

# The Crime & Justice Gazette

NEWSLETTER BY GNLU CENTRE FOR RESEARCH IN CRIMINAL JUSTICE SCIENCES

*“The duality in his persona is what makes Shankar an interesting figure — comparable almost to the Western world’s mixed perception of Ted Bundy.”.*

- Auto Shankar

*“It’s not what you know, it’s what you can prove in court”*

- Law Abiding Citizen

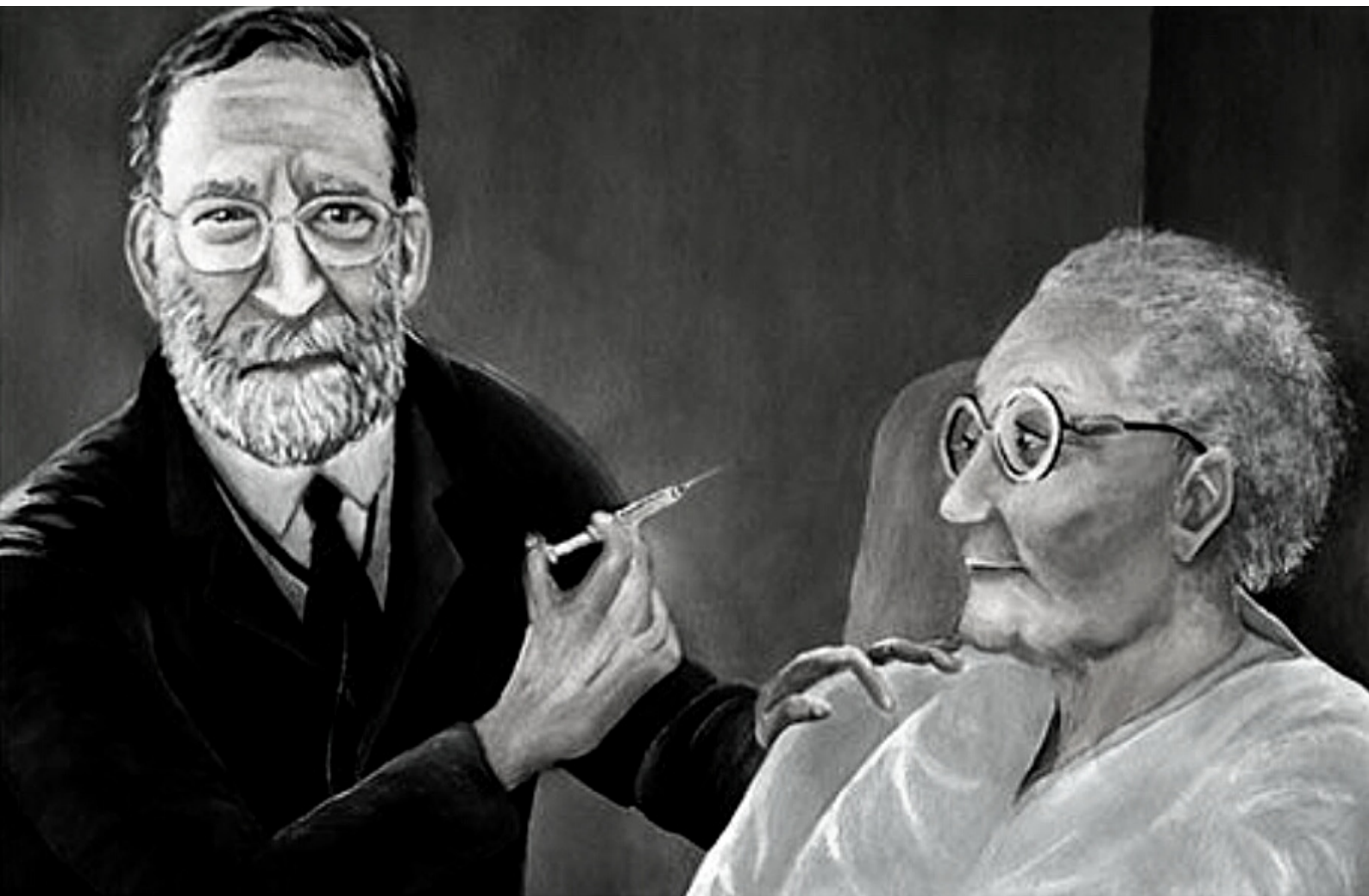


Image Source: Criminal Encyclopaedia

*“The police complain I’m boring. No mistresses, home abroad, money in Swiss banks, I’m normal. If that is boring I am.”*

- Harold Shipman, the Angel of Death

# MESSAGE FROM THE CENTRE-HEAD

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May the truth always win and good triumph over evil.

It is my utmost pleasure to write this message in the sixth edition of the Crime and Justice Gazette, a newsletter by the GNLU Centre for Research in Criminal Justice Sciences. Truth, courage & bravery, these qualities are a must for every criminal case that is to be instituted, investigated and tried.

Our Hon'ble Director Sir, Prof Dr. S. Shanthakumar, who laid the foundation of this centre, two years before, made its mandate clear that GCRCJS should bring out study, research and training in every aspect of criminal justice and the present Newsletter, is one step ahead in the same direction.

This is the result of the hard work of our student team, which has infinite zeal and never ending motivation. I wish the team every success and also hope that this newsletter will fill the gap of information in the field of criminal laws for its readers. My best wishes to the student convener (Nihal), who has made this newsletter a reality, to the editors, to every team member as contributors, and every reader, who will let us know improvements and enable further excellence in this endeavor.



Dr. Anjani Singh Tomar

# MESSAGE FROM THE TEAM

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The GNLU Centre for Research in Criminal Justice Sciences, ever since its inception, is making continuous efforts to improve the culture of Research and Analysis in the field of Criminal Law and Justice System. The Centre has seen new heights in the past three months after the new team for the Academic Year 2021-22 was constituted. In the said time, we have managed to successfully conduct one National Essay Writing Competition; a Certificate Course on Cyber Crime, Cyber Forensics and Law (in collaboration with National Forensic Sciences University, Gandhinagar and Police Academia Interactive Forum); eight sessions of “Crime & Justice: A Discourse Series” on some of the pertinent topics having great contemporary relevance; several research posts for our instagram page. The centre provides a platform for a holistic research environment and aims to further knowledge and academic discussions about the multifaceted dimensions of criminal science.

GNLU Centre for Research in Criminal Justice Sciences is committed to achieving a goal of motivating law students to do research, especially in criminal law. And, for the same here we are with the fifth edition of our newsletter 'The Crime & Justice Gazette' which aims to cover contemporary developments as well as criminal law cases and events from the past.

We would like to express our heartfelt gratitude to our Hon'ble Director Sir, Prof Dr. S. Shanthakumar, for his unwavering support, as well as our Faculty Convenor, Dr. Anjani Singh Tomar, for believing in us and encouraging us to pursue our research in every possible direction.

## Disclaimer

The authors' opinions expressed in the newsletter are their own, and neither GCRCJS nor GNLU is responsible for them. The case briefs solely summarise the current state of the cases' verdicts or orders, and do not cover anything with respect to future proceedings or appeals. The newsletter is only for internal circulation in GNLU and will be available on the GCRCJS official webpage on a later date.

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# P R E F A C E

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Criminal law is a dynamic study of law that undergoes development at every curve of dawn. This newsletter attempts to encapsulate the recent advancements in criminal law through various judgements, articles and reviews.

To begin with, the authors have presented a comprehensive study of the *Hijab Ban Judgement* and the *Chandrima Das case*. The briefs provide an in-depth examination of the judgements, as well as observations and case analysis. Several in-news case briefs on recent decisions and rulings have also been compiled in the Recent Developments section.

The newsletter elucidates on how the infamous Indian killer, Auto Shankar, peddled, transported illicit liquor, indulged in the flesh trade and gruesomely murdered people. It also features an in-depth article about the Angel of Death, Dr. Harold Shipman, who mercilessly killed his patients. We've also provided a review of the thrilling movie "Law-Abiding Citizen" starring Gerard Butler and Jamie Foxx. A brief article on the current hot topic in the news "The Hijab Row" is available for your perusal. The fun doesn't stop there; there's also a mind-boggling legal riddle for you to solve! Also, don't forget to check the answer of last issue's riddle of the month! Happy Reading!

# RECENT DEVELOPMENTS

ARMAAN ANGRA

## **Nandu Singh v. State of Madhya Pradesh, CRIMINAL APPEAL NO.285 OF 2022**

In the Supreme Court of India

*Absence of motive in a case of circumstantial evidence weighs in favour of the accused*

**Section 8 of the Indian Evidence Act, 1872; Section 201 of the Indian Penal Code, 1860; Section 302 of the Indian Penal Code, 1860.**

The appellant was tried and convicted for charges under Section 302 (murder) and Section 201 (causing disappearance of evidence) of the IPC. The trial court awarded him a life sentence on the first count and imprisonment for seven years on the second count. The High Court dismissed his appeal, and hence the appellant approached the Supreme Court.

It was submitted that the prosecution had built their entire case on the evidence of the accused 'last seen' with the deceased. Yet, in such a case based on circumstantial evidence, the prosecution failed to establish any motive on the part of the appellant to murder the deceased.

The court observed that motive assumes great significance in cases based on circumstantial evidence. While failure to establish motive alone may not lead to the discarding of the prosecution's case, at the same time, "complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused."

Further, the court relied upon Shivaji Chintappa Patil vs. State of Maharashtra,

(2021) 5 SCC 626, and asserted that though motive would not be relevant in the case of direct evidence, it plays an important link to complete the chain of circumstances in cases of circumstantial evidence.

## **Tulesh Kumar Sahu v. State of Chattisgarh, Criminal Appeal No(s). 753/2021**

In the Supreme Court of India  
*Benefit of Doubt given when the only evidence linking accused to the murder is the recovery of a stolen article*

**Section 114 of Indian Evidence Act, 1872; Section 27 of Indian Evidence Act, 1872; Section 302 of Indian Penal Code, 1860 read with Section 34 of Indian Penal Code, 1860; Section 396 of Indian Penal Code, 1860; Section 460 of Indian Penal Code, 1860**

The case originated with a dacoity which took place, and two people were found lying dead in the house the next morning. On his arrest, the appellant made a statement under Section 27 of the Evidence, which led to the recovery of a packet containing ornaments. On circumstantial evidence, the accused and six other co-accused were convicted under Section 396 (dacoity with murder) and Section 460 (house-trespass at night) of the IPC. The High Court acquitted all others except the appellant and a co-accused who were charged under Section 302 (murder) read with Section 34 (common intention) of the IPC. The decision was appealed to the Supreme Court.

The appellant argued that the only piece of evidence against him was the recovery of ornaments. Further, in the absence of any register, the evidence coming from the witnesses alleging that they had pledged certain jewellery items was extremely weak to sustain any conviction.

Therefore, taking precedence from its decisions in Ashish Jain v. Makrand Singh (2019) 3 SCC 770 & Sanwant Khan v. State of Rajasthan AIR 1956 SC 54, the Supreme Court overturned the appellant's murder conviction, finding that the

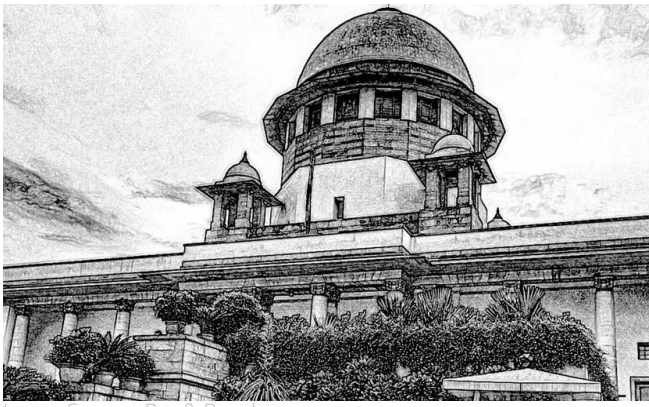


Image Source: Bar & Bench

only evidence claimed to link him to the crime was the recovery of a stolen item from him, and that no other material on record could even remotely be taken against him, rendering the evidence extremely weak.

**Gadadhar Chandra v. State of West Bengal, CRIMINAL APPEAL NO. 1661 OF 2009**

In the Supreme Court of India

*Common Intention presupposes a prior concert and prearranged plan*

**Section 34 of Indian Penal Code, 1860; Section 302 of Indian Penal Code, 1860**

The appellant, concurrently convicted under Section 302 (murder) read with Section 34 (common intention) of the IPC, contended before the Supreme Court that common intention under Section 34 was not attracted in the present case as the prosecution had failed to establish a prior concert and prearranged plan to kill the deceased. The prosecution case was that the co-accused had stabbed the deceased, and the appellant, threatening with his knife to assault a person accompanying the deceased, was also involved in the crime.

The bench drew adverse inference against the prosecution on its failure to examine two crucial eye witnesses, which made the case about the existence of a proper concert and prearranged plan extremely doubtful.

“Common intention contemplated by Section

34 of the IPC presupposes prior concert.” “It requires a prearranged plan before a man can be vicariously convicted for the criminal act of another,” the bench opined while allowing the appeal and acquitting the accused of the charges against him.

**State of MP v. Ramji Lal Sharma, CRIMINAL APPEAL NO.293 OF 2022**

In the Supreme Court of India

*Once common intention is established, it is immaterial whether accused used weapon or caused injury*

**Section 34 of Indian Penal Code, 1860; Section 302 of Indian Penal Code, 1860**

In a case of murder under Section 302 read with Section 34 (common intention) of the IPC, the trial court held all the accused guilty and sentenced them to life imprisonment. On appeal, the High Court observed certain contradictions in the ocular and medical evidence due to which the presence of the accused was doubted, and therefore acquitted the three accused on a benefit of doubt. The State challenged the High Court’s decision in an appeal to the Supreme Court.

The Supreme Court allowed the appeal and restored the Trial Court’s judgement, observing no material contradictions between the ocular and medical evidence. The prosecution could establish the presence of all the accused as well as a common intention shared by them, to the court’s satisfaction.

Notably, the court observed that “once it has been established and proved by the prosecution that all the accused came to the place of incident with a common intention to kill the deceased and, as such, they shared the common intention, in that case it is immaterial whether any of the accused who shared the common intention had used any weapon or not and/or whether any of them caused any injury to the deceased or not.”



**State of Uttar Pradesh vs Subhash @ Pappu, CRIMINAL APPEAL NO. 436 OF 2022**

In the Supreme Court of India

*Mere non-framing of a charge under Section 149 IPC on face of charges framed against the accused would not vitiate conviction in absence of any prejudice caused to them*

**Section 464 of Code of Criminal Procedure, 1973; Section 148 of Indian Penal Code, 1860; Section 149 of Indian Penal Code, 1860; Section 302 of Indian Penal Code, 1860; Section 304 of Indian Penal Code, 1860; Section 32 of Indian Evidence Act, 1872**

The Trial Court convicted the accused of murder under Section 302 read with Section 148 of the IPC (rioting, armed with a deadly weapon). On a subsequent acquittal by the High Court, the State approached the Supreme Court on an appeal.

Regarding Section 148, the court held that when the involvement of six to seven people in the commission of the crime has been established, the fact that three people were charged/tried and two of them were acquitted, cannot be a ground to acquit the accused.

Additionally, the court observed that "*the non-framing of a charge under Section 149 of the IPC would not vitiate the conviction in the absence of any prejudice caused to the accused.*" (Section 149 provides that every member of an unlawful assembly is guilty of an offence committed in the prosecution of a common object). Despite the section not being mentioned, charges can be sustained if the ingredients of the section are implicit in the charges framed.

Thus, partly allowing the appeal, the court held that while the accused cannot be convicted under Section 302 read with Section 149 of the IPC on account of the deceased dying of septicemia after a period of

thirty days, the accused shall be liable for the offence under Section 304 (culpable homicide) read with Section 149 of the IPC, along with the offence under Section 148 of the IPC.

Further, on Section 32 (dying declaration relating to cause of death) of the Indian Evidence Act, the court noted that no absolute proposition of law stipulates that a dying declaration be discarded as a whole if recorded at a time there was no emergency or danger to the life. It was also noted that merely because weapon used is not recoverable, it cannot be a ground to not rely upon the dying declaration.

**Narendra Singh @ Mukesh @ Bhura v. State of Rajasthan SLP (Crl) No. 7830 of 2021**

In the Supreme Court of India

*Trial Court does not have the jurisdiction to sentence an accused with life imprisonment extending to the remainder of their life, thereby curtailing the convict's right to seek remission*

**Section 302 of Indian Penal Code, 1860**

The accused attempted to flee from the Central Jail, Jodhpur, after attacking and killing the jailor. He was serving life imprisonment in another case. On a production warrant procured from the CJM, Jodhpur, the accused was arrested. Thereafter, he was tried under Section 302 (murder), and the Trial Court convicted and sentenced him to life imprisonment extending to the remainder of his natural life. This indicates that the sentence had no scope for remission.

The High Court dismissed the appeal as it "*did not suffer from any infirmity or error, factual or legal, warranting interference.*" The decision was thus challenged before the Supreme Court.

The court relied on the Constitution Bench Judgement of *Union of India v. V. Sriharan @ Muruganand Others 2016 (7) SCC 1* which held that "*the power to impose a modified punishment*

*providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court,”*

Reiterating the aforementioned principle, the Supreme Court modified the sentence from life imprisonment extending to the remainder of life to imprisonment for life.

### **Vijay Kumar Ghai v. State of West Bengal, CrA 463 OF 2022**

In the Supreme Court of India

*Mere Breach of Contract cannot give rise to criminal prosecution for cheating  
A second FIR based on information concerning the same or connected cognizable offence amounts to abuse of the statutory power of investigation.*

**Section 120B of Indian Penal Code, 1860;  
**Section 406 of Indian Penal Code, 1860;  
**Section 415 of Indian Penal Code, 1860;  
**Section 420 of Indian Penal Code, 1860;  
**Section 154 of Code of Criminal Procedure 1973;  
**Section 200 of Code of Criminal Procedure, 1973;  
**Section 68 of Companies Act, 2013**************

A Memorandum of Understanding was entered into on the complainant's investment of Rs 2.5 crores in lieu of which the appellant issued 2.5 lakh equity shares. Alleging a breach of contract, three complaints were filed. The first was a private complaint filed with the CJM of Tis Hazari Court in Delhi under Section 156(3) of the CrPC, which was withdrawn. The second is an ongoing complaint filed before the CMM, Tis Hazari Courts in Delhi under Section 68 of the Companies Act and Section 200 of the CrPC. Third, a complaint was filed with the P.S. Bowbazar, Central Division, Kolkata, eventually recorded as FIR No. 168 under Sections 406, 420, and 120B IPC.

The appellant approached the Calcutta High Court challenging the FIR registered in Kolkata, but the petition was dismissed. Hence, an appeal was filed with the Supreme Court.

The appellant contended that the transaction in question was merely a commercial transaction, and that the appellants possessed no dishonest or fraudulent intentions. Hence, no question of cheating arose.

The court referred to *Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr. (2000) 4 SCC 168* and observed regarding Sections 415 & 420 IPC that a mere breach of contract in itself is not a criminal offence, and fraudulent or dishonest intention forms the basis of the criminal offence of cheating.

Further, in order to attract the ingredients of Section 406, 420 IPC, a prima facie intention to cheat and/or defraud must be established, in addition to a prima facie wrongful loss to the complainant and a wrongful gain to the accused.

Furthermore, it was observed that once an FIR has been recorded, information concerning the same or connected cognisable offence or the same occurrence or incident cannot form the basis for a second FIR. Barring situations in which a counter case is filed, such a subsequent FIR constitutes an “abuse of the statutory power of investigation.”

### **Sukhdev Singh v. State of Punjab, CrA 1004 of 2016**

In the Supreme Court of India

*Physical Nature of material not relevant to determine whether it is opium or not*

**Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985**

The case was an appeal filed before the Supreme Court against an order of the Punjab and Haryana High Court. Earlier, the High Court

had dismissed the appeal and upheld the Session Judge's decision.

One contention raised by the accused was that the Chief Examiner's report indicated the tested material to be in a powdered (*chura*) form while opium is generally a sticky material. The State responded that the NDPS Act does not stipulate that opium necessarily be in the form of a sticky material.

*"The physical nature of the material is not relevant for determining whether the contents of the sample analyzed were actually opium or not, and physical analysis is not prescribed under the provisions of the NDPS Act for testing the opium,"* observed the Bench while disposing the appeal and confirming the conviction of the accused.

## HIJAB BAN JUDGMENT

A Case Comment by:  
BHANUPRATAP SINGH RATHORE  
and  
ANYA DENISE ARANHA

In the High Court of Karnataka

Criminal Original Jurisdiction

Petitioner: Muslim Girl Students

Versus

Respondent: State of Karnataka, Respondent  
College and Teachers

Bench - (3) Chief Justice Ritu Raj Awasthi,  
Justice Krishna S Dixit and Justice JM Khazi

Number of Opinions - 1

Nature - Unanimous

Date of Judgement - March 15, 2022

Case Status - Disposed and Not Overruled

## INTRODUCTION

A three judge bench of the Karnataka High Court gave its verdict on the hijab controversy, a topic to talk about given its religious angle. At the heart of this controversy lay the question of whether the hijab is considered an essential religious practice and whether the State is warranted to interfere in such matters. Another aspect of the hijab controversy was whether the wearing of hijab is to be considered as a right to expression under Article 19(1)(a) of the Indian Constitution and whether its usage could be restricted under Article 19(2) only. During the course of the 11-day court proceedings, Articles 14, 15, 19, 21 and 25 were invoked. Let us see what the judgement has to say.

## FACTS OF THE CASE

The controversy began when hijab clad Muslim girls were denied entry to a Government PU College, Udupi, Karnataka because of their hijabs. They protested against being denied entry into their respective colleges and alleged that the hijab had a religious and cultural significance.

## ARGUMENTS

Petitioners -

The petitioners argued that wearing a hijab was an essential religious practice of Islam and not allowing girls to wear the same in educational institutions would violate their fundamental rights enshrined under Articles 19 and 25 of the Indian Constitution. They said that the state could not claim that hijab was not an essential practice as it was nationally practised - even to an extent where Kendriya Vidyalaya schools allow it. They relied heavily on a South African judgement namely, *KwaZulu-Natal and Others v. Pillay*, which held that a South Indian girl from the Hindu community had the right to wear a nose ring to school. They also brought up the question of whether a Turban wearing man could be a part of the army if a hijab-clad girl could not

be allowed in a school (LiveLaw).

Respondents -

State:

The State argued that wearing a hijab does not fall under an essential religious practice in Islam. It also argued that there does not exist a right to wear a hijab under Article 19(1)(a). Another point of its argument was that the February 5th Government Order that empowers the College Development Committees (CDCs) to enforce uniforms is in line with the Education Act, 1983. The State relied on the judgments of Navtej Singh Johar and Sabarimala.

College and Teachers:

The college and teachers claimed wearing uniforms was crucial to maintaining public order and discipline. They alleged that if Muslim girls were permitted to wear hijabs then it would take away the constitutional spirit of secularism.

## REBUTTAL ARGUMENTS

The advocate for the petitioners rebutted the respondents' arguments saying that hijab-clad girls would be denied the right to education if they are not allowed to wear hijabs. He also said that “*Constitutional morality is pro-choice. It is a restriction on state power*”, while relying on the fact that the cases of Navtej Singh Johar and Sabarimala were ‘pro-choice’.

There were four questions before the High Court. These were:

1. Does the Hijab or the veil falls under the purview of essential religious practice, under the basic tenets of Islam, protected by Article 25 of the Indian Constitution?
2. Does recommendation of uniform for school students amounts to infringement of rights under Articles, 19(1)(a), (i.e., freedom of expression) and 21, (i.e., privacy) of the



Image Source: Deccan Herald

Constitution?

3. Whether the 5th February Order of the Karnataka Government (prohibiting students from wearing attire that may create “law and order situation and startle public peace and harmony”) violates Articles 14 and 15 of the Constitution, other than being unjustifiable and clearly irrational?

4. Could a case be proved against the college administration to be subjected to a disciplinary investigation?

Following is the reasoning of the court on these four issues:

1. The High Court stated that ‘secularism’ is a fundamental element of the Indian Constitution and that India embraces a “*positive secularism approach*.” It then referred to the Sabarimala case's verdict, which established the test of “*Essential Religious Practice*.” The Court banked on Indian-British lawyer and legal expert Abdullah Yusuf Ali's “*The Holy Quran: Text, Translation, and Commentary*” to determine whether wearing the *Hijab* is an “*essential religious practice*” in Islam. The court started its assessment by emphasising that the ‘*Quran*’ specifically forbids religious compulsion. Multiple excerpts from Ali's work lead to the conclusion that wearing the headscarf is only recommendatory in Islam. The court came to the final interpretation that *Hijab* is not an essential religious practice under tenets of Islam.

2. The court upheld the government's authority to enact a uniform policy on students by underlining the importance of uniforms in schools. It pointed out that the Supreme Court has defined 'education' to encompass 'curricula.' The court went on to say that, the term 'curricula' in Section 7(2) of the Karnataka Education Act should be interpreted widely to comprise the authority to enforce dress code. As per the court, the reduced character of student's liberties is due to the fact that in "qualified public spaces," like schools, individual liberty is, "as a matter of necessity" constrained on grounds of "discipline, decorum, and the function and purpose of schools." The court viewed the provision of a school dress code as a fair and constitutionally valid constraint.

3. By emphasising that Section 133(2) of the Karnataka Education Act authorises the government to provide any directives to lend legitimacy to the Act's objectives, the court asserted the power of the government to circulate the assailed order. The ambit of section 133(2) entails the right to specify a uniform dress policy for schools, as Rule 11 of the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula etc.) Rules, 1995 stipulates for the administration of dress code for schools.

4. The court rejected the claim for disciplinary proceedings against the college authorities because; their actions were done in order to enforce school rules and the uniform dress.

### CASE COMMENT

There has been apparent dissent about the hijab judgement, with Muslim girls boycotting their board exams and classes. While some argue that every student should be in uniform to ensure equality, others reiterate that the hijab has always been part and parcel of a Muslim girl's attire and that the interference with the hijab is unwarranted. Considering that India has been a melting pot of diversity and plurality, this judgement fails to reflect some constitutional tenets like the freedom of

speech and expression and the right to privacy. It can be argued that the hijab, a uniform accessory that has been worn by Muslim women worldwide for many years, does not come in the way of one attaining an education. The judgement also fails to consider the consequences of a hijab ban in educational institutions - indirect discrimination against Muslim students and perhaps a denial of education to those students whose families will not send them to school without a hijab. This stormy debate has seen the Karnataka High Court's judgement being appealed in the Supreme Court. It remains to be seen what the Supreme Court will decide but needless to say; the hijab controversy is far from over.

## **CHAIRMAN, RAILWAY BOARD AND ORS. V. CHANDRIMA DAS AND ORS.**

A Case Comment by: NIHAL DEO

In the Supreme Court of India

Civil Appeal No. 639 of 2000

Bench: S. Saghir Ahmad and R.P. Sethi, JJ.

Number of Opinions: 1

Nature: Unanimous

Decided on 28 January 2000

The Chandrima Das judgment is one such judgment wherein the Court took a strong stand against rape incidents, regardless of nationality, race, religion etc. This case is relevant as it emphasized on the responsibility of the State to protect the dignity of every individual in its territories and pushed to introduce certain institutional reforms.



Image Source: Indiqn Law Portal

## FACTS

Hanufa Khatun, a Bangladeshi citizen, reached Kolkata on 24 February 1998 and stayed in a Hotel for two days. She had to catch a train to Ajmer Sharif, for which she reached Howrah Railway Station on 26 February in the afternoon. While she was waiting in the waiting room at the station on the instruction of a Ticket Examiner (since she was not having a confirmed ticket), two men approached her claiming to get her ticket confirmed. Later, one of them (Siya Ram Singh) returned with a reservation, post which she had dinner but vomited. She was taken to Yatri Nivas (Guest House of Railways) with the other man (Ashoke) and one more person with him (Rafi Ahmed).

She was taken to her room but on the way, three more men joined. She was brutally raped by them in the room. When she recovered, she ran back to the platform where she saw Ashoke narrating the story to Siya Ram. Siya Ram slapped and abused Ashoke for his deeds. Since Hanufa had missed her train, Siya Ram informed her that there is a train in the morning and took her to his house saying that he has his wife who would take care of her. However, he lied and raped Hanufa in his house. The Landlord informed the Police when hues and cries of Hanufa were heard.

## PETITION IN HIGH COURT

Chandrima Das, an advocate practicing in Calcutta High Court filed a writ petition

against Union of India and Railway Board for compensation. The High Court ordered for a compensation of 10,00,000 INR to be paid by Union of India and Railway Board, since rape was committed by Government employees and in the premises of the Government.

## APPEAL IN SUPREME COURT

Issues:

1. Whether Chandrima Das, the advocate who filed the petition, has locus standi to file the said petition, as she was not connected or related to the victim or the offence in any manner?
2. Whether remedy exists under Public Law for the offence committed against Ms. Hanufa and was High Court correct in granting compensation under Article 226 of the Consitution (Public Law)?
3. Whether the Fundamental Rights were available for Ms. Hanufa, since she was not a citizen of India?
4. Whether there exists liability on the Central Government and Railway Board for an offence of Rape committed by employees of the Railways?

## APPEAL IN SUPREME COURT

1. The Court observed that locus standi is now given a wider meaning. The people who think in the interest of Public at large cannot be ignored by the Court for the want of their own interest being involved. Since the relief that the Respondent/Petitioner seeks is related to public interest as well, the Court held that there was locus standi.
2. On the question of Public Law vs. Private Law, the Court referred to various judgments, including *Common Cause Society v. Union of India*, where it was observed that “Under Public Law, it is the dispute between the citizen or a group of citizens on the one hand and the State or other public bodies on the other, which is resolved. This is done to maintain the rule of law and to prevent the State or the public bodies



from acting in an arbitrary manner or in violation of that rule.” The Court stated that the Question whether Public Law or Private Law shall be applicable should be answered on a case-to-case basis. The Court held that though in the present case, the Victim could have approached a Civil Court to claim damages; it does not bar her from the remedy available under Art. 226 (Public Law) since her fundamental rights under Article 21 are violated.

3. The Court rejected the argument of the Government that the Government owes no duty towards foreign nationals and that Fundamental Rights are not available to them. The Court observed that some Fundamental Rights are available to citizens but some are available to all persons, regardless of the nationality. When a woman is Raped, her Right to life and dignity under Art. 21 of the Indian Constitution gets violated and the said Article is for all “persons” and not just citizens.

4. The Court relied on the Doctrine of Vicarious Liability to hold the Government and Railway Board liable to pay compensation. The Court refused to entertain the argument that running of Railways is a commercial activity and not the act of the “State”. Since the Government employees committed the offence while on duty, the Government was held liable.

### COMMENT

The decision given by the Court is very crucial since it not only recognizes the necessity that the Governments and other machineries have in creating a safe and secure environment for women, but also establishes that even the Government cannot get away with the liability for the offences committed by its employees. It also sets a good precedent with regard to protection of life and liberty of an individual, regardless of the nationality. The Court also adopted a liberal approach in construing the locus standi and the ambit of Art. 226 of the Constitution while dealing with serious

matters such as Rape.

## THE RISE AND FALL OF AUTO SHANKAR

MARISHA DUBE

On a scorching summer day in July 1988, Madras awoke to see Auto Shankar on the news headlines. The public’s reaction was one of shock, disgust and terror, and justifiably so, for the narrations of skeletons tumbling out of his closet with a lot of flesh still attached to them (quite literally), recounted a story of filth, debauchery, and violence.

Gowri Shankar, later known as 'Auto' Shankar, was a Tamil Nadu-based Indian criminal, serial killer and gangster, active in Chennai during the 1970s and 1980s. He was born near Vellore in Kangeyanallur. His father abandoned his family when he was a child and moved to Odisha. Shankar relocated to Chennai in the early 1970s, initially living in a slum in Mylapore and then in the fast-developing suburb of Thiruvanmiyur on the fringes of South Chennai.

Shankar was married to multiple women. Early in his career as one of Chennai’s most infamous and dreaded criminals, he married Jagadeeswari and had four children with her. His second marriage was with one Geeta Sundari, a girl who used to work in one of the brothels run by Shankar. However, this marriage met a fateful end as she burned herself to death after failing to persuade him to change his unlawful ways. Lalitha, his third wife, was a performer at a cabaret club that he frequented.



Image Source: Samayam Tamil

Shankar entered the dingy dungeons of the underworld through the peddling and transportation of illicit liquor. This was a time when liquor prohibition was in force and Shankar would ply his 'auto' through the dark alleyways, transporting the liquor to the heartland of Madras. It was during this time that Auto Shankar realized how the flesh trade involved more money and had lesser associated risks.

The flesh trade was thriving in Mahabalipuram and Shankar quickly learned the intricacies of the trade and established his own business. He ran two brothels in the Thiruvanmiyur area, one from a lodge on LB Road and the other near Periyar Nagar huts. The women needed to be transported from the city to the coastal vacation town, and he ferried them there through his auto rickshaw. Slowly, but steadily, his business grew as his clientele expanded to include police officers and powerful politicians.

However, Shankar's rise to power also resulted in a rise in his lawlessness and ended up in a series of heinous crimes that ultimately took him to the gallows.

His gang had become so ruthless that they killed three people in a brawl over his business. The victims' bodies were later recovered by the police from the walls in which they had been sealed off.

This macabre chain of events continued as Shankar's paramour and third wife, Lalitha, eloped with his friend Sudalaimuthu. An enraged Shankar plotted his vengeance by feigning reconciliation with the two through common friends. He invited Lalitha to one of his houses in Periyar Nagar one night in October 1987, then killed and buried her. The residence was subsequently rented for Rs. 150 to an elderly widow.

Shankar later informed his friend Sudalaimuthu, who, unbeknownst to him, was going to be Shankar's next victim, that Lalitha was on an all-India tour with a VIP and invited him to supper two months later.

Unaware of his intentions, Sudalaimuthu drank with Shankar, who after intoxicating Sudalai, strangled him, burnt his body, and threw his ashes away into the Bay of Bengal, a method of extermination that he allegedly used on nine young girls who mysteriously vanished from their homes in 1988, prompting the police to investigate a possible serial killer. The truth about those females was never revealed, although Shankar confessed soon before his death that the girls were kidnapped to fulfil the perverse demands of some senior politicians, the identities of whom remain unknown to date. By the time the law caught up with him, Shankar had built a house in Periyar Nagar to live with his wife and sons and was surrounded by a powerful gang. He had videotaped his housewarming ceremony, which was seen to be attended by several police officers and politicians.

Shankar confessed to the murders and the other three murders when he was ultimately apprehended and probed. However, much to the dismay of the jail authorities, Shankar and his five accomplices managed to flee from prison on August 20, 1990. The Chengalpattu Sessions Court heard Shankar's case. On May 31, 1991, he and two of his friends, Eldin and Shivaji, were convicted for six murders and condemned to death. In 1995, Auto Shankar was hanged in Salem Central Prison.

The rise and fall of Auto Shankar has been the subject of a documentary television series aired on Makkal TV and a web – series on ZEE5. "However, in many ways, his narrative has not been told in its whole. We still don't know, and may never know, about the powerful politicians tied to him," prominent journalist Babu Jayakumar says, adding cynically, "Perhaps he would have been a minister if he were still alive."

## HAROLD SHIPMAN: THE ANGEL OF DEATH

NIYUSHA BHESANIA



*“I didn’t kill anyone and that will be the statement until I die.”*

Shipman was born in Nottingham in 1946, he studied medicine at Leeds School of Medicine before beginning his career as a general practitioner (GP) in 1974 at the Abraham Ormerod Medical Centre in Todmorden. However, he was thrown out of his practice and into drug rehabilitation in 1975 after it was revealed that he had written numerous false prescriptions for the opiate pethidine, to which he had become addicted. Shipman began working as a general practitioner in the Greater Manchester borough of Hyde in 1977, where he gradually acquired a reputation and established a profitable business.

In 1998, one of his patients, an 81-year-old woman, was found dead in her home just hours after Shipman had visited her.

The daughter of the lady was informed by a solicitor that an inauthentic-looking will had been made seemingly by her mother, excluding her and her children but leaving £386,000 to Shipman. The daughter reported Shipman to the police, who opened up an investigation and found traces of heroin (diamorphine), often used to treat terminal cancer patients, in the patient's body. In fact, the forensic scientist said that the death of the old lady was consistent with the use or administration of a significant quantity of morphine or diamorphine and similar values have been seen in fatalities attributed to morphine overdoses. Moreover, in the given situation, Shipman had desired

that no autopsy be performed. Shipman asserted that the old lady was addicted to a drug like codeine, morphine or heroin and pointed to his GP notes as evidence, however, police found that the comments had been written on his computer after her death, as well as on a typewriter that could be used to make the forged will.

He was arrested on 7th September 1998. Police managed to investigate and certify 15 other cases, where Shipman had administered lethal doses of diamorphine, falsely registered the patients' deaths, and edited their medical history to show that they were deathly ill.

He was sentenced to life in prison in 2000 after being convicted on 15 charges of murder and one count of forgery. Shipman killed himself in jail by hanging himself in his cell. A federal investigation was launched to investigate how many more patients Shipman may have murdered; an official report released in 2005 revealed that he had killed an estimated 250 individuals since 1971.

For most instances, Shipman administered a deadly dosage of the painkiller diamorphine to the victim before signing a death certificate attributing the occurrence to natural causes. His motivations were unknown; some suspected that he was seeking vengeance for his mother's death, while others speculated that he thought he was conducting euthanasia, eliminating from the population aging individuals who would otherwise have been a burden on the health-care system. A third theory was that he took pleasure in knowing that, as a doctor, he possessed the power of life and death over his patients, and that murdering was the way by which he exercised this authority.

Despite his fabrication of one of his victims' wills, money gain does not appear to have been a significant motivator. The mystery of why he killed hovers over his death. A lot of explanations have been proposed to understand why Shipman considered the need to kill; some believe he was vengeful for his mother's death.



Image Source: BBC

On the other hand, it was believed that he had injected the elderly with diamorphine as a mistaken act of charity. Others believe the doctor had a God Complex and simply needed to prove that he could take as well as preserve life.

## MOVIE REVIEW: LAW ABIDING CITIZEN

VAIBHAV KESARWANI

“Law Abiding Citizen” is a taut thriller about a serial killer in reverse where director F. Gary Gray has shown a different turn of emotions and events as the trial of Clyde Shelton (Gerard Butler) goes on. He’s already in jail when he executes all but one of his several killings, and he spends most of that time in solitary confinement. As a result, the plot takes the form of a locked-room mystery: How does he plan such complex assassinations? Is he working with someone beyond the walls? The speculations are endless.

The movie starts with a painful scene where Clyde Shelton’s (Gerard Butler) wife and his daughter are brutally killed by thugs who enter their home. Although the murderers are caught, the Philadelphia prosecutor, Nick Rice (Jamie Foxx), can only collect circumstantial evidence due to improper procedure. Without informing Shelton (the victim), he signs a plea bargain deal with the killer in return for testifying against the second, ultimately leading to the central criminal walking away with a lighter sentence. Here, Shelton comes face to face with the reality of how the justice system is plagued and feels dejected because of the useless and corrupt justice system and takes up his hand to reform the system. Clyde is preparing a strategy to punish the wrongdoers and the judges and prosecutors

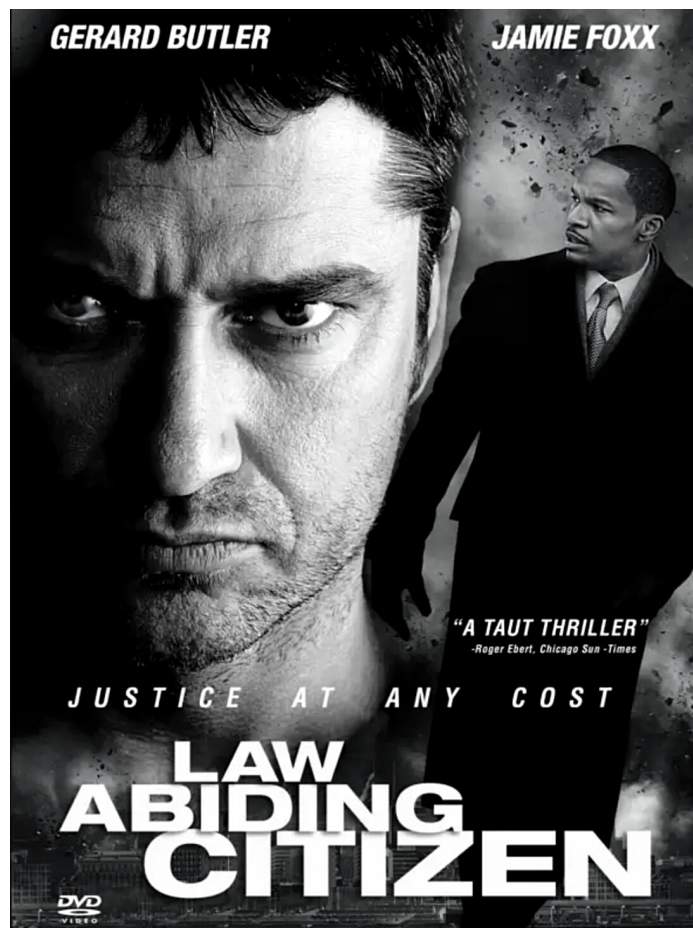


Image Source: Flipkart

who allowed the deal to go through. Is Nick able to decipher Clyde’s terrible scheme before his own life is taken in the name of justice? This is the central theme of the film.

I won’t elaborate on what transpires subsequently other than to point out that Clyde’s first murder involves infiltrating the Death Row execution chamber itself — and this is before he’s even been imprisoned. He’s arrested later on suspicion and further shifted to solitary confinement because he killed a co-prisoner, which later becomes part of his plan.

Law Abiding Citizens shifts itself from failed justice and dispirited citizen’s hopes movie towards a torture death movie but with a glimpse of a socially critical message that the “Justice system should be reformed”. Gray, through this movie, sends home a message that when the system fails to provide justice to its innocent and law-abiding citizens, and when the ordinary person takes the devil’s path to rectify the faults in the system, the results could be catastrophic. Law Abiding Citizen works nicely as a new-millennium spin on films like “Death

Wish” or “Taxi Driver” when it sticks to the straightforward physical intensity of the action. Clyde’s manipulations are only a step away from the four-colour outrageousness of a graphic novel evil mastermind. Gray constructs Kurt Wimmer’s script’s bits and pieces with excellent aesthetics. Still, he stumbles when attempting to combine the action sequences with a narrative that sounds plausible or doesn’t push the boundaries of believability.

Talking about the characters, Foxx and Butler form a perfect couple in their gloomy drive. Colm Meaney is underutilised as Nick’s police colleague; given the “Law of Economy of Characters,” we believe he’s the accomplice, but possibly he has a different function to play. With Regina Hall as Nick’s wife, Annie Corley as the judge who has some twists in her courtroom, and the formidable Viola Davis as the city’s mayor, Leslie Bibb works well as Nick’s prosecution colleague.

The movie puts us on the edge of our seats, trying to figure out what Clyde may do next and Nick’s response. However, it sends the wrong message by persuading us that a bereaved, furious father and spouse, ten years after the crime, is justified in committing the same atrocities he committed in his own life.

Director F. Gary Gray presents an intriguing moral dilemma that allows you to follow its joint antagonist down a rabbit hole of murder and mayhem while nearly sympathising with him. The excellent performance by Gerard Butler adds more depth to his character and keeps the audience hooked till the very end.

The movie is entertaining to its very core and raises a serious issue. It directly hits the loopholes of the justice delivery system and shows how these loopholes disturbingly affect the ordinary citizens of the society who are looking for justice.

Overall the movie can generate considerable

suspense and a sense of dread and thus can be an excellent pick for the thrill-seekers who want to see society from the victim’s viewpoint.

## RIDDLE OF THE MONTH

Collated by: ADITYA DALAL

On the first day of the school year, a chemistry teacher was murdered. The police had 4 suspects: the janitor, the economics teacher, the sports teacher, and the school principal. They all had alibis:

The janitor was cleaning the toilet.

The economics teacher was taking a mid-semester test.

The sports teacher was inducting a new football team.

The school principal was addressing a conference on a Google Meet.

Who was the murderer?

## ANSWER

RIDDLE OF THE MONTH  
(ISSUE 5)

Anish and Sahil went on a trip to Thailand. But only Sahil came back. He revealed that Anish had died due to an unfortunate accident. The police authorities filed an FIR against him saying that “We took a statement from your travel agent. He said you might have murdered Anish.”

How did the travel agent know that it was a murder?

Answer: Because Sahil had booked a round-trip ticket for himself and only a one-way ticket for Anish.



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