obliterated or scratched out from the statute
5 book, or in any way altered or amended, for that is not the function of the Court.

6
7 The judicial declaration that a part of the section is unconstitutional and void only nullifies
8 that offending part in the sense that it renders that part ineffective against the inapplicable,
9 an inapplicable to a citizen who consumes or uses, in that case, liquid medicine preparations,
10 so on and so forth.' In another judgment, which puts it very well which is the **Sundaramaia**
11 judgment. Dealing with the Post Constitution Act and after considering the judgment in
12 **Pesikaka**, it was held this - 'Thus the Legislation on a topic not within the competence of
13 Legislature and a Legislature within its competence but violative of Constitutional limitations,
14 have both the same reckoning in a Court of Law, they are, both of them unenforceable. But
15 does it follow from this, that both laws are of the same quality and character and stand on a
16 different footing for all purposes? This question has been the subject of consideration in
17 numerous decisions in American courts.'

18
19 **JUSTICE B.V. NAGARATHNA:** [UNCLEAR]

20
21 **ZAL ANDHYARUJINA:** Oh, I'm sorry.

22
23 **CHIEF JUSTICE DY CHANDRACHUD:** And the preponderance of authority....

24
25 **ZAL ANDHYARUJINA:** 'And the preponderance of authority is in favour of the view that
26 while a law on a matter not within the competence of Legislature is a nullity. A law on a topic
27 within its competence, but repugnant to the Constitutional prohibitions is only unenforceable.'
28 So you may have two views about what is the effect, depending on what was the type of
29 challenge. Now some high scholarly authority. One Mr. Seervai has summarized the law on
30 this point as follows. The practice, I believe, is that never to cite living authors in this Court.
31 'When a court declares a law to be unconstitutional, that declaration does not repeal or amend
32 the law. For to repeal or amend the law, is a Legislative and not a judicial function.' Then the
33 next authority, **Khairati Lal's** case. Justices Fazal Ali, Jaswant Singh and approved by
34 Justice Deshpande. This in the dissenting judgment, sorry, approved the dissenting judgment
35 of V. S. Deshpande and followed the same line of reasoning on the following lines. 'On a
36 consideration of the circumstances, facts and authorities discussed above, in our opinion, the
37 following legal propositions emerge. When a statute, either as a whole or a part, is declared

1 void. It means that the portion which is declared void is ineffectual destitute of any legal effect
2 and not binding on the parties. Nevertheless, the Act remains on the statute book for the
3 consideration of Legislature in order to repeal or amend the same and for using it for some
4 other collateral purpose.' Now My Lords, that's the first part of it. Now the second part. So, the
5 substitution part. Actually, what happens when you make the substituted law?

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Now, what did section 4 done? What is declared
8 unconstitutional was Section 4. What did Section 4 do?

9

10 **ZAL ANDHYARUJINA:** It had widened the...

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Has it substituted and widened, or did it only...

13

14 **ZAL ANDHYARUJINA:** It had substituted in my respectful submission. Substituted and
15 widen is not wrong. But widened by substitution is what I would say. But I think it is very
16 difficult to see.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** So the substitution could not have been divorced
19 from the widening, right? Section 4 did two things. It substituted the earlier provision, and it
20 widened the earlier provision.

21

22 **ZAL ANDHYARUJINA:** The whole point of the substitution was the widening. But it did so
23 by...

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Purpose was to widen it. Now, if that has been
26 declared unconstitutional, Section 4 is declared unconstitutional by the operative part in
27 *Minerva*. Right? What is the consequence, then?

28

29 **ZAL ANDHYARUJINA:** The consequence is that actually, Article 31C altogether is
30 unconstitutional and remains a dead letter till such time a Parliament steps in and takes the
31 necessary Legislative activity. Or that is... Although I hasten to add...

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** Substitution was for the purpose of widening.

34

35 **ZAL ANDHYARUJINA:** But because of the fact that in widening you've obliterated the
36 whole Section. That is the part of my note that I just come to now. That is the Legislative...

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Look at it in a slightly different perspective, that
2 the substitution was not for the purpose of obliterating but the substitution was for the
3 purpose of widening. Right? That Parliament never intended to dilute the protection under
4 39(b) and (c). They wanted to really make that protection on 39(b) and (c) plus the other
5 provisions of the Directive Principles. Right? So the purpose... In a given case, Parliament may
6 want to obliterate the provision completely and then substitute, okay? Which was actually the
7 *NJAC* case. But here, this was not a case of obliteration. What Parliament intended to do was
8 to expand the ambit of the protection. Now therefore, it was not a substitution and obliteration
9 per se, but a substituting substitution and expansion. Now, if Section 4 is declared to be invalid
10 on the ground primarily, or exclusively, that the expansion was invalid, and conscious of the
11 fact that the original provision had been already declared to be valid, then will this doctrine
12 apply in a situation like this?

13

14 **ZAL ANDHYARUJINA:** Let me try to answer that, because Your Lordship has once again
15 raised a point that must be considered. When the scope of the article stood expanded, I asked
16 myself one question. Could it be simultaneously also considered to be narrowly in the form of
17 its original form? The answer must, that's the first step of my reasoning. The answer must
18 surely be - No. The article now stands in expanded form, but I want to also take the converse,
19 My Lord. Let me assume that the article was originally in expansive form and by the
20 amendment it was narrowed down. But in my respectful submission, the same would follow,
21 that it is now only the narrower interpretation that has any force, but it is very difficult to view
22 substitution as a single stage process, and that is the point. I'm glad Your Lordship asked me
23 this question. It is always a two-stage process, which is exactly what the authorities say, which
24 come. The first is deletion of the original provision and the second, is to insert the new
25 language. Now, there is some inexorable sort of consequence of that. That is the argument on
26 the other side. I will deal with that...

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** That cannot strictly apply, Mr Andhyarujina, in
29 a situation like this, where the deletion of the original language is not the purpose of the
30 substitution, because the original language gets incorporated in the new provision.

31

32 **ZAL ANDHYARUJINA:** I understand. Your Lordship has raised a very good conceptual
33 problem.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** There may be a...

36

1 **ZAL ANDHYARUJINA:** So, to Your Lordship's point, 39(b) and (c), remain within the
2 expanded conception of...

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** We got your point. The moment that Parliament,
5 in its constituent power, substituted and expanded the words, expanded the protection of 31C,
6 the original provision was completely knocked off the Constitution.

7

8 **ZAL ANDHYARUJINA:** Deleted.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Thereafter, when Section 4, which substituted
11 and incorporated the new provision is declared as unconstitutional, then, according to...

12

13 **ZAL ANDHYARUJINA:** There's nothing to go back to.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** the substituted provision doesn't get revived,
16 because that substitution has been attained finality, happens by the same act of the Legislature
17 in its constituent capacity. According to you, the first part attains finality. The declaration of
18 unconstitutionality attaches to the latter expansion, that will not result in revival because
19 revival is the constituent power. I think we'll now close with that and call upon the other side.

20

21 **ZAL ANDHYARUJINA:** Very well. May I just indicate two minutes to Your Lordship...

22

23 **JUSTICE B.V. NAGARATHNA:** And also see, I think *Ziley Singh's* case, that it is written
24 with the same ink...

25

26 **ZAL ANDHYARUJINA:** I wanted to show Lordship just that..

27

28 **JUSTICE B.V. NAGARATHNA:** When the substitution takes place, the original is effaced.

29

30 **ZAL ANDHYARUJINA:** But please look exactly.

31

32 **JUSTICE B.V. NAGARATHNA:** *Ziley Singh's* case.

33

34 **ZAL ANDHYARUJINA:** I put it through another case, but the pen and ink theory, exactly
35 the point.

36

37 **CHIEF JUSTICE DY CHANDRACHUD:** Where is that?

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ZAL ANDHYARUJINA: Paragraph 19 and 20.

CHIEF JUSTICE DY CHANDRACHUD: At page?

ZAL ANDHYARUJINA: Page 43. 'But the act...' Just allow me to read this note before we close. 'The Act of Substitution, in effect, consists of two steps. First, the old provision is made to cease to exist. Next, the new provision is brought into existence in its place. Even if the new provision be invalid, the first step, that is the old provision ceasing to exist, is not undone. It remains in effect. And it is for this reason that the old provision cannot revive. This is now firmly established by the following decisions.' All settled authority on the topic. Now to the pen and ink theory. Paragraph 20. 'The pen and ink theory first set out in the judgment of justice both in *Shamrao V. Parulekar* where it held that. But, the rule is that when a subsequent act amends an earlier one, in such a way, as to incorporate itself or a part of itself into the earlier, then the earlier act must therefore be read and construed except where, that it would lead to a repugnancy, inconsistency or absurdity, as if the altered word had been written into the earlier act with pen and ink and the old words were scored out, so that, there is no need to refer to the amending act at all. This is the rule in England. See Craies on Statute Law. It is the rule in America. See Crawford on Statutory Construction, and it is a law which the privy council applied in *Keshoram Poddar Vs Nundo Lal Mullick*. Bearing this in mind, it will be seen that the Act of 1950 remains the Act of 1950 all the way through, even with its subsequent amendments. Therefore, the moment the Act of '52 was passed and Section 2 came into operation, the Act of '50 meant the Act of '50, as amended by Section 2. That is to say, the Act of '50, now due to expire on 1st October '52. The aforesaid judgment has been followed.' In this My Lord, I might have missed My Lady's judgment. I'll check that and update it as well.

JUSTICE B.V. NAGARATHNA: So, you are saying was the State of Kashmir... Jammu and Kashmir...

ZAL ANDHYARUJINA: I'm obliged. My Lady, I'll do that also. Just one last word I want to have before Your Lordship goes. I know that one way of viewing my argument is to say that you have raised a point of high technicality. I'm conscious of that. But My Lord, in my respectful submissions, the correct way to view the argument, is that it has raised an important point with regard to the effect of unconstitutionality, and to the separation of powers. But it raises three points really. For unconstitutional... the effect of unconstitutionality on the judgment, the Parliamentary procedure involved in substitution, and thirdly, what is the

1 constituent power and whether this type of action, the revival, is something which resides with
2 Parliament, and not with the Courts. My Lord, the consequence of... this consequence of me
3 being right... is hardly going to result in some sort of Constitutional chaos. My Lord, as was
4 the case in the *NJAC* judgment. For 22 years, Article 31C was not even on the statute book.
5 Chief Justice Chandrachud's observations in *Minerva Mills*, namely that you don't need 31C,
6 if the law is correctly made towards the purpose of 39(b) and (c), because a challenge under
7 14 and 19, would then never survive. So My Lord, in my respectful submission, it would be
8 appropriate, that Parliament expresses its will, by appropriate Legislative action with regard
9 to 31C. I'm deeply obliged to Your Lordships. My learned friend, Mr. Parekh wants to say a few
10 words. And we will not keep Your Lordships from lunch, I promise.

11

12 **SAMEER PAREKH:** There was one, third issue. I'll finish by 01:00. There was one third
13 issue, which is...

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** 30 seconds now. We've heard.

16

17 **SAMEER PAREKH:** No, no, My Lord. I just want to point out one issue. There is a third
18 issue, which is specifically that we'd argued, five-judges referred it to 7, which is on *Sanjeev*
19 *Coke*. *Sanjeev Coke* does two things. It does not only confer or follow the dissent in
20 *Ranganatha Reddy*, it also follows the dissent in *Minerva Mills*. So, *Sanjeev Coke* does
21 three things, and we specifically raised it, and Para 17 has been doubted. And I just want to
22 indicate and on first principle and say, what *Sanjeev Coke* does is three things. First, it
23 doubts *Minerva Mills*, specifically, but says that because the review petition is pending, we
24 are not saying anything further. But, it follows *Minerva Mills* dissent saying that once 39(b)
25 is in, Article 14 is out. And that is an issue that we specifically took up in *Coelho*, to argue,
26 that even if it is protected in that case, under the Schedule 9 of under Article 31B, 14 is not fully
27 out. It may be a higher threshold. Basic structure issue may be involved, but Article 14 is not
28 out. And that's para 17 is what we challenged of *Sanjeev Coke*, to say that the intent of 39(b),
29 is not to make Arbitrary Law, or make it in a manner that is discriminatory. Then therefore,
30 *Coelho* specifically said that 14, 19, 21 is imbued, imbibed in the whole Constitution. And
31 therefore, even if you're seeking to go ahead with the purposes of 39(b), the Constitution can
32 never be said to intent that you do it in an arbitrary manner. And therefore, it may be a higher
33 threshold, which may be a combination of 14, 19, 21 or that 14 which effects the basic structure.
34 14 is still available. And therefore, we challenged specifically, 17 of *Sanjeev Coke*. And I
35 wanted to point that out, and make two or three submissions, because today we are on first
36 principle, My Lords. If it was a smaller bench holding that what is the effect of *Minerva*
37 *Mills*, My Lords may proceed in a different manner. But today, as nine-judges, My Lords can

1 certainly say, and even today find that **Minerva Mills** was right or what is the impact of
2 **Minerva Mills**, and do you hold the whole thing. And that again, Mr. Andhyarujina, pointed
3 out... the series of judgment... now, two judgments of nine-judges, both in **Puttaswamy** and
4 **Coelho** have said that, the Constitution is a living document. From time to time, you may
5 interpret it differently. And therefore, we want to raise this specific point. One on first
6 principle, since it's open to My Lords to confirm **Minerva Mills** or vary it, or whichever you
7 like. My Lords can today hold, and we don't have to strictly go by the interpretation... what did
8 **Minerva** say? What is the effect? Today, My Lords are in a position, where My Lords can
9 today say, that we find that the amendment is bad and therefore it must go, because if Article
10 14 is the essence of the Constitution, then even if you want to achieve the purposes of 39(b)
11 and (c), you cannot do it in an arbitrary manner. You want to take away my property, you
12 cannot do it in a discriminatory manner. You must follow some process. Even if you want to
13 take over coal mines, etc. You cannot say -'I do not like, Mr. X or Y or Z, and therefore, I only
14 acquire your property, and next door I do not.' And that's the consequences, My Lord's holds,
15 31C, and much water has flown down the Mithi river, if I may say so, Article 31A is there. A, B,
16 C, none of them were there in the Constitution. A protects all agrarian reforms. B protects
17 anything put in the 9th Schedule. 31C today is irrelevant completely. Because if anything, the
18 Parliament wants to protect as a matter of 31A, it can protect it. If anything has to be put in
19 the 9th Schedule by a Constitutional Amendment, they can put it in the 9th Schedule and
20 **Coelho** now protects me that maybe a higher standard but 14 is still available to me, even if
21 you put it in the 9th Schedule. So therefore, 31C today, has no substance. And, My Lord, sitting
22 in a combination of nine-judges, can certainly decide that. And therefore our submission is,
23 that para 17, and if My Lord permits, that's really all I want to say, but I wanted to show a few
24 paragraphs of **Sanjeev Coke** because it says these three things, as I pointed out. And Para 17
25 is what we had challenged, if My Lord permits, page 2294 of Volume 5 is where **Sanjeev Coke**
26 starts. If My Lords comes straight to page 2308, Volume 5.

27

28 **JUSTICE HRISHIKESH ROY:** What para is it?

29

30 **SAMEER PAREKH:** It's para number 13. It starts at 2307. 3 paras I'm seeking permission
31 to read and then I'll close. Paragraph 13 starts at 2307. My Lords have? 'The **Kesavananda**
32 **Bharati** case, the Court expressly ruled that Article 31C, as it stood at the time, was
33 constitutionally valid. No doubt the protection of 31C was at that time confined to law giving
34 effect to the policy under (b) and (b) of Article 39. The Constitution 42nd Amendment Act the
35 protection was extended to all laws giving the effect to all or any of the principles laid down in
36 Part IV. The dialectics, the logic and rationale involved in upholding...'

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** 2307?

2

3 **SAMEER PAREKH:** 2307 it starts at the bottom, last paragraph.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** Para 13. Yes, you can...

6

7 **SAMEER PAREKH:** First it cites *Kesavananda Bharati* upheld the unamended 31C.
8 Then My Lords has 2308?

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

11

12 **SAMEER PAREKH:** 'By the Constitution 42nd Amendment Act, the protection was
13 extended to all laws giving effect to all or any of the principles laid down in Part IV. The
14 dialectics, the logic, the rationale involved in upholding the validity of 31C when it confined its
15 protection to unlaws enacted further to 39(b) and (c) should uncompromisingly lead to the
16 same resolute conclusion that Article 31C, with its extended protection, is also constitutionally
17 valid. No one suggests that the nature of the Directive Principles enunciated in other articles
18 of Part IV of the Constitution is so drastic or different from these Directive Principles (b) and
19 (c) of 39, that the extension of Constitutional immunity to laws, made to further those
20 principles would offend the basic structure of the Constitution. In fact, no such argument
21 appears to have been advanced in *Minerva Mills* case, and we find no discussion and no
22 reference whatsoever separate to any of the distinct principles enunciated in the individual
23 articles of Part IV of the Constitution of *Minerva Mills*. The arguments advanced and the
24 conclusions arrived at, both appear to be general, applicable to every clause of Article 39 and
25 every article of Part IV, no less Clause (b) and (c) than the other clauses. We wish to say no
26 more about the *Minerva Mills* case,
27 as we are told that the pending review petition...'

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** When they doubted *Minerva*, they had to refer
30 it to a larger Bench, they just can't set this in the case of [UNCLEAR]

31

32 **SAMEER PAREKH:** I'm grateful, My Lords. And that's what we pointed out that this is most
33 improper. Because sitting there, in fact, and I did not read all those paragraphs because of
34 paucity of time. In fact, they quote the entire dissenting judgment, in this case from *Minerva*
35 *Mills*. And therefore, also I'm urging that this Honourable Court, in this combination, may
36 confirm *Minerva Mills*, because it's too late in the day to now say *Minerva Mills* was
37 wrong. And in fact, *Sanjeev Coke* doubts that. Then, in para 15 on onwards, and again,

1 paucity of time, I'm not reading 15, 16. If I can come straight to 17. 17 is what we are, because...
2 No, not confirm in the sense that only **Sanjeev Coke** doubted the correctness of **Minerva**
3 **Mills**, saying that issue doesn't arise. They say it is obiter. There are finding....

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** In fact, and in Para 16, they say we broadly agree
6 with much what has been said by Justice Bhagwati in the extracts.

7

8 **SAMEER PAREKH:** Lordships, I'm deeply obliged. Which is why, in fact, this judgment
9 seems to suggest that the dissent is correct. And there are findings which say that **Minerva**
10 **Mills** findings are obiter because they didn't arise. And therefore, it would be appropriate
11 today, in 2024, at the stage of Constitutional history, we are yet, to confirm that **Minerva** was
12 absolutely right, that both III and IV are part of the same chariot, as My Lords have called it,
13 and both must work together. The aim in Part IV must be achieved through Constitutional
14 means of Part III. You can't say I jettison Part III because I have some great objective to
15 achieve. Therefore, you can't say I like industrialist XYZ and therefore I'll acquire their
16 property because it's still 39(b), but I don't like ABC, therefore, I will not. Article 14 is that,
17 there's nothing more to Article 14. It must be non-discriminatory. You can't pick it at your
18 whims and fancies and therefore, there are multiple observations here which say, **Minerva**
19 **Mills** is only obiter. There is no finding there. And that, My Lord, may clarify. That's all I was
20 saying. But after that My Lords, may see 14, 15 onwards, there is the second question, which
21 is finally decided in paragraph 17, and this is what we were challenging, and that is what five-
22 judges, when they referred, are also referring to and that's why they were waiting for **Coelho**
23 and this is, if I can point out, para 17, page 2312. And just this last para 17 - 'We are firmly of
24 the opinion that where Article 31C comes in, Article 14 goes out'. We are challenging this, My
25 Lords. 'There is no scope of bringing an Article 14 by a sidewind as it were. That is, by equating
26 the rule of equality before the law of Article 14, with the broad egalitarianism of Article 39(b)
27 or treating the principles of 14 as included in principles of 39(b). To insist on nexus between
28 the law, to which protection is claimed and the principles of 39(b) is not to insist on fulfilment
29 of the requirement of Article 14.' Now, much water has flown down the river since then, My
30 Lords, I would submit that today My Lords, may hold that certain principles of 14 certainly
31 which will in fact impact the basic structure can be a ground to challenge, even if My Lords
32 holds that 31C is there, 39(b) is there. Even then, certain principles and that is the issue that
33 we specifically raised and was referred and five-judges and seven-judges therefore refer to
34 these issues. **Sanjeev Coke**, **IR Coelho**, that's why they said, wait for **Coelho**. And that's
35 the logic in which this is. So, therefore, My Lords, today, I would submit that My Lords may
36 hold and My Lords can hold, that Article 14...

37

1 **JUSTICE SUDHANSHU DHULIA:** Article 14 goes. You've read that particular paragraph.
2 Article 14 goes, Article 19 goes, if a reasonable nexus is established between the statute and
3 39(b), (c).

4

5 **SAMEER PAREKH:** Your Lordship.

6

7 **JUSTICE SUDHANSHU DHULIA:** In that context, it is saying that Article 14 goes. Not,
8 not... [UNCLEAR]

9

10 **JUSTICE B. V. NAGARATHNA:** There is no nexus.

11

12 **SAMEER PAREKH:** No difficulty. Justice Dhulia is absolutely... That's why after *Coelho*,
13 that is not the law to this extent and that's our submission that 14, 19 at a basic level may go,
14 but if it amounts to affecting the basic structure of the constitution, 14, 19 will still remain for
15 a challenge, despite a protection from 31... Article 31C. And I hope I've made that point clear.
16 It may be a higher standard. It may not be the normal standard of 14, 19, but if an Act protected
17 by 31C with nexus to 39(b) and (c), still violates the basic features of the Constitution or basic
18 structure of the Constitution. It will still be open to this Court to say, under Article 14, we hold
19 the law to be bad. And that's the context, and that's the Constitutional development My Laws
20 have... in fact over the years... 14, 19 has been raised much higher than it was at this stage of
21 the Constitutional history, and therefore, I submit, My Lords today can declare that 31C is no
22 longer there. I don't only rely on revival or all those doctrines. Today, I submit this Court can
23 decide, that 31C is bad. 31A and B are already there. The two Part III and IV should be read
24 together, and therefore, in fact, in 14,19 to some extent is available. That is all our submission.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** We will commence after lunch. No, we'll call
27 upon. We can't have this, people repeatedly coming back and arguing. Now, we'll call upon the
28 other side.

29

30 **RESPONDENT'S COUNSEL:** *Deelip Singh* Judgement is (2004) 8 SCC.

31

32 **JUSTICE B.V. NAGARATHNA:** Yes.

33

34

35 **R. VENKATARAMANI:** I seek Your Lordships indulgence to begin my story with Article 39
36 and not with 31C.

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CHIEF JUSTICE DY CHANDRACHUD: With article?

R. VENKATARAMANI: With Article 39.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

R. VENKATARAMANI: As far as 31C is concerned, while a lot of things have been stated, both ideas, facts, concepts which need a little more discovery, exploration and response, if I may say it like that, I thought it's better to take, engage the Court for some 39 and then come to 31C later. There's a good deal of literature available. Your Lordships permit me to make some broad preliminary statements, which are like a commentary on our constitutional history. A good deal of literary statements on the first two decades of our Constitution when the State was grappling with the issue of harmonising Fundamental Rights and its obligation in directing the State policy. Professor Tripathi's book on Fundamental Rights is a textbook it used to be in the early part of our curriculum. And all those eras were about understanding the dynamics of Part IV of the Constitution and when they get interlocked with citizens claim on Fundamental Rights. You go back in point of time to how certain provisions in the Constitution came to be enacted and became part of the Constitution, particularly Part IV. We have so many explanations theories and so on and so forth. Particularly in the context of Article 39 and few other provisions of Part IV. Those who want to draw one particular picture will say, well, this is a Marxist idea or a socialist idea, Irish Constitution or a Japanese Constitution, so on and so forth. But what is most important for us I thought is, when Constitutions are enacted there is a certain constitutional ideas which are a part of what we call... their understanding of those times, there's a nice German word for it, the *Weltanschauung* what they call it, the feel of the times. So if you have that therefore, when Part IV came to be enacted we had all the history of post French revolution, liberty, equality, fraternity and the Marxist traditions, then the Fabian socialism, utopian socialism, so on and so forth. That's why Oscar Wilde said beautifully about, a map of the world does not have an utopia, it's not a world to land at all. The soul of man without socialism and all that kind of stuff. So we have an idea of landing somewhere. But how do we land somewhere? Therefore, nobody could have probably said Part IV is a perfect kind of a blueprint where we can land what this nation wanted to land nor one could have said Part IV is a complete antithesis of Part III and Part IV. But then that's how it began. Our constitutional history began with Part III becoming a complete antithesis to Part IV. It's in that context when the State has to grapple with solutions, ideas and responses. So we have all these very important developments in the Constitution. So, while you're certainly under 31C at a clearer point of time. So we needed to probably erect a certain wall of support

1 within the Constitution while probably it could have been raised to hire raise sooner is a
2 different question also, we talk about basic structure. So there has to be a wall of support for
3 many of the endeavours under Part IV of the Constitution. So we see 31A, B, C only from the
4 point of view. I'll address it a little later.

5

6 Therefore, we look at 39(b). Well, the Attorney General, in *Minerva Mills* said 38(a) is the
7 bedrock of Part IV, et cetera, which is not probably accepted. But in a way how do you draw
8 up a roadmap for a better world? So, if Part III, if I can put it like this, is a provision for a saner
9 and open society but Part IV is a roadmap for a better world. So, if a roadmap for a better
10 world, then every step which a State can take in a roadmap for a better world will always get
11 interlocked with this, an open society having everybody claiming certain rights, interest, etc.
12 Therefore, unless we have that understanding, so we are not, Chief Justice said we are not
13 looking at Constitution as a mere statute. A dictionary on the one hand and read constitutional
14 provision the other hand and try to give you meanings, et cetera., it don't happen like that. So,
15 when you use transformative Constitution, it's also for the Court, for the citizen, also for the
16 State. So, it takes, therefore, the combination of all these three players in the society to idealize
17 and to go forward in this mission. So, I thought it's important for us, it may be taking cold to
18 Newcastle but I thought we'll be a break this little preamble statements in order to understand
19 39(b). If Your Lordships can pick up my note, it is II-F. And the Constitution will certainly be...

20

21 **JUSTICE HRISHIKESH ROY:** II-F?

22

23 **R. VENKATARAMANI:** II-F.

24

25 **JUSTICE HRISHIKESH ROY:** First paragraph is Article 39. First sentence is Article 39,
26 right?

27

28 **R. VENKATARAMANI:** Yes. Article 39 of the Constitution. As we are talking about saying
29 the Constitution is not treated like a...

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** There's five pages, yeah.

32

33 **AMEYAVIKRAMA THANVI:** Your Lordship may recall II-F revised.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** That also has four pages.

36

37 **JUSTICE HRISHIKESH ROY:** Eight page, right?

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R. VENKATARAMANI: Seven pages. Seven pages. I hope Your Lordships have that.

JUSTICE HRISHIKESH ROY: You have four pages more?

R. VENKATARAMANI: It's about seven to eight pages. Including the cover page, is eight pages.

CHIEF JUSTICE DY CHANDRACHUD: Your original five pages, will they remain on the statute book? Are they effaced?

R. VENKATARAMANI: Maybe they will not remain in the statute book.

CHIEF JUSTICE DY CHANDRACHUD: Fine. Are they unenforceable, are they substituted, effaced from the statute book?

R. VENKATARAMANI: Maybe I will add the liberty to keep on revising them from time to time.

CHIEF JUSTICE DY CHANDRACHUD: Yes. Article 39...

R. VENKATARAMANI: That is like to be or not to be is the question.

JUSTICE HRISHIKESH ROY: One is the legislative exercise.

R. VENKATARAMANI: Yes.

JUSTICE HRISHIKESH ROY: One is the Court exercise.

R. VENKATARAMANI: Yes.

JUSTICE HRISHIKESH ROY: And now we are confronted with the Attorney General exercise.

R. VENKATARAMANI: Which Your Lordship can say the forensic exercise. Just saying... talked about Constitution expressions are not to be treated like common statutes. They thought more statement, well certainly Court, in the context of a transformative Constitution,

1 says, I'll add meanings to Article 21. But I want to say that while adding or giving meaning to
2 certain expressions or words of the Constitution is different from adding concepts and
3 categories which may essentially fall in social, economic or political realm. Giving meanings is
4 one thing. Right to life includes livelihood. A telegraph includes telephone. But when you talk
5 of concepts and categories which fall in social, economic and political realm, Court will be very
6 ordinarily reluctant to treat them as meanings to be added under the Constitution. I'll make
7 good the submission little later, when you talk about what is a resource, what's a material
8 resource, what's a common good, etc. We will definitely have to pick up several social,
9 economic and political concepts and categories and thoughts. The common good is not
10 something which you can go to a dictionary and find a meaning. Like when the UN Declaration
11 on New Economic Policy came, a lot of sociological literature and what is common good versus
12 public good. Therefore, we have to probably travel into those areas where social, economic and
13 political concepts and ideas have a certain free mingling way. So, I was trying to find out
14 whether the Court will be little slow in bringing those ideas into this or taking them out of
15 39(b) or the Directives on State Policy as the case may be, like when you do in the context of
16 ordinary statutes. Now, let me read this, 'Article 39 of the Constitution of India in particular
17 39, Clauses (b) and (c) are best understood as a combination of social, economic and political
18 principles. The organization of human life involves the organization of our activities,
19 transaction, and our interactions with a physical world for the purpose of sustenance and
20 welfare. All the above can happen with the world of resources available both in natural state
21 and made available by human interaction. So all things in the material world which are
22 available and made available by human interaction or engagement, constitute the resource of
23 the community.' That's a very broad statement, I think, relevant for the purpose of
24 understanding 39(b) and also 39(c). Then how do we understand the following? 'Resources.
25 Anything or object in the material, physical world that human beings can use exploit for
26 human consumption or use has also anything or object that can be made or created for any
27 human purposes, will all constitute resources of the community. It's because that both
28 resources available in nature and resources made by human interaction or a utility, value and
29 relevant for human purposes that Article 39(b) has in mind ownership and control.' That's a
30 reason. 'Material...'.
31

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32 **CHIEF JUSTICE DY CHANDRACHUD:** In your definition, there is no concept of a private
33 ownership at all?
34

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35 **R. VENKATARAMANI:** It talks about all resources. That's why *Ranganatha Reddy* said
36 manmade plus natural. He did not go into a private ownership. He talked about only these
37 distinctions, natural versus man made.

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CHIEF JUSTICE DY CHANDRACHUD: But it has to be a material resource of the community.

R. VENKATARAMANI: Yes, I'll try to address that question, because, after all, we live in a material world. All resources which we use and create are all material resources.

CHIEF JUSTICE DY CHANDRACHUD: But they may not be material resources of the community.

R. VENKATARAMANI: I'll come to that.

CHIEF JUSTICE DY CHANDRACHUD: Formulation of...

R. VENKATARAMANI: I'll just come to that.

CHIEF JUSTICE DY CHANDRACHUD: Anything which is created by the application of private labour is a material resource of the community.

R. VENKATARAMANI: They are material resources, but they are community resources with a different issue altogether.

CHIEF JUSTICE DY CHANDRACHUD: No, because you have said...

R. VENKATARAMANI: I'll just come to that. Allow me to...

CHIEF JUSTICE DY CHANDRACHUD: Because you've said that, you have said of the community. Thus, all things in the material world...

R. VENKATARAMANI: We are not trying to address it; what is a material resource?

CHIEF JUSTICE DY CHANDRACHUD: And made available by human interaction or engagement constitute the resources of the community.

R. VENKATARAMANI: That's right. I'll try to make good that as I go further. Now, material, fulfilment...

1 **CHIEF JUSTICE DY CHANDRACHUD:** If I build the house using my own income, that's
2 material resource of the community.

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4 **R. VENKATARAMANI:** No.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Or if I own a car, that's a material resource of the
7 community.

8

9 **R. VENKATARAMANI:** What I create, I make for myself, for my own personal
10 consumption, it doesn't transcend beyond a certain limit or a boundary.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** What I earn by way of a salary by the...

13

14 **R. VENKATARAMANI:** That's true. It can. In a given case, therefore, what I create, if it
15 doesn't go beyond a certain boundary, it may remain my private resource only from a human
16 consumption. But the moment it goes beyond the boundary, then it becomes there is an
17 element of the community having a call on that resource. Community will have a call on that
18 resource.

19

20 **JUSTICE B.V. NAGARATHNA:** That is only the taxes...

21

22 **R. VENKATARAMANI:** That's why transportation service. Transportation service. I want
23 to... it's a little broad. We can come back to it later. I want to put that broad canvas so that
24 we understand where we probably land.

25

26 **JUSTICE HRISHIKESH ROY:** Would we be sort of treading the right path by divorcing
27 your definition that you are giving from the word 'community'? After all community has a
28 connotation. And you are saying that whatever the human resources is capable of generating
29 can also fall into the ambit of community, that becomes a little difficult. The government can
30 tax, certainly. Suppose somebody is earning an X amount; so much tax, Y amount; so much
31 tax. But then it becomes resources of the community.

32

33 **R. VENKATARAMANI:** As I develop it further, I think it will be a little more clear. What
34 I'm trying to say is, we don't live as a poet, English, John Donne we don't live in isolation. All
35 of us live in transactions, interrelationships. So the wealth we create, the value we create, are
36 all by our interactions in economic activities. So, the word 'resource' in 39(b) essentially
37 connotes an economic base, it has understood from that, from that framework. So if we are

1 talking about wealth value created by human interactions and as long as it remains, for
2 instance...

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** That means the corporation which produces cars
5 or a corporation which produces a semiconductor chips, corporation which produces mobile,
6 all these are resources of the community.

7

8 **R. VENKATARAMANI:** They are all resources of the community.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Material resources of the community.

11

12 **R. VENKATARAMANI:** They are all resources of community. In the most fundamental
13 constitutional sense. The next question is whether to what extent State can enter into
14 regulating, etc., it's a different question altogether. That's where we'll land probably into
15 scanning off the State's control, State's regulation, prohibition, restriction to what extent,
16 degree. All that questions will come later. But if you look at resources as a very narrow area.
17 That's why I thought the Referral Order talks about private versus public resources. Perhaps
18 that's not what *Ranganatha Reddy* was talking about. When it said manmade resources, it
19 all meant resources which are in private hands. Capital, share values, they're all resources.

20

21 **JUSTICE RAJESH BINDAL:** Their probably capacity to raise loan was also mentioned. If
22 somebody can raise a loan also, that is also a material resource.

23

24 **R. VENKATARAMANI:** Yeah. I want to lay a foundation that I know... there'll be all
25 questions about why do we have a very broad canvas about a resource. I understand that, but
26 I thought, let me place that and then try to find out where we are able to navigate further. May
27 I read it and then come back to this resources concept once again? So, looking at material.
28 'Fulfilment of human sustenance needs and other connected purposes happen through human
29 interaction with the material world. Non-material resources in the community are not
30 contemplated in the Article 39(b) for example, culture or literature or non-material resources.
31 This distinction is sufficient to understand the use of the word "material".' So, that's why I
32 create something for myself, a piece of poetry or literature, a culture where... a way of living.
33 So, it doesn't enter into a State's domain to own and control but anything else besides that or
34 the material resources of the community. So, in the early days of the socialist thought under
35 the Fabian utopian socialist thought, etc they looked at land, factories. You go back in point of
36 time, 18th and 19th century. The textile mills in England or what Maxim Gorky talked about
37 in a book, 'Mother'. So, it's all about that narrow resources which were, at that point of time,

1 they still included both private and public resources but have moved into further what's called
2 enhanced understanding of the economic role that a State need to play in the ownership and
3 control of all resources. I think today, regardless of the fact that we have moved away from...
4 given up notion of the socialist controlled model, regardless of all that, they needed a necessity
5 for the State at any point of time to take stock of the resources of the community for subserving
6 the common good, will always be an open question. So therefore, it's important for us to
7 understand why, along with the moving times, if you give certain contemporary meanings to
8 these expressions, then we would have served the constitutional purpose of ensuring that
9 39(b) and (c) play their role well. Moment we try to clip, cap and confine Article 39(b), saying
10 that concerned only with land or mineral resources, etc, then we are probably missing the most
11 important message under Article 39 as it must evolve with the times. So therefore, the only
12 way I thought one could look at it is the distinguishing material and non-material. What is
13 non- material is certainly not within the ownership and control and what is non-material, we
14 can have many examples like this. So, as I said, it is not exactly a dictionary definition. It has...
15 we have looked at the social and economic history of how all these ideas evolved over a period
16 of time. So, we must land there and then to probably able to have an understanding of why
17 Constitution captured it, probably with certain base or inspiration at a given point of time. But
18 as I say, we must also infuse in this meaning, which will keep the Constitution alive. So, let me
19 take to the next part of it. 'Common good and distribution'. The words 'common' and
20 'community' must be read together. 'Community' connotes a set of people, adhering to an
21 organized way of life in a given locality and it would also include a section or part of it. Again,
22 you go back to sociology, community has so many connotations. Urban community, rural
23 community or a community of reference, of particular faith. We're not talking about that. So,
24 community can be a nation, community can be a part of a nation. Community therefore, the
25 geographical area where people have an organized way of life is a community in the large
26 sociological understanding of this term, and the word 'community' even before the 1900s has
27 been used in several senses. But the most important sense, like the sociologist Max Weber was
28 talking what it is, a set of people living in an organized locality and sharing certain values,
29 would like to interact and leave us part of a clan of people, a group of people. Therefore, the
30 word 'community' will have to be given that kind of an understanding. 'So at a time when
31 economic scarcity was to be dealt with, control of trade and commerce in several essential
32 commodities were all for the common good of the entire community'. 'At a time when
33 economic scarcity was to be dealt with, control of trade and commerce in several essential
34 commodities were all for the common good of the entire community. Cement was the
35 controlled industry, like gold used to be earlier. In the context of this case, the housing needs
36 for a particular section people is the common good of that section. The housing needs of a
37 particular section is the common good to that section. Distribution can mean spreading which

1 suggests equal allocation of resources in favour of the defined class of persons on the
2 entitlement of common good'. Then see why ownership and control will come in.
3 'Understanding your ownership under the legal thought is well known. It includes matter such
4 as title, matter such as absolute discretion of use of property or a resource. Control includes
5 elements of regulation and can extend up to prohibition. The meaning of the word 'restriction'
6 under Article 19(2) as expounded by the Court suggests the latitude of choices available within
7 the scope of restriction or control.' So, that is probably the larger view of looking at 39(b) and
8 (c). If you have that in mind then as I proceed little further, if you look at paragraph 4. 'The
9 object of Article 39(b) is a realization of common good by recourse to the resources of the
10 community. To the extent such resources are under the ownership or control of citizens, the
11 State is called upon to explore the common good and for that purpose, deal with the ownership
12 and control of resources in the hands of citizens. Once resources are in the hands of the State,
13 no further questions about ownership and control issues will make sense. The reference to
14 private resources in the order of reference of the Hon'ble Court may properly be read as a
15 reference to human made resources. That's what **Ranganatha Reddy** has in mind. So
16 Article 39 is in the company of Directive Principles of State Policy, either the enacted principles
17 of social, economic and political equality and the realization of an egalitarian social order.' In
18 **Kasturilal**, this Court, Honourable Court has held. I read, 'It was pointed out by this Court
19 in **Ramana Dayaram Shetty** that with a growth of welfare State, new forms of property
20 in the shape of government largesse are developing since the government is increasingly
21 assuming the role of regulator and dispensary of social services and provider of a large number
22 of benefits, including jobs, contracts, licenses, quotas, mineral rights, etc. There's increasing
23 expansion of the magnitude and range of governmental function as we move closer to the
24 welfare State. And the result is that more and more of a wealth consists of these new forms of
25 property. Some of these forms of wealth may be in the nature of legal right, but the large
26 majority of them are the nature of privileges.' For today, we are talking a very expanded
27 understanding of new forms of property, banking, insurance, the whole technology in several
28 services. They're all new forms of property and most of them are in the service of the
29 community. So you snap good part of a technology and economy today, I think the whole
30 organization of social life will collapse. 'So much of our economic activity depends on how do
31 we harness human interactions, producing economic wealth and for the common good. While
32 within, certainly the regulation control how we do it is a different question. So also, the concept
33 of public interest must be, as far as possible, receive its orientation from the Directive
34 Principles, but according to the Founding Fathers constitutes the plainest requirement of
35 public interest or the Directive Principles and the embody for excellence, the constitutional
36 concept of public interest. If, therefore, any governmental action is calculated to implement or
37 give effect to a Directive Principle, it would ordinarily subject to any other overriding

1 consideration, be informed with public interest. That's one shade of common good.' Then
2 Directive Principles of State Policy and Fundamental Rights are the two wheels of the same
3 chariot. Please see so and so. I will skip these two paragraphs for the time being. I'll come to
4 para 8. I will come back to **Minerva Mills**. I'll read paras 56, etc. Then Paragraph 8 in
5 **Lochner versus New York**, 'homes with a dissenting noted was observed as follows. But a
6 Constitution is not intended to embody a particular economic theory whether of paternalism
7 and the organic relations of citizen to the State or of *laissez-faire* is made for people of
8 fundamentally referring views in the accident of finding certain opinions natural and familiar
9 or novel and even shocking ought not to conclude our judgment upon the question whether
10 statutes embodying them conflict with the Constitution of the United States.' That's why we're
11 talking about the Constitution being read in more than one sense, and in a large sense,
12 wherever the demands require. Now paragraph 9.

13

14 'Having regard to the constitutional context in which Article 39(b) is located and its relevance
15 towards realisation of an egalitarian social order, any narrower, truncated, rendered reading
16 of the provision may itself be offensive to the free play that is desirable in the working of the
17 principle enshrined in Article 39. There is nothing in Article 39 which suggests of any
18 limitation or qualification of the words used therein. The distinction between public or private
19 resources or natural versus human made resources is alien to the spirit of Article 39(b) and
20 (c)'. That's why I said we will not read into the Article 39 any economic, political, other
21 categories or concepts which are not themselves found in Article 39(b) and (c). Article 39(b)
22 and (c) could not probably otherwise word it. They have tried to convey all range of aspirations
23 and principles of building an egalitarian social order. It's not like drawing a statue. 39(b) and
24 (c) is not a drawing a statute for a working purpose. So that's what I started saying that unless
25 we have in mind the whole historical background, which led to the formulation of these ideas
26 and principles, they have to be treated as sign post. And the sign post may not be said 'I'll draw,
27 cross a line here on signpost'. Then you will never understand the sign post. 'So a cursory of
28 cases decided with Hon'ble Court with reference to Article 39(b) provides with an insight on
29 the range of resources which have come up for our consideration. For instance, in **B.**
30 **Banerjee versus Anita Pan**, it's a case of freezing on suit for eviction by transferring
31 landlord for three years.' Then in the next, I skipped **Ranganatha Reddy**. There it is, serial
32 number 2 and 3 **Bhim Singhji** is about land. **Sanjeev** 4 is about cocoa and plant, which is
33 then a processed mineral, then serial number 5 **Abu Kavur** deals with a whole range of issues,
34 but particularly sage carriage and contract carriage. Which is on part of the **Ranganatha**
35 **Reddy**. Then 6, **National Textile Corporation**, assets of six textile undertakings, mills
36 and industries and they are obviously private properties and private resources. In **Union of**
37 **India Vs Cyanamide India Limited** it's a case of regulating drugs, pharmaceutical

1 industry. In Item 8, serial number 8, it's a case of regulating electricity as an industry. A
2 Constitution bench, then **Parthasarathy**, serial number 9, where a company is issuing
3 shares, Capital Control Authority were to regulate the share market. So shares as resource of
4 the community. Then Orient Paper Industries, to have a forest, you give a license to cut
5 bamboos and then make them as a forest industry. Then 11, a refractory plant in an industry,
6 which is a true industry in the economic sense. Then Item 12, we look at grant of dealerships
7 of petroleum products. It's a public resource. Equality, to bring about equality in accessing
8 public resources. So look at a wider range of resources which have to necessarily come within
9 the ambit of distribution for common good. Then 13, land 14 about mines and minerals. 15 is
10 again about a mining, a lease. So the whole law of mines have undergone a sea of change. And
11 you still say auction or otherwise to allocate material resources of the community. Then
12 **Mafatlal** with a case of refund of excise duty, where they pressed into service that 39(d). I'll
13 show the all those judgments. Then 17 is natural gas. 18 is again a question of grant of natural
14 resource. Then **Coal India** a recent judgement in which Justice Nagarathna was there. Then
15 application of the Competition Act to nationalise coal companies. So how competition element
16 is important, even amongst public sector undertaking. 39(b) was brought in the picture and it
17 was discussed there. So, I just gave a few illustrations to show that how the resources of the
18 community will have to be understood from a very large framework of what will serve both
19 individual, sectional or collective good of the community. So sometimes, it can be an individual
20 need in the disabled part of a community, who may require a certain technology improvement
21 to serve them. So, there has to be financial incentives. Which company will do that? I mean,
22 regulate it. Therefore, the regulation in ownership and control will subserve not only that...
23 they talk of common good in order to sell the entire national good. It can be the good of a
24 certain section. An identified section of the community and that's the same obligation. Turn
25 to Volume II. What we have done here... the shorter one was like a paraphrased one. This is a
26 detailed one. I also appear for MHADA. This is done keeping that in mind.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

29

30 **R. VENKATARAMANI:** What I've done here is each paragraph... I'm sorry. Page 38. I'll
31 quickly... each paragraph refers to some judgments or the other to catch the wide meaning of
32 resources which our Courts have dealt with earlier, already. For instance, in para 13 at page,
33 para 12. 'The idea of distribution of... the idea of distribution of material resource as a
34 community as prescribed in the Article 39(b) is not necessarily limited to the idea of what is
35 taken over for the distribution among the intended beneficiaries.' I'll read each one of them,
36 little later. Just giving a broad overview. In para 13, 'the theme of the amended provision of
37 the MHAD Act advances the social cause of the homeless families, and the provisions

1 contained therein and can easily be classified as a socially beneficial statute. The Courts in
2 various occasions, they expressed their reservation in striking down a socially beneficial
3 statute dead unless a plane breaches the fundamental [UNCLEAR] in its manifest. That's what
4 **Anita Pan** says. It just preceded **Ranganatha Reddy**. Para 14, 'Courts have to ensure the
5 Directive Principles are not to be discussed with the mass at teasing illusion and a promise of
6 unreality, curtailment in public interest of such extreme rights. The landlord as are read, in
7 tooth and claw is a Constitutional compulsion.' Then I'll skip **Ranganatha Reddy** for the
8 time being to come back to it later. Your Lordships, turn to page 40, para 19. That's a statement
9 from **Bhim Singhji**. 'There's a wide misconception that only the public utilities can subserve
10 the common good and fulfil the objective of common good. It shall not be an understatement
11 to aver that even a private resource may be for national deed and serve the common good.
12 Article 39(b) of the Constitution should be construed in the light of Article 38 and understood
13 as placing an affirmative obligation upon the State to ensure the distribution of material
14 resources does not result in heightening inequalities among people and among regions.' Then
15 Article 39(b) envisages in particular, direct policy toward securing ownership and control are
16 so distributed that subserve the common good. Socio-economic justices read the arc of the
17 Constitution. Public resources distributed to achieve that objectives in the liberty and
18 meaningful right of life or age with availability of opportunities and resources to augment
19 economic empowerment.' We just look at it like that and how are opportunities created in the
20 social world is not merely an opportunity for an employment in the public sector. So
21 opportunities created by economic transaction, economic activities. So unless you have
22 enough opportunities and equal opportunities, even outside the realm of the State and that's
23 where the ownership and control made to subserve for the common good principle comes in.
24 So, mandate of Article 39(b) does not impose any restriction on the means adopted to subserve
25 the public good and uses the word 'distribution', suggesting that the methodology of
26 distribution is not fixed. 'So, when natural resources are made available by the State to private
27 person, the commercial exploitation exclusively for their individual gains, the State's
28 endeavour must be towards maximization of revenue. This alone would ensure Fundamental
29 Rights in Article 14 and Directive Principles in Article 39(b) are extended to the citizen of the
30 country.' Then in **Byramjee Jeejeebhoy**. 'Each word in Article 39 has a strategic role and
31 the whole of article has a social mission'. Has a strategic role.

32
33 'Each word in Article 39 has a strategic role and the whole of article has a social mission. It
34 embraces the entire material resources of the community. It's task is to distribute resources.
35 It's goal is to undertake distribution as best to subserve the common good. It recognises as the
36 distribution, the ownership and control of so and so. The term 'resources' is a sweeping
37 expression and covers not only cash resources, but even ability to borrow credit resources'.

1 Each one judgments play, add on to a certain you know facet to the understanding of resources.
2 'The word "distribution" used in Article 39(b) must be broadly construed so that the Court may
3 give full and comprehensive effect to the statutory intent contained in 39(b). It should not be
4 construed in a purely literal sense.'

5

6 **JUSTICE J.B. PARDIWALA:** Mr. Attorney, come straight to paragraph 27 of your written
7 submissions. That's...

8

9 **R. VENKATARAMANI:** 27, Your Lordship.

10

11 **JUSTICE J.B. PARDIWALA:** That's exactly what you want to convey where you have
12 referred to *Jeejeebhoy*?

13

14 **R. VENKATARAMANI:** Yes.

15

16 **JUSTICE J.B. PARDIWALA:** Just come to that.

17

18 **R. VENKATARAMANI:** I'll read that.

19

20 **JUSTICE J.B. PARDIWALA:** And then you can conclude.

21

22 **R. VENKATARAMANI:** 'The material resource of the community is a wide concept broadly
23 interpreted to bring within sweep all resources, natural or physical, moveable or immovable,
24 corporeal or incorporeal, tangible or intangible properties, etc. Private resource or property or
25 part of the material resources community. All things that produce wealth for the community.
26 [INAUDIBLE] I'll... why is it said to be so widely sweepingly made? As I'm trying to understand
27 today, I think every little part of a life on an organised basis takes place by reason of wide range
28 of economic activities coming together. So, when you say all that produce wealth, when you
29 talk of wealth for instance, in the early part of the 18th and 19th century, we talked about the
30 wealth which is available as part of a land or the wealth which you have produced and put it in
31 a bank. Wealth today has no such... has minimal connotation. That's why we talk with different
32 forms of property. Today we talk emerging forms of property. So wealth, it must be understood
33 in that sense, not merely monetary wealth.

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35 **JUSTICE J.B. PARDIWALA:** Legal rights, correct?

36

37 **R. VENKATARAMANI:** I'm sorry.

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JUSTICE J.B. PARDIWALA: Wealth, could be in the nature of legal rights. But the large majority of them are in the nature of privileges. We are just putting it to you.

R. VENKATARAMANI: Let me complete reading this. Because I thought while this was a very engaging issue in the sense that you don't have a very pedestrian answer to it. You can't say, 'Well, private resources are exempted from 39(b)'. But then we don't answer the question, what are those private resources? How do they come about? Therefore, in *Jeejeebhoy* they look at the larger way of understanding.

JUSTICE J.B. PARDIWALA: We can go into these issues at this point of time.

R. VENKATARAMANI: We can, we can. I'm trying to. Why that we need to go into it is... to say that 31C has lots of relevance in a sense that we are an open society, a free economy. We're not talking about a very outmoded Marxist notion of distribution level. I don't think the Court should look from that perspective. In the economic history of our country, we still have large mass of population who need to be brought succour to their life. So, it's from that point of view, 39 was enacted and we still have not travelled a good part of the journey. Therefore, to say that it is now lost its Marxist connotation would be to look at only Marxism and leave everything else outside the realm of understanding. If that is a way, probably then China would not have probably taken this course of regulated capitalism. So therefore, it's important for us to say that we will not halt or they arrest the progress of a certain part of our Constitution and leaving it in the responsible hands of the State to regulate the ownership and control the resources to subserve the common... Each one of them in a given context or a statutory context will be certainly scrutinized. There'll be certainly a judicial review of whether does it have a particular common good or public good or it's an illusory common we're talking about.

JUSTICE J.B. PARDIWALA: That's the core issue.

R. VENKATARAMANI: That's right. That certainly will happen. That truly is available in the hands of the Court. But to say that no, we will try to give a very narrow meaning to 39(b) and to curtail these broadest expansive understanding and the potential of its use in the hands of the State.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

1 **R. VENKATARAMANI:** In *Jeejeebhoy*, in the paragraph, they talk about providing access
2 to equal opportunity. That's why for instance, in the new deal era in the 1930s, the Lochner
3 Era they call it, so, provision of economic opportunities for the racially segregated. So, the US
4 Supreme Court accosted, "Deal with them". So, equal opportunity in the economic field. So
5 accessing banking resources. So a wide range of resources today are evolving. So, access to
6 those who must act... for those people who are not able to access them on their own. So, when
7 Amartya Sen talked about the capabilities approach, he looked at a world where it can be
8 probably brought by certain amount of State involvement in it. So, unless I have the
9 capabilities built with me, which can happen only if I have access to resources. So, if I don't
10 have access to the human... housing resource. So what did *Olga Tellis* talk about. So "You
11 take away my life and therefore, you take my means of life, you take away my life" Shylock
12 talking about in *Merchant of Venice*. So, access to many things in life today depend upon how
13 they can be made available by voluntary economic engagements and by State engagement. So
14 the facilitating, the enabling environment can be rebuilt only when you have a certain
15 understanding. But that does not mean the State can lay it very broadly, can lay it arbitrarily.
16 That's a different area altogether.

17

18 **JUSTICE B.V. NAGARATHNA:** Social and economic justice which is there in the Preamble
19 of the Constitution, justice includes social and economic justice apart from political justice.
20 So, it is in order to ensure that goal of the Constitution, we have this Article 39.

21

22 **R. VENKATARAMANI:** That's why when... Your Ladyship is entirely right. Therefore, we
23 are talking of the amalgam. The interconnection between social, economic and political
24 dimension of a society. So, for long we had this dialogue in human rights, the civil and political
25 rights. We'll have a precedence over social and economic rights but then that there is no longer
26 a debate in human rights. They are part of one common human rights endeavour. Therefore,
27 the interconnection between this... see, 39(b) was to die a natural death, once Marxism was
28 dead, it's a different answer altogether. I don't think we'll probably wish to give that answer.
29 Maybe there are even contentions on whether Marxism is dead or not. Thankful Chief Justice
30 yesterday brought Gandhiji's successorship issues, when there were a large amount of
31 criticism about when Gandhiji made this very interesting proposition, and there were a lot of
32 potential about it, over there of Marxist criticized Gandhiji for saying that he's serving a
33 *bourgeois* interest, to borrow a Marxist expression. That's probably... we'll move towards a
34 whole amalgam of Gandhiji's successorship ideas, access to resources ideas, and how do we
35 build them? Do we have a kind of a blueprint for all that? That's why every experiment in the
36 economic field, every experiment in the in the social field or all experiment to move towards,
37 as it's called, the movement towards a better world.

1

2 **JUSTICE B.V. NAGARATHNA:** The salutary nature of Article 39 as such, the debate is
3 when it is applied and the application which it has under Article 31C, I think you should go to
4 the next chapter. Nobody is doubting the salutary aspect of Article 39.

5

6 **R. VENKATARAMANI:** Now, Your Ladyship is right, but if you are talking about a private
7 resource, immune from 39(b). That's how the argument has been built. These are private
8 property, good part of it consumes of livelihood or whatever it is, and therefore they are
9 removed from Article 39. There can't be any law which seeks to invoke Article 39(b) as a resting
10 house. Therefore, it is important for us to understand this broader canvas of 39(b), then one
11 can find out whether... The law is good or bad is a different issue. Because from 1940 onwards,
12 rent has been free or frozen, and therefore, we really do not have the potential enjoyment of
13 the property. We are in the particular context of a law. Whether that law is bad because if it
14 closed eyes to a certain history, that is a different question altogether. But we are here trying
15 to understand and settle the meaning of what 39(b) would actually take within its broad sweep.
16 If it's read very narrowly, well, yes. If not yes, then the implications need not necessarily matter
17 for the Court and think and say, if a law is made wrongly on an abusive understanding of 39(b).
18 I don't think, I don't think today given the kind of limitations on lawmaking power and the
19 competition in the political... in the political field, egregious wrongs will happen. They may
20 happen on the fringes, but not necessarily in the core of social governance. I don't think it's
21 likely happening. Of course there are blunders which Governments can make. Blunders for
22 certain short term political in the whatever. We're not talking about that. We are talking about,
23 how do we read a constitutional provision. If one were to say that 39(b) has lost its vitality, we
24 can say yes. Or if it is, say, no provision like 39(b) can never lose its vitality. No, I'm just... I'm
25 just saying. I'm just... Yes, so it can never lose its vitality because it has a kernel of importance
26 for social organization and moving towards a better world. That's a kernel of 39(b).

27

28 **JUSTICE J.B. PARDIWALA:** I think we can come to para 37.

29

30 **R. VENKATARAMANI:** 37.

31

32 **JUSTICE J.B. PARDIWALA:** Article 31C.

33

34 **R. VENKATARAMANI:** Yes. This 37 goes into a 31C argument. I propose to come to it a
35 little later, as I was saying, to request the Chief Justice that since a very incisive arguments
36 have been advanced on 31C and also with the contribution of the Hon'ble Chief Justice adding

1 wealth to the understanding of this case, 31C, we need a little more time to reflect on that. It's
2 not that we write 31C like this and say we give goodbye to 31C.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** 4 O'clock is the... as the conclusion...

5

6 **R. VENKATARAMANI:** I would like to look into little more carefully to make any argument.
7 Though, we have all of us have some thoughts on 31C, but I don't think that should be like
8 thinking on the feet and then responding to it. It needs a certain reflection and a responsible,
9 responsible reflection.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Wrap up by 4 o'clock today, Mr. Attorney. We
12 have to wrap up by 04:00. So, maybe the arguments will conclude at 04:00, so please leave
13 some time.

14

15 **R. VENKATARAMANI:** So it's very difficult. Your Lordship, this is an important matter
16 where two salient provisions of Constitution are being debated and two and a half days on the
17 other side Your Lordships, I could, of course, write a precis writing and hand it over to the
18 Court, right? That's not what the probability Court wants from the Attorney and the Solicitor
19 General and we need a good deal of investment of our time and mind to assist the Court in
20 every possible way.

21

22 **TUSHAR MEHTA:** And it can't be finished, My Lord. I'll just on a lighter note, there can be
23 20-20 one day or five day. The fielding team should get as much time as the other team have
24 got. We are the fielding team.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Correct. Mr. Attorney, can we just rest one thing
27 that if you can wrap up by, say, 3:30p.m today, then we can start with the other.

28

29 **TUSHAR MEHTA:** My Lord we, we... I would need one session, My Lord.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** We'll see that. But if the Attorney completes by
32 3:30p.m. We've got now the general drift of what the learned Attorney has to say.

33

34 **R. VENKATARAMANI:** I will try to do that. But that's like pushing me to the wall.

35

36 **JUSTICE SUDHANSHU DHULIA:** So right now, till now, you are showing us the land.

37

1 **R. VENKATARAMANI:** Your Lordship, please?

2

3 **JUSTICE SUDHANSHU DHULIA:** Showing us the land

4

5 **R. VENKATARAMANI:** I only try to take off now, I know I have to land.

6

7 **JUSTICE SUDHANSHU DHULIA:** Now you have to land.

8

9 **R. VENKATARAMANI:** I know that, I know it. I've not read... for instance, every one of us,
10 by reading the same part of a judgment has a certain way of reading it, a certain emphasis,
11 looking at a particular word and expression and draw sense out of that. So I've not read quite
12 a few judgments which is why I would like to read them. But I'd like to take a broad outline. I
13 thought that would be the best way of going about it to begin with. There is also trying to look
14 at... the attention of the Chief Justice also on this very engaging subject of the more you draw
15 it wide, what happens? The more you close it wide, what happens? And, of course it's... one
16 has to reflect on it. I looked at 39(b) very closely over... after this matter. You look at every part
17 of it. Either you treat 39(b) as having served a purpose for a period of time and fold it up and
18 wind it up and keep it in like in some constitutional mausoleum, and keep it there or we say
19 'No, it still has to have its vitality'. Therefore, one looks at various expressions used in it, so
20 that a common good use. The common good as we're trying to point to it as I said, an individual
21 can also have a common good, a set of people who live... a tribal people, they have their
22 common good. So protection of the mineral, as *Samata* said; for the common good, the tribal
23 have the material resources to be so distributed for their common good. Of course, ownership
24 and control.

25

26 **JUSTICE HRISHIKESH ROY:** Attorney General, I think you have brought in the concept
27 of distributive justice. That is at page 50, paragraph 54. I think that is what ultimately, you are
28 trying to sort of canvas.

29

30 **R. VENKATARAMANI:** Paragraph? Your Lordships.

31

32 **JUSTICE HRISHIKESH ROY:** Paragraph 54. Just the heading of that. 'Concept of
33 Distributive Justice'. I think when you talk about 'subserve the common good'. I think this is
34 what you are trying to perhaps...

35

36 **R. VENKATARAMANI:** That's right.

37

1 **JUSTICE HRISHIKESH ROY:** Concept of distributive justice.

2

3 **R. VENKATARAMANI:** Your Lordships are right. The distribution...

4

5 **JUSTICE HRISHIKESH ROY:** These are your words, but I think this is what your
6 argument is, I think, geared towards.

7

8 **R. VENKATARAMANI:** This paragraph is an extract from *Lingappa Pochanna*. I will
9 say there's one part of it. Distributive justice is again has often been seen as a liberal thought
10 or a quasi-Marxist thought. I'm not looking it from this very doctrinal, economic
11 understanding. So a distribution of a resource of in a community today may have very
12 imaginative understanding of that. So distributive justice in that sense. But how do you
13 actually apply distributive justice today? How do you handle them today? See if you need a
14 bedrock for that like 39(b) remain as it is, with that larger connotation which we're trying to
15 suggest to 39(b). So this para 54, 'Distributive justice', let me just quickly read it since your
16 Lordships are at that. It's at page...

17

18 **JUSTICE HRISHIKESH ROY:** 52, part of 52.

19

20 **R. VENKATARAMANI:** Page 52, bottom.

21

22 **JUSTICE HRISHIKESH ROY:** We have quickly glanced through it already.

23

24 **R. VENKATARAMANI:** I'm sorry. 'The concept of distributive justice. In the sphere of
25 lawmaking connotes *inter-alia*, the removal of economic inequalities and rectifying the
26 injustice resulting from dealings and transaction between unequals in society.' Lordships have
27 used an instrument of distributive justice to achieve a fair division of wealth among the
28 members of a society based upon the principle. I'm not talking about 'robbing Paul to give
29 Peter.' That's what the usual old dialogue against Marxism. I'm not talking about that. 'From
30 each according to his capacity...' again a Marxist credo. But the distributive justice in the
31 Constitution means something else. We have claimed equality will be taken into account, the
32 right to a private initiative, creativity, innovation, which is Article 19(1)(g) is about. So, liberty
33 is all about creativity and innovation. 19(1)(g) is about it. So, the State will have to banner
34 amongst all these conflicting areas of again emerging Fundamental Rights. So if you're only a
35 Chapter-3, we have no difficulty at all. We have only clash among Fundamental Rights. We
36 can probably as well say Chapter-4 has done his day, then pick up few provisions of Chapter-
37 4 and the rest of it can be given an exit day. That's not what can happen in a dialogue like this.

1 'The distributive justice comprehends more than achieving lessening of inequalities by
2 differential taxation, giving debt relief, a distribution of property owned by, onto venue of none
3 by imposing ceilings, on holding both agriculture and urban of a direct regulation of a
4 contractual transaction, by forbidding certain transactions.'

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Distributive justice. Now we go to concept of
7 socio-economic justice, para 60, the Arc of the Constitution. The rules of interpretation, what
8 cannot adopted doctrine... we can go now to para 62, UN Report on public goods for economic
9 development.

10

11 **R. VENKATARAMANI:** Paragraph 60 is only either summation of what is this socio-
12 economic justice. We have seen the previous paragraph, in the previous paragraph from 56
13 onwards, it's a little bit of a history. We always go back to Aristotle about what's a common
14 good. We talk about Aristotelian understanding, then later, medieval understanding, then an
15 enlightenment understanding, later the socialist and other understanding. The common good
16 has always received a wide range, but then, ultimately it's about how do we organize our lives
17 through requiring that our human interaction in economic transactions benefit not only a few,
18 but everyone. So, in a pre-industrial society, that things were different. So, in a post-industrial
19 society is going to be very different. A machine age is going to be a very different. Therefore,
20 the importance of looking at it from a very, what's called potential... provision which has a
21 potential utility, and that can be invoked as flexibly as possible.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** What is this UN report on public goods for
24 economic development? Page 56, para 62.

25

26 **R. VENKATARAMANI:** I'll just come to it. Now My Lordships have paragraph 62?

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

29

30 **R. VENKATARAMANI:** 'The common good resource is one that can be exploited for private
31 gain, but that no one owns. Free access to these goods bring up a basic management problems
32 in the criteria derived from private benefits do not coincide with those that public or
33 intergenerational interest demand. Private benefits call for the most intense exploitation,
34 while public or intergenerational interest demand the establishment of control mechanism to
35 preserve the resource. Thus, the characteristics of both non-rivalry and non-excludability can
36 vary across classes of public goods. There are instances when an activity may simultaneously
37 yield two or more outputs, called a joint torex. Some of them public or with different degrees

1 of publicness. The degree of publicness varies according to the dimension and characteristics
2 of the public effects. These joint products, such as education, biodiversity, benefit both those
3 who receive them and the entire society by fostering more responsible social behaviour. The
4 idea of the public effects.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Now, let's see the common agenda report of the
7 Secretary General?

8

9 **R. VENKATARAMANI:** Yes, I'll just do that. 'The twin concepts of the global commons and
10 global public goods are used in various contexts and fields including law and economics. The
11 global commons usually refer to natural or cultural resources that are shared by and benefited
12 all. They include the four conventionally understood common that are beyond national
13 jurisdiction, the high seas, the atmosphere, Antarctica and outer space, all of which are now
14 in crisis. Public goods are understood as those goods and services provided to and benefitting
15 all of society, which at the national level may include street lighting, fire department, traffic
16 control or clean water. Certain public goods have long been acknowledged as being global in
17 nature in that they cannot be adequately provided by any one State acting alone, and they
18 concern the welfare of humanity as a whole. These have traditionally ranged from global
19 aspirations of peace, practicalities, civil aviation regulation, etc. Ultimately, what distinguishes
20 these prestigious domains is that their protection is in increasing the target that can only
21 undertake together.' Then provisions of so and so, I'll just skip that. Then, there's a need to
22 look at some of these statements in *Sanjeev Coke* and *Ranganatha Reddy*, in a sense that
23 why they look at the resources, very free in a broad canvas.

24

25 **JUSTICE HRISHIKESH ROY:** The Chapter VIII-A of the MHADA Act, I think in the
26 context of Article 14 argument is dealt with.

27

28 **R. VENKATARAMANI:** It is there.

29

30 **JUSTICE HRISHIKESH ROY:** Yes, I think that would be something of relevance.

31

32 **R. VENKATARAMANI:** But that's where... I just want to hint at that point because the Court
33 is not called upon to decide the legality of that Act here.

34

35 **JUSTICE HRISHIKESH ROY:** Geographical classification.

36

1 **R. VENKATARAMANI:** Yeah. 'The geographical classification held as permissible
2 classification. Hence, making provision applicable only to the Island City of Bombay cannot
3 be held to be arbitrary and reasonable. That classification, therefore, cannot be held re-
4 impermissible.' Next is with the objects of classification. Stopping here for a minute. As I said,
5 any section of a community in any defined geographical area or a class of people with a defined
6 aspiration, understanding needs, demands, requirements. So therefore, the public good
7 concept, the common good concept, all that will have to be woven into it in a very... in a way
8 that they ultimately seem to serve the purpose of sharing the resources.

9

10 **JUSTICE J.B. PARDIWALA:** 74. Salient features of chapter... Page 63.

11

12 **R. VENKATARAMANI:** This takes us, these paragraphs takes us in the details of the
13 legislation and how it's not arbitrary, etc. So, I suppose once the Court sets up base for
14 understanding of 39(b), then any Court which scrutinizes will look into that aspect.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** What you're saying is that...

17

18 **R. VENKATARAMANI:** I put.... I'll put them all there. I don't think I'd trouble the Court
19 with that.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** [UNCLEAR] 39(b).

22

23 **R. VENKATARAMANI:** That's right. So why did *Ranganatha Reddy* go into this
24 question or *Sanjeev Coke* in coal? *Ranganatha Reddy* was a clear case where a transport
25 service, nationalisation of transport service is now part of our national economy, and every
26 State has done that. They coexist today. There are private and public transport service and
27 whether they do well or not is again a different question. You may have all kinds of accusations
28 against the poor quality of a public service. The same can also be extended to private services.
29 I think there's nothing different about it.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you, Mr. Attorney. With your usual
32 characteristic precision, you have finished ten minutes before your allocated time.

33

34 **R. VENKATARAMANI:** I would like to read *Ranganatha Reddy* because it's... and
35 *Anita Pan, Ranganatha Reddy*, I'd like to come to *Mafatlal* to quickly say that it is not
36 an obiter. It's not an obiter at all because nine-judges sitting together looking at *Sanjeev*

1 **Coke** in coal, what happened earlier. And they say, look and then the Counsel raised an
2 argument before the Court, look at these aspects of this case.

3

4 **JUSTICE HRISHIKESH ROY: *Mafatlal***, you are talking about?

5

6 **R. VENKATARAMANI: *Mafatlal***, I'm talking about. Sorry.

7

8 **JUSTICE HRISHIKESH ROY: *Mafatlal***, there's just one paragraph. Paragraph 86.

9

10 **R. VENKATARAMANI: 83, 84, 85, 86 of *Mafatlal***. So kindly...

11

12 **CHIEF JUSTICE DY CHANDRACHUD: Now again, you'll read *Ranganatha Reddy***.

13 If you can just tell us the points that you're making, we'll make a note of it.

14

15 **R. VENKATARAMANI: This is Volume 5D. At page 160, PDF 162. This was a case of a rent**
16 **control act. Paragraph 6 at page 162, Volume 5D. 'Some background observation to appreciate**
17 **the contest in court of necessary. No social realist will deny the frightful dimensions of the**
18 **problem of the homeless families and precarious tendencies, and if the Directive Principle,**
19 **State policies are not to be dismissed by the Marxist teaching illusion and a promise of reality.'**
20 **Volume 5D.**

21

22 **JUSTICE HRISHIKESH ROY: That starts with, 'some background'?**

23

24 **R. VENKATARAMANI: Yes, that's right, 'some background observations to appreciate the**
25 **contest and no social realist will deny the frightful dimensions of the problem of homeless**
26 **families and precarious tendencies and if the directive principles, State policies are not to be**
27 **dismissed as so and so curtailment in public interests of extreme right, the landlord has**
28 **already in truth employed the constitutional compulsion. The Court informed by the so**
29 **economic situation and reinforced by initial presumption of constitutionality, hesitate to strike**
30 **a socially beneficial statute at debt, leading to escalation for the receipt to suppress with the**
31 **human high house legislators, unless, of course, a plain breach of Fundamental Right of the**
32 **citizen is manifest.' Then paragraph 8. 'To explore the import of neglecting such a distressing**
33 **urban development reasonably obliges the State to impose drafting of sections and landlord**
34 **right to property. And when circumvention of wholesome legal innovation is practiced, here**
35 **the new challenge is met by cloaking the law with four effective armour, and that is a rationale**
36 **of the Amendment Act. The learned judge has rightly referred to the legislative proceeding,**
37 **notorious common knowledge so on so to brought to the can [UNCLEAR]. The sound proof**

1 theory, ignoring voices from parliamentary debate, one sanctified [UNCLEAR] tradition has
2 been replaced by the more legally realistic and socially responsible can preceding to the
3 legislative author when the artefact is being interpreted.' We agree with the High Court, My
4 Lord observe. Then, kindly turn to paragraph 12 at page 165. This is an example of how the
5 Court may look at it, not by holding lenses with a narrow approach, but laws so and so etc. 'We
6 emphasize this fact of sociological jurisprudentially because of High Court struck down on
7 surmises possibility, then maybe rather than on the study of actuality than truth of the nature,
8 number and age of pending litigation caught in the net so and so... That just act not behind,
9 but on a hard fact properly My Lord, sufficiently to rebuff the initial presumption of
10 constitutionality of legislation. The Court or the Chamber, the house to where it should
11 legislate prospectively un-draft the clause differently. If now the foundation, the large
12 assumption so and so.' etc.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Attorney, we will have a look at that again,
15 *Ranganatha Reddy*. You can then give us a small note, maybe later on.

16

17 **R. VENKATARAMANI:** At page 1749, Volume 5. Four plus three in *Ranganatha Reddy*
18 to be seen as four plus three, not four minus three. In the sense, Justice Untwalia was saying,
19 we've now taken to, concurred with Justice Krishna Iyer. Here is what they say in paragraph
20 37, end of paragraph 37. 'Our learned brother Krishna Iyer had prepared a separate judgment
21 specifically dealing with this point.' What's the point about? 'The transfer of certain funds
22 which are being taken from the secured creditors, and whether 31C will cover that issue.'
23 Therefore, the judges say that is being said dealt with separately and then Krishna Iyer's
24 judgment himself at page 1750.

25

26 **JUSTICE HRISHIKESH ROY:** That is why Justice Untwalia...

27

28 **R. VENKATARAMANI:** We go only with our learned brother, Untwalia.

29

30 **JUSTICE HRISHIKESH ROY:** That's why he said that we must not be understood. We
31 have to agree with all that he has said in that judgment index. Normally you give a dissenting
32 judgment, and that remains.

33

34 **R. VENKATARAMANI:** That's right, but the judges understood as far as 31C is concerned,
35 there's another opinion. I understand it. Everybody having agreed on that.

36

37 **JUSTICE HRISHIKESH ROY:** No, no.

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R. VENKATARAMANI: In the common theme of the judgment. I'm talking about a common table of judgment.

TUSHAR MEHTA: No. In fact what Justice Krishna Iyer understood to be a concurring opinion, Justice Untwalia say is in fact a dissenting opinion, in a different way. Very clear that we should not be understood that we have agreed to that. Agreed with all.

R. VENKATARAMANI: All that he has said. I'm trying to look at it like this. The Court has called upon to answer a question, whether the nationalisation of a transport service would fall within the 39(b) and (c). That was the main question. So, the Act was upheld. The Act is upheld, which means it doesn't fall foul of any constitutional provision. Whether on the expanded logic of 39(b), natural resources, meaning or not, Act has been upheld. That's what I'm trying to say. Therefore, if 39(b) expand, a meaning has to be given to support the outcome of the judgment. Krishna Iyer has endeavoured to do that. So, if you have to look at 39 at all, you have to look at it. So kindly just pick up only a few paragraphs My Lords. Kindly have paragraph 79 at page 1770. 'Majority view in so and so set up with a Court and stated...', Your Lordships may skip a few lines and little later... Article 31C has also been upheld, subject to the rider that there should be no nexus between Article 39(b) and 39(c).

JUSTICE HRISHIKESH ROY: There should be.

R. VENKATARAMANI: Any object of acquisition. That's right, should be. 'Learned so and so struck a middle note and pointed out that where the inputs of valuation caveat a statute only irrelevant or unconnected with a social good, then Article 31(ii) may not retrieve the statute. It's a far cry from this observation to the position that the 25th Constitution amendment leaves untouched a ratio in *Cooper*. You have pointed out how the set constitutional amendment was expressly undertaken *inter alia* to undo the effect of *Cooper* and to forbid forensic diagnostics into the question of compensation. In this light it is difficult to uphold view of the High Court that *Cooper* survives after death and keeps virtually alive the obligation of payment of market value, inclusive of superior rate of interest and all that.' Then next, kindly, turn over to paragraph 81. "'Resources" is a sweeping expression and covers not only cash resources, but even ability to borrow, it's meaning given in Black's dictionary and keeping that dictionary meaning and material resource of the community in the context of reordering the national economy embraces all the national wealth, not merely natural resources, all the private and public source of meeting material needs, not merely public possessions. Everything of value or use in the material world is a material resource and the

1 individual being a member of the community is a resource is part of the community. To exclude
2 ownership of private resource from the coils of Article 39(b) is to cipherize its very purpose of
3 redistribution the socialist way. The directive to the State with deliberate design to dismantle
4 feudal and capitalist citadel or property must be interpreted in that spirit, and hostility to such
5 a purpose alone can be hospitable to the meaning, which excludes private means of production
6 of goods produced from the instruments of production. A. K. Sinha agrees that the private
7 means of production are included in the material resources
8 of the community but by some baffling logic, excludes things produced. If a car factory is a
9 material resource, why not cars manufacture? Material may cover everything worldly and
10 resources according so and so takes in the collective wealth of a country or its means of
11 producing wealth. Money or any property that can be converted into money assets. No further
12 argument is needed to conclude that Article 39(b) is ample enough to rope in buses. The motor
13 vehicles are part of the material source of the operators.' Then paragraph 83, page 1772.
14 'Through conclusions take strike as quintessential. Part IV, especially Article so and so, either
15 futuristic mandate to the State with a message of transformation of the economic and social
16 order. Firstly, it's a change caused by the collaborative effort from all legal institutional system,
17 the legislated issue in the administrative missionary. Secondly, and consequentially, loyalty to
18 the high purpose of the Constitution, there is social and economic justice in the context of
19 material want and utter inequalities on a massive scale compels the Court to ascribe expansive
20 meaning to the pregnant words used with a hopeful foresight not to circumscribe their
21 connotation into contra-dictionary objective, inspiring the provision to be parasite towards
22 the Constitution through ritualistic construction is to weaken the social, spiritual or the
23 founding father's dynamic fight.' And *Krishna Iyer* talks about the social spiritual trust,
24 probably also has in mind Gandhiji's trust issue.

25

26 **JUSTICE B.V. NAGARATHNA:** Please read paragraph 88.

27

28 **R. VENKATARAMANI:** I'll just come. That's a conclusion.

29

30 **JUSTICE B.V. NAGARATHNA:** Yes. That is very important.

31

32 **R. VENKATARAMANI:** There is another stark possibility. Now, before that paragraph 87,
33 also, just make a note. 'Legalism has yield to end spacious issues arise. Whatever the legal
34 aspect of the thing, there are moments when a feeble read to rely on so and so in the
35 Constituent Assembly. There's another stark possibility, the administration sliding back from
36 the progressive constitutional values to the protective private interest. And the Court may
37 activate the welfare jurisprudence under the Constitution pay appropriate commands.' While

1 I would go along with what the learned judge has said here as I was trying to point out, we are
2 not trying to, we're not asking the Court to read Article 39(b) from particular economic prism,
3 not a particular economic lens. The moment we try to bring into Article 39(b) any particular
4 economic doctrine, I say we are going to clip, cap and confine it. It must have is openness.
5 While it might come in at a point of time from a certain social, economic, or an ideological
6 understanding, if it was remained part of the Constitution, it means received that expansive
7 meaning. But if it doesn't require that expansive union because we say, with the death of a
8 particular ideology, we don't need this to hang upon. That is a different story altogether, it is a
9 political story.

10

11 **JUSTICE B.V. NAGARATHNA:** Isn't this a caveat against privatization and liberalization,
12 which is the order of the day today? And where private enterprise is being encouraged, and as
13 a result, the increase in private wealth would ultimately lead to the increase in the nation's
14 wealth.

15

16 **R. VENKATARAMANI:** Absolutely, I'm not saying in a classic sense, the classic Marxist
17 sense, you regulate everything national. I'm not saying that should be read in... that's a way. It
18 is, in fact such constitutional provisions will receive wisdom and maturity in an evolving
19 constitutional framework. So therefore, even we have a private, expansive private market or
20 private capitalism, whatever one may have, but this provision will still have a certain relevance.

21

22 **JUSTICE B.V. NAGARATHNA:** His Lordship, Justice Krishna Iyer seems to be warning
23 against what is the scenario today.

24

25 **R. VENKATARAMANI:** He wrote at a point of time when, with his own understanding of
26 what could mean reading into Article 39, but I don't think... that's only one index. It's one
27 index of looking at 39(b), but I'm looking at various indexes which may have brought into
28 39(b) and we do not know how many indexes are going to be there. To say that I am only a
29 Marxist or a socialist in that, and they're all dead for all practical purposes, why should we go
30 into it at all that is again, a political philosophy understanding. But I suppose if the
31 Constitution has to do a journey beyond what we are seeing today, therefore, if you... you can
32 probably wipe out many of the provisions in Chapter IV because we are living in open society
33 of free...

34

35 **JUSTICE B.V. NAGARATHNA:** It's how you look at it. Each word of the Constitution can
36 have a different meaning at different points of time.

37

1 **R. VENKATARAMANI:** They can have.

2

3 **JUSTICE B.V. NAGARATHNA:** That is what... so we cannot only think of what was there
4 in 1950s.

5

6 **R. VENKATARAMANI:** Exactly.

7

8 **JUSTICE B.V. NAGARATHNA:** The same words can be interpreted in the 21st century.

9

10 **R. VENKATARAMANI:** Absolutely. Therefore, we are not, suppose we are talking about
11 Right to Privacy, Article 21, a wide range of interest in the Article 21. So, I suppose all those
12 values which go into an expansive constitutional interpretation are not even confined only to
13 certain provisions of the Constitution, then we have to probably inform the most important
14 part of the Constituent Assembly, Part IV.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Attorney General, I think we'll close now I
17 think today and we'll start on Tuesday with the Solicitor's submission.

18

19 **R. VENKATARAMANI:** I have not touched upon 31C. We will have to probably after the
20 Solicitor... deal with 39(b).

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** We'll see if something remains, then we can
23 always...

24

25 **R. VENKATARAMANI:** 31C, we still need to come back to.

26

27 **TUSHAR MEHTA:** I'll combine both, My Lord, and assist Your Lordships in a composite
28 way, thereafter.

29

30 **R. VENKATARAMANI:** Or if Your Lordships permit me, I'll try to deal with 31C as early
31 as... as quickly as possible.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** We've got your broad drift of your submission.
34 we'll start with now, the Solicitor on Tuesday, and then Mr. Dwivedi will be arguing thereafter.
35 Solicitor said you'll take about one session, right?

36

37 **TUSHAR MEHTA:** One session. Maybe it's a few minutes here or there.

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CHIEF JUSTICE DY CHANDRACHUD: And then Mr. Gopal Sankaranarayanan after Mr. Dwivedi. Try and leave a little bit time for them for the rejoinders. So, that we can wrap up on Tuesday.

TUSHAR MEHTA: We will not repeat anything.

CHIEF JUSTICE DY CHANDRACHUD: We know how precise you are always Mr. Solicitor. That's why we are taking this liberty with you and Mr. Dwivedi. Trust us that we will not...

TUSHAR MEHTA: Your Lordships are never, My Lord...

CHIEF JUSTICE DY CHANDRACHUD: But if possible, you can leave a little time for the rejoinders so that just the salient points they can state in the rejoinders, then they can supplement it with a note, also. No difficulty.

RESPONDENT'S COUNSEL: My Lords, if Your Lordships permit me after Mr. Gopal Sankaranarayanan, I'll just five minutes for a small intervention. Just five minutes.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Sankaranarayanan is appearing for?

RESPONDENT'S COUNSEL: Counsel for the State of West Bengal.

CHIEF JUSTICE DY CHANDRACHUD: State of West Bengal. What about you?

RESPONDENT'S COUNSEL: My Lords, I'm for an intervenor.

CHIEF JUSTICE DY CHANDRACHUD: We'll see how much time we have left.

RESPONDENT'S COUNSEL: Maximum two minutes.

CHIEF JUSTICE DY CHANDRACHUD: In the West Bengal matter?

TUSHAR MEHTA: In MHADA matter, he is appearing for the tenants who will be opposing this with Mr. Devrajan.

1 **CHIEF JUSTICE DY CHANDRACHUD:** We'll try and wrap up on Tuesday.

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END OF DAY'S PROCEEDINGS