

Mohit Kumar Gupta, Advocate-on-Record, Supreme Court of India

435

SUPREME COURT OF INDIA

ADVOCATES-ON-RECORD EXAMINATION - JUNE, 2023

Roll No. 168

Dated 15th June, 2023 (Thursday)

Paper No. - IV

Signature of
the Candidate 

Name of the Paper: Reading cases

1. Kindly write your Roll Number **only** on the left hand corner of this page at the place provided. The Roll Number shall **not** be written anywhere else.
2. The name of the candidate shall **not** be written anywhere in the answer sheet.
3. The candidate shall **not** put his/her signature anywhere else except at the designated place above on the flying sheet.
4. Kindly write on **both sides** of the answer sheets and number the pages.
5. Kindly use only **one type of ink** throughout.


**Assistant Registrar
(AOR Examination)
Supreme Court of India**



Signature of the Invigilator

Mohit Kumar Gupta, Advocate-on-Record, Supreme Court of India

SUPREME COURT OF INDIA
ADVOCATES-ON-RECORD EXAMINATION (JUNE, 2023)

Roll No. 435

15.06.2023

Name of the Paper: **Leading Cases (Paper IV)**

1. Kindly write your Roll Number only on the left-hand corner of this page at the place provided. The Roll Number shall not be written anywhere else.
2. The name of the candidate shall not be written anywhere in the answer sheet.
3. The candidate shall not put his/her signature anywhere else except at the designated place above on the flying sheet.
4. Kindly write on both sides of the answer sheets and number the pages.
5. Kindly use only one type of ink throughout.

MARKS OBTAINED

Q.1 ✓	15 ✓	Q.7 ✓	15 ✓
Q.2 ✓		Q.8	
Q.3 ✓	16 ✓	Q.9	
Q.4 ✓	15 ✓	Q.10 a	
Q.5		b	
Q.6 ✓	15 ✓		
Total Marks	76 ✓	Initials of the Examiner	

Assistant Registrar
(AOR Examination)
Supreme Court of India

Mohit Kumar Gupta, Advocate-on-Record, Supreme Court of India

3



DATE _____

1

Answer No. 7 (seven)

- Reasons why the judgement of Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology (2002) 5 SCC 111 is a leading case:

- The judgement interpreted the meaning of 'state' as is provided for under Article 12 of the constitution of India, to being within its purview entities of a private nature / set-up, if the same are functionally, financially and administratively dominated by or under the control of the government and such control is particular to that body and pervasive.
- The judgement redefined the doctrine of precedent with the inter-mix of its inherent and plenary powers, not as an appellate court though, to hold that a decision cannot stand as an authority if was plainly erroneous, although it may have stood for a length of time.

- Majority and Minority view in the judgement:

Facts (Brief) of the case -

The appellants having lost jobs at the Indian Institute of Chemical Biology preferred SLP before the supreme court, but the court referred it to the constitution bench doubting the correctness of the decision in Iskhajit Tiwary case (wherein CCR was not held to be state when a junior stenographer sought pay parity); having regard to the pronouncements of the court in several subsequent decisions in several other institutes of similar set-up.

Legal Issue -

Whether CCR was a 'state' within the meaning of Article 12 of the constitution of India?

Assistant Registrar
(AOR Examination)
Supreme Court of India

• Majority view of Justices Bhargava, Mal. Advani, Hedige, Patil and Pasayat):

The court held the following:

→ the question in each case, as a test, is to see the following:

(i) whether in light of the facts established, the body is financially, functionally and administratively dominated by or under the control of the government.

(ii) such control must be particular to the body and must be pervasive.

If the above two conditions are satisfied, then the body is considered as state as per Article 12.

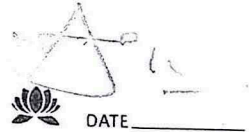
(ii) If the control is mere regulatory, under a statute or otherwise, it would not serve to make the body a state.

→ Inclusive definition is not always exhaustive, as the definition starts with 'includes', and the terms 'state' and 'authorities' used remain among the 'great generalities of the constitution', the contents of which have been and continued to be supplied by the courts from time to time.

→ A close reading of Article 323A and Section 14 of the Administrative Tribunals Act, 1985 makes it clear that no notification could have been issued by the central government unless the employees of AIR were either appointed to public services and posts in connection with the affairs of the union or of any state or other bodies within the territory of India or under the control of the government. once the jurisdiction has been shifted

Assistant Registrar
IOR Examination
Supreme Court of India

2



3

from the High Court to the Central Administrative Tribunal, CSIR was found amenable to writ jurisdiction.

• Minority view of Justices Lahoti and Raju

The bench in its dissenting judgement held the following:

- The CSIR did not come within the meaning of term 'other authorities' under Article 12.
- There was no statutory provision, neither it owes its birth to a statute nor there is any other statute conferring it such powers as would enable it to be branded an authority.
- Presence of the indicia of power was found absent.
- The CSIR was not found to have discharged functions as are of government or closely associated therewith or being fundamental to the life of the people.

• Article 12 of the constitution of India

State shall include the:

- Government and Parliament of India, and
- Government and Legislature of each of the states, and
- all other authorities and local bodies by or under the control of the government.

- Circumstances under which a writ under Article 226 of the constitution can be filed against a private institution which is not a 'state' under Article 12 of the constitution.

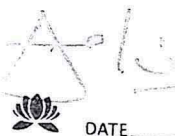
Assistant Registrar
(AOR Examination)
Supreme Court of India

- 6
- The private entity has been discharging duties of a public nature without being satisfying the law laid down in the Pradip Kumar Biswas, which equates with the work being undertaken by an entity regarded as state under Article 12.
- The state is made a party to the said case as respondent, without which the petition under Article 226 would be rendered non-maintainable.
- As per a recent judgement by Karnataka High Court against Oriental Insurance, wherein (ROAI) being a party respondent to the writ petition alongside Oriental Insurance, the court was pleased to issue writ against the private insurance company on the ground that such an entity was discharging or discharging duties of a public nature affecting large number of individuals, and interpretation should cater to the changing needs of the society.

Assistant Registrar
(AOR Examination)
Supreme Court of India

Mohit Kumar Gupta, Advocate-on-Record, Supreme Court of India

4



Answer No. 6 (six)

- Factors which are considered while fixing compensation in the cases of medical negligence, and the concept of just and fair compensation, and also whether Hospital is vicariously liable for the negligence of a doctor:

Relevant factors, are as follows, which were delineated by the court in the matter of Dr. Balam Prasad vs. Dr. Kunal Saha & Ors.:

→ Time value of Money and Inflation

The claim having remained pending for 15 years which resulted in devaluation of rupee losing its time value, and therefore required adjustment on the basis of consumer Inflation Index.

→ Additional claim in the Pleadings and Limitation

The claim for additional compensation could be made without formal amendment of the pleadings through an affidavit, and the duty of the Tribunal was to examine the same in light of evidence and facts of the case. There was no forfeiture of right provided under order II Rule 2 of CPC, 1908, and such claim is not barred by limitation.

Assistant Registrar
(AOR Examination)
Supreme Court of India

Just, Fair and Reasonable compensation

(i) The Tribunal is duty bound to award just and fair compensation, even when no claim of such nature

(ii) The Principle is 'restitution in integrum' i.e. claimant must receive the sum of money which would put in the same position as he would have been if he had not sustained the wrong.

- (ii) The claim for compensation would include both pecuniary and non-pecuniary damages.
- (iv) Status of the individual along with the educational qualification and income for regular source, as on the date of death should be considered. It means future prospects of the deceased.
- (v) 'Future loss of income' be not equated with future prospects of the deceased, and Tribunal must make an estimate without the need of an expert witness - private expert estimate of future income was not admissible.
- (v) Loss upto the date of trial i.e. loss of profit, would also include loss incurred previously and loss likely to be incurred in the future.
- (vi) Multiplicand method was not inspiring and cannot be applied as a straggly-jacketed formula, in order to avoid case of over compensation, and therefore a suitable multiplicand need to be evaluated.
- (vii) Hospital is vicariously liable for its doctors, and compensation payable by the hospital and for doctors would not depend upon their culpability under section 304A IPC, but rather on the anvil of medical negligence.
- (viii) The claimant must be entitled to interest on the compensation amount.

Assistant Registrar
(IOR Examination)
Supreme Court of India

6

9



DATE

The contours and specific heads of compensation evolved and discussed are as follows -

1. Loss of missed work (income)

It having no direct nexus with the negligence cannot be allowed.

2. Travelling Expenses

It shall be awarded on the basis of actual expenses incurred.

3. Litigation Expenses

Since the party may have to seek extensive legal assistance, even while appearing in person, reasonable litigation expenses are allowed.

4. Loss of Income of Deceased (Loss of Dependency)

The calculation shall be done as follows -

Particulars	Amount
Income from regular source	xxx
(+) 30% towards future loss of income	xxx
Total Income (Multiplicand)	xxx

Life expectancy of a healthy individual (-) Age of the deceased on the date of death = Multiplier

Assistant Registrar
(AOR Examination)
Supreme Court of India

Amount = Multiplicand x Multiplier + Adjustments for foreign exchange at a stable rate

5. Interest on compensation

The interest on compensation as per Interest Act, 1978 shall be allowed from the date of death till payment of compensation.



6. Pain and suffering of deceased during the course of treatment
more than the conventional amount cannot be paid, although
even if regard to the social and economic status of the deceased.

7. Emotional trauma, pain and suffering faced by the husband/
others
such trauma having no direct nexus with the negligence
cannot be allowed to be considered for compensation.

• Facts (Brief) of the case -

the wife (US National) of Mr. Kunal Salun died in India on
account of medical negligence, wherein before the MDRB,
additional claim was sought under different heads,
which though allowed subject to 10% deduction, and
where the husband of the deceased was also held to be
guilty of contributory negligence.

• General observations (obiter dicta) of the court in the
said case -

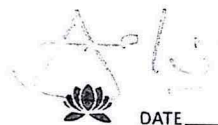
(i) The patients irrespective of their social and economic
status must be dealt with dignity as it is their fundamental
right.

(ii) Hospitals and individuals providing medical services to the
public at large must learn and update themselves about
new disciplines and rare diseases so that such tragedies
do not occur.

• Latest update -

Assistant Registrar
(AOP Examination)
Supreme Court of India

Mohit Kumar Gupta, Advocate-on-Record, Supreme Court of India



02

11

9

22

The NCDRC has dismissed the complaint filed by the wife and children of late Justice J.S. Verma regarding medical negligence committed by certain doctors and hospitals while treating Justice Verma.

15

✓
Assistant Registrar
(AOR Examination)
Supreme Court of India

Answer No. 4 (Four)

- What is the duration of the order of Anticipatory Bail granted to a person u/s 438 Cr.P.C. & Is it open for a court to impose any appropriate conditions?

The said questions were answered by the Hon'ble Supreme Court of India in the matter of Jushila Aggarwal and others v. State (NCT of Delhi) and another, as follows:

- Facts (Brief) of the case & legal issues:

The court having been found with conflicting views of different benches of varying strength, particularly in light of the judgment of the court in Gurbaksh Singh Sibbia v. State of Punjab, referred the matter for decision qua the following:

- whether protection granted u/s 438 Cr.P.C. should be limited to a fixed period so as to enable the person to surrender and seek regular bail?
- whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court?

- Ratio Decidendi, is as follows:

1. The protection granted to the accused u/s 438 Cr.P.C. should not invariably be limited to a fixed period of time and inure to the person without any conditions; however the court may impose normal conditions u/s 437(3), and also impose other condition, only in light of particular facts and circumstances.

Assistant Registrar
(AOR Examination)
Supreme Court of India

Mohit Kumar Gupta, Advocate-on-Record, Supreme Court of India

13



DATE _____

18

2. The life of an anticipatory bail does not end normally at the time and stage when the accused is summoned by the court, and continues till the end of the trial; however, if there are any peculiar or special features necessitating the court to limit the tenure, it is open for it to do so.

3. The observations in Siddharam Mhetre case (and other similar judgements) that no restrictive conditions at all can be imposed, while granting anticipatory bail are overruled. Likewise, the decision in Salauddin Hashmi and subsequent decisions limiting the grant of anticipatory bail to a period of time are overruled.

• Guiding Principles enumerated for the courts to follow while dealing with applications u/s 438 Cr.P.C. :-

1. The application of anticipatory bail does not presuppose registration of an FIR, and must contain concrete facts and side of story of the accused / person.

2. The court may issue notice to the Public Prosecutor, depending upon the seriousness of the matter to obtain facts, while granting interim protection.

3. Nothing compels or obliges courts to impose conditions limiting relief in terms of time or otherwise, but has to consider

- Nature of the offence,
- Role of the person
- Likelihood of his influencing the course of investigation or tampering with evidence
- Likelihood of fleeing justice etc.

Assistant Registrar
(AOR Examination)
Supreme Court of India

Mohit Kumar Gupta, Advocate-on-Record, Supreme Court of India

DATE

4. Whether or not to grant anticipatory bail is a matter of discretion of the court.
5. Anticipatory bail, depending on the conduct and behaviour of the accused, continues after the filing of the charge sheet till the end of trial.
6. Order of anticipatory bail should not be blanket in nature so as to enable the accused to commit future offences.
7. An anticipatory bail order does not limit or restrict the rights or duties of police to investigate.
8. The observations in *Sibbia* regarding 'deemed custody' to facilitate the requirements of section 27, Evidence Act, 1872 shall remain applicable, and person need not surrender and seek regular bail, if disclosure is made in pursuance to a disclosure of fact during statement made while in deemed custody.
9. It shall remain open for the police to approach the court which grants anticipatory bail in first instance, to arrest the accused in the event of breach of any condition.
10. The correctness of the order of anticipatory bail which was challenged on the ground of non consideration of material facts or crucial circumstances does not amount to cancellable in terms of section 439(2) CrP.C.

• My viewpoint:

The judgment is path-breaking especially for people who are now a days being accused on frivolous grounds or

Assistant Registrar
OR Examination
Supreme Court of India

Mohit Kumar Gupta, Advocate-on-Record, Supreme Court of India



DATE _____

13

grounds which are trivial in nature by attaching them with
graver offences in the nature of sex-related, religion sentiments,
etc. The correct use of the judgement by the needy person
as well as the courts would depend on the advice one follows
and implementation one desires, as still there is a lot of
discretion found with the courts, directly or indirectly.
The fundamental premise 'bail, and not jail', is
realised to an extent, which should propel the investigating
authorities to focus more on timely completion of investigations,
than fulfilling the purpose of superficial arrests and
temporary incarceration.

15

Assistant Registrar
(AOR Examination)
Supreme Court of India

Answer No. 3 (Three)

The following answers are answered in terms of the Nurbhaya case i.e. Mukesh vs. State (NCT of Delhi) & ors.

I. In what cases, statement by way of confession made in police custody is admissible in evidence against the accused?

- As per section 27 of the Indian Evidence Act, 1872, a discovery of fact made in pursuance of a disclosure statement made by the accused in custody, then guarantee is provided that the information is true and is a relevant fact and accordingly can be safely allowed to be given in evidence.
- The above is subject to two conditions —
 - The information obtained must have caused the discovery of a fact, and
 - The information must relate distinctly to the fact discovered.
- That the above two conditions must be satisfied before a confession made to a police officer is sought to be admitted, as then the burden of proof gets shifted on the defence to the same, which in fact turns to be strict, and cannot be discharged merely by pointing at procedural irregularities, especially when the revelations made were corroborated by direct as well as circumstantial evidence.
- The complete bar on the admissibility of a confessional statement made to a police officer under section 25 and 26 of the Indian Evidence Act, 1872 remains

14

17



DATE

subject to the operation of Section 27 of the said Act,

- The concept of examining failure perpetrated in procedure on account of exceptional circumstances as opposed to wrongful or deliberate acts, are relevant to consideration of statements made to police in custody.

II. What is the evidentiary value of a dying declaration?
Under what circumstances, the dying declaration were relied upon in Nirbhaya case?
What are the aggravating and mitigating factors considered by the Supreme Court while awarding death sentence?

- The following testimony are relevant to note in the evidentiary value of a dying declaration:

PW - 49 : Doctor who examined the victim first, when description of insertion of rod was not mentioned.

PW - 27 : SOM before whom vivid description of the incident was provided, and in fact, the victim wrote her name and date.

PW - 28 : The MM recorded the statement through the use of nods, signs and gestures, and the victim was meaningfully communicative; however, the MM made an overwriting on date, but correctly mentioned the date in the forwarding letter to the IO.

- The rationale provided by Justice Mishra and ~~Kanwar~~ ^{Bhushan} ~~Kanwar~~ ^{Kanwar}.

→ Insignificant errors are inconsequential, if cogent evidence

Assistant Registrar
 (AOR Examination)
 Supreme Court of India

stands on *teara firme*.

- dying declaration without corroboration can be the sole basis of conviction, if reasonable.
- The availability of 'compos Mentis' certificate before making of every declaration was significant, in light of no tutoring.
- The recording of statement through nods, signs and gestures found cogent evidence and does not require videography, as it is only a matter of caution, and not fatal, provided:

- (i) who recorded the statement;
- (ii) whether proper care was taken while recording the statement;
- (iii) whether the person recording was able to correctly act as to what was being conveyed by nods, signs and gestures.

- The court has to examine discrepancies and inconsistencies in declaration, to see whether any materiality exists.

• The rationale provided by Justice Bannumathi-

- The court has to examine the testimony for legal of the entire case and sufferings of the victim.
- There cannot be laid as an absolute rule that dying declaration cannot be the sole basis of conviction.
- mere fact of recording of multiple declarations do not take away the evidentiary value of other declaration, if the same are reasonable, firm and not tutored, whether made before or after any particular declaration.
- The court must see that the declarations are not the



DATE _____

17

product of imagination, tutoring or animosity.

→ Corroboration through medical, DNA Analysis, Resources and conspiracy was merely a rule of prudence, and not essential at such.

• Aggravating and mitigating factors while awarding death penalty -

Justice Bharamathi delineated ^{4 discords} the following:

1. The following tests and principles have evolved with the changing times -

→ Calme Test

→ Calme and residual Test

→ Rarest of Rare Test

Test to determine the award of death penalty

whether there was something uncommon about the offence that award of life sentence ^{may} be inadequate?

whether there is alternative punishment other than death penalty which can be given?

Assistant Registrar (AOR Examination) Supreme Court of India

Balancing of aggravating and mitigating factors to be considered.

2. Closure of deterrent approach in Bachan Singh case, while keeping a small window opened for award of death penalty in rarest of rare cases, while in Chandrasekhar case, concept of life imprisonment was meant to be 'life imprisonment'



The remainder of life: Further in Machhi Singh, victim centric approach was considered as:

- The punishment should act as a soothing balm to the sufferings of the victim and her family, and
- Rights of the victim should be formally acknowledged.

3. Application of 'Rarest of Rare' Test:

The rarest of rare test can be applied when -

- The society abhors such crime;
- The crime shocks the conscience of the society;
- The crime attracts intense and extreme indignation from the society.

4. Mitigating and aggravating circumstances considered:

- whether crime was committed against helpless children, women or senile/old persons.
- whether depravity of mind displayed by the offender?
- whether crime was committed in a grave and heinous manner?
- Other points -

• Young age of the accused, poor background cannot be said to be mitigating circumstances.

• Post crime remorse and post-crime good conduct of the accused, statements as to their background and family circumstances, age, absence of criminal antecedents and their good conduct in prison cannot be taken as mitigating circumstances.

• My opinion -

The judgement was the need for a substantial stand of the judiciary in not taking lenient view when accused

Assistant Registrar
CAOR Examination
Supreme Court of India

Mohit Kumar Gupta, Advocate-on-Record, Supreme Court of India

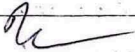


DATE _____

19

of such a nature against women was convicted. As rightly pointed out by Justice Bhaskumathi that gender justice must not only be on paper, but dignity and respect for the women is essential for our community to prosper. Some legal lacunae may have come up, which I also relate to, but may to be foregone for a larger purpose in the interest of justice in our adversarial system.

16


Assistant Reglstr. of
(AOR Examination)
Supreme Court of India

Answer No. 1 (one)

Summary of reasons stipulated in the case of Navtej Singh Johar vs. Union of India (2018) 10 SCC 1 for declaring section 377 of IPC as violative of fundamental rights provided under Article 14 and 15, 19 and 21 of the constitution

Section 377 IPC

Whoever voluntarily has carnal intercourse against the order of nature with a man, woman or animal, shall be punished with imprisonment for life or with imprisonment for a term upto 10 years, and fine.

A. The reasons provided by Justice Mishra and Khanna:

1. Constitution - Transformative, Doctrine of Progressive Realization of Rights and Doctrine of Non-Retrogression

The constitution must change with the time to realise the ideals of justice, equality, liberty and fraternity. The decision making involves a sense of engagement, constitutional morality and creative thinking for protection of fundamental rights, and state should not take steps whereby enjoyment there is retrogression of enjoyment of such rights.

2. Constitutional Morality

- constitutional morality draws over social morality
- sovereignty over body: Autonomy over is individualistic within the compartment of privacy.
- Right to union, exist for social, mental and sexual purpose.
- Dignity is part (inalienable) of one's identity.



DATE _____

21

3. Distinction between section 375 and 377 IPC.

- legislature did not add 'subject to the provisions of ...' in section 375.
- where there is proximity between heterosexuals to engage in consensual sex, there is no reason as to why the same be debarred for LGBT.

4. Decision in Somash Kohal

The decision that Article 14 seems to be applicable only for the majority, LGBT being less in population, is no more a good law.

5. Scope of Article 14 and 19 after constitution.

- Distinction between consensual sex under Section 375 and section 377 is arbitrary (manifest).
- since one's home is one's castle, right to sexual union which does not cause disturbance to public, is violative of Article 19, in as much as it prohibits right to choose sexual partner, is therefore, wholly ~~arbitrary~~ disproportionate.

Assistant Registrar
(AOR Examination)
Supreme Court of India

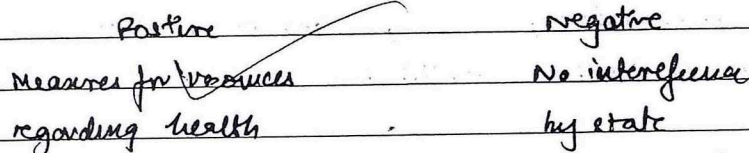
B. The reasons provided by Justice Nariman:

- LGBT engaging in sex does not create an illness as per Mental Illness Act, 1917.
- where the reason for a law goes, the law itself goes is a rule of law
- No presumption can be attached under Article 372 to pre-constitutional laws.
- The union has failed to accept the recommendations of 172 law commission report and also did not challenge High Court judgement striking down 377 IPC partly.



C. The reasons provided by Justice Chandrachud:

- Right to intimacy includes Right to sexual agency.
- Right to health is protected by Article 21 (sexual health)



- Transformative constitutionalism with the changing times as per need.
- Bentham Utilitarian theory: Right neutral behaviour giving pleasure without causing pain to others.
- Harm Principle: state can intrude by sanction if it is others' affecting.
- ~~normative~~ ~~hetero~~ ~~normative~~ framework disturbed.
- sexual privacy and autonomy - deconstructing the heteronormative framework existing.
- WHO classification does not treat 'non-peno-vaginal' sex as disease.

D. The reasons given by Justice Malhotra:

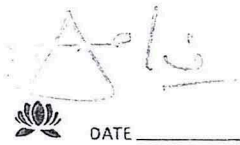
- As per the Canadian SC Judgment, discrimination on the ground of 'sexual orientation' is analogous to the grounds mentioned in Article 15(1).

Article 15(1)

The state shall not discriminate citizens only on the ground of race, sex, caste, religion or place of birth.

- section 377 IPC applicability to consenting adults is violative of Article 14, since measures for protection of children in such cases of consensual sex is provided for under POCSO Act, 2012.

Assistant Registrar
 (AOR Examinations)
 Supreme Court of India



25

25



DATE

23

- Sexual orientation is innate to a human being, and therefore, important of one's personality and identity. LGBT is entitled to sexual privacy and autonomy over their bodies. Personal liberty with partner of their choice, is being violated under Article 21 of the constitution, being forced to live life as 'unapprehended felon'.
- Right to health and access to healthcare are also crucial aspects of right to life guaranteed under Article 21 which are available to LGBT.
- LGBT has freedom to choose their sexual partner and express their sexual orientation in myriad ways, section 377 cannot be a reasonable restriction under Article 19(2) on the basis of public or societal morality, since it's inherently subjective.

• My Viewpoint:

The judgement is particularly significant, as it has stopped the realistic and continuous unguarded harassment of the LGBT community, more committed at the hands of the state, due to their open policy of moral policing. The overruling of KURESH KOUSHAL was an important milestone, as Article 14 is available for even a single individual.

Assistant Registrar
(AOR Examination)
Supreme Court of India

As our present Hon'ble CJI Mr. Chandrachud once said that 'constitution even belongs to those who do not believe in it', I see this judgement more of a win for our transformative constitution, as interpreted so by the guardian of fundamental rights in India.