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ADMINISTRATIVE ROLE OF CJI IN CONFLICT WITH ADMINISTRATION OF JUSTICE: AN ANALYSIS

Kashish Makkar[*]

Abstract

The January 12th, 2018 press conference by the four senior-most judges of the Supreme Court has highlighted the extent of arbitrariness in the exercise of administrative powers vested in the CJI. One of the major criticisms that has been levelled is the discretionary nature of the administrative powers vested in the CJI's office. This criticism is especially significant given the administrative side of the Supreme Court can, to a very large extent, determine the judicial side of the Supreme Court. In this paper the administrative powers, specifically the power of constitution of benches, conferred on the CJI which can potentially conflict with the administration of Justice in the apex court have been studied. The powers vested on the CJI have been tested on the mantle of discretion available to the CJI in such exercise. Such a test is important because it is this discretion which provides a room for arbitrariness. And, it is this arbitrariness which is necessarily violative of Article 14 as was laid down in Royappa. *The recent order of the SC reaffirming the CJI's power as the master of roster has been taken as a case in point for the analysis of this arbitrariness. The author has also suggested a sui generis solution to the problem of this arbitrariness. The solution necessarily comes from within the judicial system, whereby the bench constituting power of the CJI is termed as an administrative power and is thus made subject to Part 3 of the constitution. In such a situation, the public can seek recourse to an arbitrary exercise of powers via a writ petition. Moreover, in order to*

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provide a rider on the discretion, a suggestion to include two other senior-most judges in the constitution of benches has been examined. This could be similar to the collegium system. However, this has been suggested just as a safeguard, the real protection can only come via the challenge through writ petition of this administrative power in cases of an arbitrary exercise of the same.

1. **Introduction**

The recent tussle between Chief Justice Dipak Misra and Justice Chelameshwar, and the mud-slinging that ensued brought to light the extent of judicial impropriety at the apex court. While this polemic has made the public sceptical of the integrity of the apex court, at the same time there has been increased scrutiny from all quarters over the functioning of the Supreme Court. One of the major criticisms that the Supreme Court has been subject to is the vesting of the widely discretionary administrative powers in the hands of the CJI. The powers for administration of the SC are increasingly significant in a court that is dealing with hundreds of cases on a daily basis.

This is especially significant given that the administrative side of the Supreme Court can to a very large extent determine the judicial side of the Supreme Court. For instance, particular cases of significance for the government in power can be allocated by the chief justice to judges who have been trained in specific schools of jurisprudence to obtain favorable outcomes. Such an allocation can be done for appeasement of the government which determines the appointment of these judges in various commissions of enquiry, tribunals etc. or other vested interests. This is the classic case of how administrative powers can get into the way of administration of justice.

Therefore, it is evident that the discretionary nature of these powers can give rise to issues like arbitrariness in allocation. As A.V. Dicey said, "*Wherever there is discretion, there is room for arbitrariness*". Simply put, the vesting of powers must not be susceptible to the vice of arbitrariness, which is also the crux of Article 14 and is basic to rule of law. Hence, if the exercise of powers by the CJI is subject to arbitrariness, it would not be far-fetched to say that it is antithetical to Rule of Law and Art. 14 of the constitution.

This paper aims to study the administrative powers conferred on the CJI which can potentially conflict with the administration of Justice in the apex court. The paper examines the exercise of these powers vis-à-vis the principles of Rule of Law and doctrine of arbitrariness under Art. 14 of the constitution. The most significant among these administrative powers is that of constitution of benches for hearing of cases. This power has been discussed in specific detail. A possible provision to deal with this problem has also been discussed in length at the end of the paper. The researcher has used a combination of descriptive and analytical approach. Mostly, non-empirical tools have been used for data collection. However, personal observation has helped the researcher.. The Bluebook guide to legal citation, (19th edn.) has been followed throughout the paper.

2. **Non-Comparative Arbitrariness & Article 14**

The doctrine of arbitrariness under article 14 of the constitution has two facets. The first facet deals with the application of the principle of 'arbitrariness' to any form of 'equality' analysis under article 14. The doctrine lies at the heart of 'reasonable classification' test used to determine the rationale behind

discrimination.[1] This facet of the doctrine deals with classification or discriminatory treatment vis-à-vis others under Article 14. Therefore, this is more often than not termed as comparative unreasonableness.

The second facet takes into account cases where no standard for comparative evaluation is available. This is along the lines of the Wednesbury Principle, i.e., A reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it.[2] Its Indian counterpart was *Sharma Transport* v. *State of A.P.*,

> *" The expression 'arbitrarily' means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."*[3]

Therefore, while the first facet of the doctrine of arbitrariness is conditional upon some comparatively differential treatment between two persons or two classes of persons, the arbitrariness doctrine is not limited to that. The second facet increases the scope of the doctrine far beyond analysis relating to equality. Due to the introduction of the second facet, the doctrine can now be invoked for any sufficiently serious failure to base an action on good reasons. Under this approach to constitutional adjudication, one need not allege any discrimination vis-a-vis others. Therefore, it has enormously widened the scope of the application of article 14 to include unreasonable & discretionary public actions.

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1 Shri Ram Krishan Dalmia v. Shri Justice S.R. Tendolkar, 1958 AIR 538.

2 Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223.

3 Sharma Transport v. State of A.P. AIR 2002 SC 322.

The notion of doctrine of arbitrariness in relation to irrationality and unreasonableness and therefore, violative of article 14 was first developed in *E.P. Royappa* v. *State of Tamil Nadu,* wherein it was observed:

> *"Equality is a dynamic concept with many aspects and it cannot be 'cribbed, cabined and confined' within the traditional and doctrinaire limits. From the positivistic point of view equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies.... Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14"*[4]

The employment of the unreasonable, irrational and discretionary exercise of powers as yardstick in deciding upon the arbitrariness of administrative actions was discussed in *Om Kumar* v. *Union of India.* This marks the beginning of the using of non-comparative arbitrariness as a facet of Art. 14. The following was discussed:

> *"[W]here, an administrative action is challenged as 'arbitrary' under Article 14 on the basis of* Royappa, *the question will be whether the administrative order is 'rational' or 'reasonable' and the test then is the Wednesbury test. The Courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary."*[5]

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4 E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3, 38.

5 Om Kumar v. Union of India, (2001) 2 SCC 386.

This was followed in *Shrilekha Vidyarthi* v. *State of U.P.*[6] In the instant case the state government had passed an order which in effect removed all the existing district government counsel for appointing fresh ones in their place. The court held that even though the appointments of the counsel were contractual they have to be governed by the requisites of reasonableness and non-arbitrariness inherent in article 14 and the principle of the rule of law. It went on to observe:

> *"The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary"*

Therefore, article 14 of the constitution has been interpreted to be wide enough to include any discretionary, unreasonable or irrational exercise of power by any public authority.

3. **Administrative Powers of the CJI: An analysis**

The Chief Justice of India with respect to other justices of the Supreme Court is *Primus inter Pares,* i.e., first amongst equals.[7]

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6 Shrilekha Vidyarthi v. State of U.P. 1991 AIR 537.

7 Kamini Jaiswal v. Union of India & ors., Writ Petition [criminal] no.176 of 2017, [Supreme Court of India].

However, his role on the administrative side makes his stature higher than other justices. This is even more relevant given the effect of administrative powers on the judicial functions. The array of powers enjoyed by the CJI is very wide in nature. These powers are vested by virtue of constitutional provisions, Supreme Court rules and conventions.

In order to analyse the discretion enjoyed by the CJI in terms of these powers, it is imperative to analyse these powers in the first place.

3.1 Administrative powers vested under the constitution

There is plethora of administrative powers vested on the CJI by the constitution itself. Therefore, it cannot be denied that the heightened stature of the CJI is guaranteed in the constitution itself. Some of the powers vested on the CJI are directly related to maintaining the functioning of the SC by ensuring adequate strength of the judges in the SC. For instance, Article 127 gives the CJI power to appoint ad hoc Supreme Court judges. Similarly, Article 128 confers the power on the CJI to appoint retired SC judges to act as the judge of the court. Both of these powers require the prior consent of the president,[8] therefore, these powers cannot be termed discretionary. Even if there is any irrational discretion it would be ruled out on account of prior consent of the president.

Special administrative powers under Articles 257, 258, and 290 have also been vested with the CJI. These powers give the CJI the ability to appoint arbitrators to resolve certain financial disputes

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8 IND. CONST., Art. 127,128.

between the centre and the states.[9] Since, these appointments have mostly nothing to do with the functioning of the judiciary in the SC, an analysis about their nature is beyond the scope of this paper.

There is a wide gamut of other powers too, for instance under Article 130 the CJI with the president's approval can change the seat of the SC to be outside of Delhi.[10] Another significant power that is vested in the CJI is under Article 146. This article gives the CJI powers to appoint officers and servants of the Court. In fact it vests the power to frame rules regarding their appointment in the hands of the CJI.[11] While the former has not been exercised ever, the fact that it requires Presidential consent again rules out discretion. The latter power can be termed to be discretionary. However, in light of the domain of the latter power not conflicting with judicial exercise of powers of the CJI in the SC as officers, any discretion whatsoever doesn't hamper the administration of justice.

3.2 Administrative Powers vested under the Supreme Court Rules

Under Article 145 of the Constitution, the Supreme Court with the approval of the President can make rules for regulating the practice and procedures of the court.[12] The Supreme Court Rules, 2013 and Handbook on Practice and Procedure and Office Procedure, 2017 are the rules that govern the procedure of the Supreme Court. Various administrative powers are vested on the CJI by virtue of these rules. It is these powers which can be extremely discretionary in nature. There is a wide gamut of powers that are vested in the CJI. In order to analyse the powers based on the

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9 IND. CONST., Art. 257,258, 290.
10 IND. CONST., Art. 130.
11 IND. CONST., Art. 146.
12 IND. CONST., Art. 145.

broader theme of discretion that can be exercised, the same have been divided into two parts for better analysis.

3.2.1 Powers with limited discretion

Not all powers exercised by the CJI provide him with an absolute discretion and thus cannot be called to be arbitrary. For instance, it is given in the rules that every cause, appeal or matter shall be heard by a Bench consisting of not less than two Judges nominated by the Chief Justice.[13]

Now, it is clear that the nomination of the justices to the bench is as per the sole discretion of the CJI. However, this is not the case generally. Fresh cases are allocated as per subject category through automatic computer allocation, unless coram is given by the Chief Justice or the Filing Counter.[14]

Therefore, the discretion is generally restricted to the extent that the coram is provided by an automatic computer allocation system, which determines the coram on the basis of the subject matter to the case. It matches it with the field of expertise of the judge. For instance, Justice Ranjan Gogoi, would generally preside over tax matters.[15] Other relevant factors include engagements of the judge, urgency of the matter etc. The CJI can at any time change the composition or appoint a bench that he desires, despite the algorithm. However, this has generally not been observed empirically, except in the recent past. A study regarding the same has been taken up separately.

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[13] Supreme Court Rules (SCR), Order VI Rule 1, (2013).

[14] Handbook on Practice and Procedure and Office Procedure, Chapter XIII, Cases Coram and Lisitng, (2017).

[15] DC of IT, Bangalore v. Ace Multi Axes System, [2017] 88 taxmann.com 69 (SC); CIT v. Modipon Ltd. [2017] 87 taxmann.com 275 (SC)

3.2.2 Powers with un-channeled discretion

The Supreme Court Rules, 2013 provide un-channeled discretion to the CJI in certain cases. For instance, the Chief Justice can direct matters of urgent nature to be heard by a Judge sitting singly,[16] or to a division bench during summer vacation or winter holidays.[17] A similar discretionary power is vested in the Chief Justice whereby he can by a special or general order, direct a particular class or classes of cases to be listed before a particular Bench.[18] For instance, Chief Justice Dattu, as he then was, in December 2014 set up a special Social Justice Bench under Justice Lokur and Justice U.U. Lalit. The bench was set up to hear important issues affecting a large number of deprived and discriminated population, expeditiously. Therefore, this is one wide discretionary power in the hands of CJI.

Another very wide discretionary power is the power that the Chief Justice has to direct the Registrar for re-allocation of judicial work. This power can be exercised in cases of 'contingencies'. The exact scope has not been defined, however, it is clear that this power can be used to exercise unmatched control over SC.

There is yet another power, which has been the subject of the tussle between CJI and Justice Chelameshwar recently. This power relates to appointing of a larger bench by the CJI on reference being made from the Division Bench. This power is provided as:

> *"Where, in the course of hearing of any cause, appeal or other proceeding, the Division Bench considers that the case should be dealt with by a*

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16 SCR, Order VI Rule 6, (2013).
17 SCR, Order II Rule 6, (2013).
18 Handbook on Practice and Procedure and Office Procedure, Chapter IV, General, (2017).

> *larger Bench, it shall refer the case to the Chief Justice, who shall thereupon constitute such a Bench for hearing it."*[19]

This effectively means, whenever a case is referred by a two-Judge Bench to a larger Bench, the coram shall be allocated by the Chief Justice. After the Reference is answered by a larger Bench, wherever required, the case shall be placed before the Chief Justice for listing before an appropriate Bench for hearing and decision in accordance with the opinion of the larger Bench. Another similar power in this regard is the power given to the CJI where if a Bench directs listing of a case before another Bench, particular Bench, appropriate Bench or larger Bench, as the case may be, it will be the orders of the CJI that will list the matter before a particular bench.

These are the powers which heighten the stature of the CJI's office above other justices. Most importantly, these powers are vested with the CJI to be exercised on his discretion. And, there are no checks on the same, therefore, it is these powers which are the subject of arbitrariness in their exercise. In the following section it is these powers which will be the subject of analysis.

4. **Arbitrary Exercise of Administrative Power: A case in Point**

> "*Discretionary Authority must mean insecurity for legal freedom.*"
>
> -A.V. Dicey

As discussed above, the powers vested in the CJI by the Supreme Court Rules provide un-channelled discretion to the CJI. Such discretion can more often than not run into arbitrariness. The arbitrariness in this case is the non-comparative facet of arbitrariness as discussed in Chapter 2. This is anti-thetical to rule of law and is

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[19] SCR, Order VI Rule 2, (2013).

violative of article 14 of the constitution. Such an arbitrary exercise can be analysed by understanding a case in point, i.e., the recent Master of Roster controversy.

Recently, a special hearing of 5 judges, headed by CJI was convened to determine who has the authority to determine the constitution of larger benches of the SC.[20] As per the SC rules, which has been reiterated in the order, it is clear that it is the CJI who has the prerogative to constitute larger benches of the SC when the same has been referred by the division benches.[21] However, it is this prerogative of constituting larger benches, that led to arbitrariness in exercise of the administrative powers by the CJI in the instant case.

After passing the order that it is the CJI's prerogative to constitute larger benches of SC, the CJI constituted a bench of 3 justices to hear a petition that sought appointment of an SIT to investigate charges of corruption in the highest level of the judiciary.[22] In order to understand the prayer sought in the petition, it is imperative to understand the context for the petition.

The CBI has been investigating allegations of a conspiracy in which a retired justice of Orissa High Court, I.M. Quddusi, promised a party to get a favourable decision from the Supreme Court, in exchange of gratification. The case that I.M. Quddusi was alleged to influence was heard by a bench having CJI as one of its members.[23] The facts allege corruption at the highest levels of judiciary and can potentially implicate all the members of the bench that was hearing

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20 CJAR v. Union of India & ors.,Writ Petition (Crl.) No.169 Of 2017.

21 *Supra* note 19.

22 *Supra* note 7.

23 Vakasha Sachdev, *Divisions in Supreme Court? Chief Justice Annuls Colleague's orders*, THE QUINT, (11/11/17), at:https://www.thequint.com/news/india/cji-unprecedented-order-reverses-sc-decision-judicial-bribery.

the case, including the CJI.

It was these allegations of corruption on this particular of bench of the SC for which the petitioner CJAR and Kamini Jaiswal sought an SIT enquiry. It was here that the conflict regarding the arbitrary exercise of administrative powers of CJI began, as the CJI had to constitute a bench for hearing the petition.

In effect, a bench constituted by the CJI was supposed to determine whether an SIT should be appointed to investigate a case that can potentially implicate the CJI. This clearly amounted to conflict of interest. Moreover, it is a clear violation of the principle 'Nemo Judex in Causa Sua' which is the basic principle of Natural Justice.

It is here that the administrative powers of the CJI are called into question as being unreasonable, irrational and widely discretionary to the extent that they can be classified as arbitrary under the Wednesbury Principle and Non-comparative arbitrariness under Article 14 of the constitution. Such an action on the part of the CJI also potentially violates Article 21 of the Constitution of India to the extent that Right to Justice Delivery is hampered. This is on account of the fact that a violation of Principles of Natural Justice by a Court necessarily amounts to a denial of a just and fair adjudicatory mechanism to citizens, which is the primary requirement of providing citizens access to justice under Article 21.[24]

This is reflective of the administrative role of CJI overpowering the administration of Justice.

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24 Anita Kushwaha v. Pushp Sudan, (2016) 8 SCC 509.

5. **Resolving the Conflict: The Way Forward**

The previous chapter clearly portrays how the exercise of administrative powers by the CJI can be unreasonable, irrational and discretionary to the effect of violating the principle of *Nemo Judex in Causa sua*. Such an exercise of power can be termed 'arbitrary' under the non-comparative arbitrariness facet of Article 14 and can also be found to be violative of Article 21 of the constitution.

Therefore, in this section, the author proposes a method for reconciling these administrative powers and restoring the administration of justice in the Apex Court. The approach involves bringing a reform from within the judiciary and hence would necessarily involve challenging the status quo via litigation through the means of a writ petition. This chapter would essentially highlight on the logistics that are required to be figured out before proceeding with the suggested course of action.

Hence, quite naturally, the logistical analysis begins with determining preliminary logistics for the filing of writ petition, goes on to determine the grounds on which the same should be filed and accepted, and finally ends with evaluating the potential of the writ petition to bring a real change in the status quo at the Apex Court.

5.1 Preliminary Logistics of filing a writ petition:

5.1.1 The Petitioner:

In *S.P. Gupta* v. *Union of India,*[25] the Supreme Court categorically observed that any member of the public or social action group acting bonafide can invoke the writ jurisdiction of the Supreme

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25 S.P. Gupta v. Union of India, (1981) Supp SCC 87.

Court under Article 32 of the constitution, in order to seek redressal against a violation of a fundamental right where the interests of general public are involved.[26]

As aforesaid, in the instant case, the arbitrary exercise of administrative powers on the part of the CJI has clearly led to a violation of Principles of Natural Justice. Quite significantly, the Supreme Court has laid down that the protection of Principles of Natural Justice is at the core of a fair and just adjudicatory mechanism.[27] And, the provision of such an adjudicatory mechanism is vital under the Right to Justice Delivery which is guaranteed under Article 14 & 21 of the constitution.[28] This is the *locus standi* for the petitioner.

Therefore, any member of the public can move the Apex Court under Article 32 of the constitution via a writ petition claiming a violation of Fundamental rights of public in general on account of the arbitrary exercise of power by the CJI.

5.1.2 The Respondent:

Quite naturally, the respondent in the writ petition is the state. However, only the authorities prescribed under Article 12 of the constitution are answerable to a writ petition if they breach a fundamental right in the course of their actions. Judiciary or the Supreme Court is not one of the authorities which has been covered under the definition of State under Article 12. But, the definition is not exhaustive as well. The term 'other authorities' in Article 12 suggests that the definition is inclusive. Therefore, *'The Registrar,*

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26 Id, ¶18.

27 Anita Kushwaha, *supra* note 24, ¶34.

28 Anita Kushwaha, *supra* note 24, ¶33.

Supreme Court of India' and '*Union of India*' can be impleaded as the respondents if the CJI, in his administrative capacity, can be proved to be covered within the definition of State under Article 12.

The Supreme Court in *Prem Chand Garg* v. *Excise Comm, UP*,[29] has held that Judiciary while exercising administrative powers is covered under the definition of state under Article 12 and is subject to the Fundamental Rights guaranteed to citizens under Part III of the constitution.

Clearly, in the instant case, the dispute has arisen on account of the exercise of the administrative powers by the CJI, hence, following *Prem Chand Garg*, the CJI's administrative powers have to be covered under the definition of State under Article 12.

In any case, even if the above argument would not suffice, the landmark ruling of the Apex Court in *A.R. Antulay* v. *R.S. Nayak*[30] comes to the rescue of the petitioner in the instant case. The Supreme Court in *Antulay* categorically held that the order of a Court be it administrative or judicial, against the provisions of the Constitution or in violation of the principles of natural justice, can always be remedied by the Court *ex debito justiitae*.[31]

Therefore, the CJI's exercise of administrative powers can be made answerable via a writ petition if it is found to be in violation of Part III of the constitution. Hence, the *Supreme Court of India through its registrar* and *Union of India* can be impleaded as a respondents in the instant case.

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[29] Prem Chand Garg v. Excise Commissioner, U.P. 1963 Supp. (1) SCR 885.
[30] A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602
[31] Id, ¶238.

5.2 Grounds for filing the Writ

For the acceptance of the writ petition, the petitioner must satisfy a violation of a Fundamental Right resulting from the arbitrary exercise of powers by the CJI. A violation of Fundamental Rights in the instant case can be done on two counts, *first,* the exercise of powers by the CJI qualifies as non-comparative arbitrariness and is *per se* violative of Article 14 of the Constitution and, *second,* the exercise of powers by the CJI violates the Right to Justice Delivery guaranteed under Article 14 & 21.

5.2.1 Arbitrary exercise of powers, per se violation of Article 14.

As explained in Chapter 2, so long as the exercise of discretionary powers vested in an authority can be proved to be arbitrary and unreasonable, it can be held to be violative of Article 14 of the constitution. As has been held in *Om Kumar* v. *Union of India*,[32] if an administrative action is challenged as arbitrary under Article 14, the only questions that the court will determine are:

(a) Whether the administrative conduct is 'irrational' or 'unreasonable'?

(b) Whether his view is one which no reasonable person could have taken- The Wednesbury Unreasonableness.

(c) Whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration

If the answer to all of these questions is affirmative, then it would amount to a violation of Article 14.

32 *Supra* note 5.

As per the turn of events explained in Chapter 4, i.e., the CJI's appointment of a 3-judge bench to hear a petition that sought appointment of an SIT to inquire the allegations of corruption levelled on him, violates the Principle of 'Nemo Judex in Causa Sua'. This is on account of the fact that even when there's a real likelihood of bias on the part of the judge in carrying out his functions, the function must not be carried forward.[33] This principle is a principle of Natural Justice. Violation of this principle by the CJI amounts to a conduct that is unreasonable on his part.

Similarly, no reasonable person in his place would have alienated a principle of Natural Justice, as it is the core of a fair and just adjudicatory mechanism.[34] One of the most relevant factors for consideration from an administrative point of view is that one who has been vested with discretion must preserve principles of Natural Justice in exercising the same. Breaching these principles amounts to acting illegally.[35]

Therefore, on all the counts this administrative action is arbitrary and hence, violates Article 14.

5.2.2 Violation of Article 14 & 21 on account of violation of Right to Justice Delivery

It was clearly and categorically laid down in *Anita Kushwaha*, that access to justice is a vital part of Right to Life under Article 21 of the Constitution.[36] The court stressed that since "life" includes a bundle of rights that makes life worth living, hence, there can be no

33 Jiwan K. Lohia v. Durga Dutt Lohia, AIR 1992 SC 188.
34 Anita Kushwaha, *supra* note 24, ¶34.
35 J. Mahopatra & Co. v. State of Orissa, (1984) 4 SCC 103.
36 Anita Kushwaha, *supra* note 24, ¶31.

juristic basis for holding that denial of "access to justice" will not affect the quality of human life. Therefore, access to justice is within the purview of right to life guaranteed under Article 21.[37]

The court further added that one of the primary requirements for providing the citizens access to justice is to set-up an adjudicatory mechanism which must not only be effective but must also be just, fair and objective in its approach.[38] And, the procedure which the court adopts for adjudication must be just and fair, and should uphold the well recognized principles of Natural Justice.[39]

The exercise of administrative powers by the CJI in appointing a bench to adjudicate Kamini Jaiswal's petition violated the Principles of Natural Justice. This in turn violates the fundamental right of Justice Delivery guaranteed under Right to Life. Hence, the writ petition that has to be filed challenging the exercise of such discretionary powers on the part of CJI must be held to be maintainable on this ground.

5.3 Potential of the Writ Petition to bring a change to the status quo

The final straw in the matter will be the listing and then the hearing of the writ petition. There can be two outcomes that can follow, *one*, where the CJI again chooses to be the master of roster and allocates the writ petition to a bench whose composition would be determined by him, or *two,* wherethe CJI recuses himself from the entire process and the writ goes for adjudication, without even a likelihood of bias, and the court lays down the law for future.

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37 Anita Kushwaha, *supra* note 24, ¶31.

38 Anita Kushwaha, *supra* note 24, ¶34.

39 Anita Kushwaha, *supra* note 24, ¶34.

In case the first scenario unfolds, it would mark the epitome of violation of the principle of *Nemo Judex in Causa Sua*. Therefore, it is highly unlikely that such a situation would unfold as such a move on the part of the CJI is bound to create a lot of ripples across circles and would subject the office of CJI to widespread criticism. However, in the unlikely circumstance where the bench is determined by the CJI, it would necessitate the need on the part of policymakers to formulate a framework that restricts the discretion enjoyed by the CJI in exercise of his Administrative powers.

In case the second situation unfolds, which is anyway more likely to happen, the bench would recognize the arbitrariness in CJI's exercise of powers and how it violates Art 14 & 21. As a result, it would have to lay down the law in order to permanently settle the conflict where the exercise of administrative powers hampers administration of justice, thus bringing a change to the status quo.

Hence, in both the paradigms, there will be a need for a reform in the framework governing the exercise of administrative powers at the Apex Court. Therefore, a recommendation for the same is in order.

A Recommendation for Change in the Law

In the status quo the only way forward, without compromising the independence of judiciary, is to increase the participation of the senior-most judges in the exercise of administrative powers.

Such a move is not unprecedented. The appointment of judges to higher judiciary under the constitution was envisaged to be done by the president in consultation with 'such of the judges of the

Supreme Court'.[40] In the initial years, the mechanism for appointment involved President appointing new judges to constitutional courts in consultation with the CJI.[41] However, by the third judges case, it was interpreted to be the CJI and the 4 senior-most judges of the Supreme Court.[42] Such a dilution was done in order to keep a check at the discretion and concentration of powers in the hands of the CJI.[43]

The same can be done in the instant case, an administrative body of atleast 3 seniormost judges overseeing the exercise of administrative powers by the CJI can be appointed. This body will act as a check on the discretion enjoyed by the CJI, which is the cause for the conflict in the first place.

Hence, a potentially, permanent solution can be found to this conflict.

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40 IND. CONST., Art. 124.

41 S.P. Gupta v. Union of India, (1981) Supp SCC 87.

42 Special Reference No. 1 of 1998, *In re*, (1998) 7 SCC 739.

43 Supreme Court Advocates on Record Association v. Union of India, (1993) 4 SCC 441.