

**NAME AS AN EXPRESSION OF IDENTITY: A COMMENT ON *JIGYA YADAV v. CENTRAL BOARD OF SECONDARY EDUCATION (CBSE)***

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**I. Introduction**

IN WILLIAM Shakespeare's lauded work "Romeo and Juliet", Juliet tells Romeo, "What's in a name? That which we call a rose by any other name would smell as sweet,". This quotation has found place in the judgment rendered by A.M. Khanwilkar J., on the issue of change/correction in the name of a student on the certificate issued by the Central Board of Secondary Education (hereinafter "CBSE" or "Board"). *Jigya Yadav v. Central Board of Secondary Education (CBSE)*<sup>1</sup> is about the recognition of the expression of identity as a fundamental right and the principle that one cannot be forced to have an identity different from what they own as per the records and the certificate issued by CBSE.

**II. Facts of the Case**

The appellant, Ms. Jigya Yadav, a minor approached the High Court of Delhi seeking direction to the CBSE to carry out a correction of her parent's name in the mark sheets issued by the board. The said prayer was rejected by the High Court. The Court relied upon the nursery application form, school admission form and stream allotment form for class XI filled by the parents of the appellant to conclude that the errors were not inadvertent, and they had

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<sup>1</sup> (2021) 7 SCC 535.

consciously chosen and retained the said names despite having opportunity to rectify before the Xth standard. The court then observed that Byelaw 69.1 of the CBSE Examination Byelaws (*hereinafter* “byelaws”) permits CBSE to carry out corrections only to the extent of bringing the record in conformity with the school record.

This case involves a batch of 22 petitions wherein questions relating to correction/change in name/surname/date of birth of candidates or their parents in the certificates issued by the CBSE have been raised. The Supreme Court herein, has dealt with the view of various high courts such as Delhi, Kerala, Rajasthan etc. wherein there was a legal conundrum with respect to correction/change in the name/surname/date of birth, in absence of any finding by the Apex Court on this issue. The Delhi High Court was of the view that such an application is not to be allowed when the mistake had been made inadvertently whereas the Rajasthan High Court<sup>2</sup> has taken a liberal view holding that the Board should not be allowed to force any individual to have his mother’s name or his father’s name different from what his/her mother’s name or father’s name is known in the society as well as in the records. The submissions of the appellant were substantially on the grounds of non-applicability of bye-laws, absence of any typographical errors, consonance between school record and certificates, and lapse of substantial time despite knowing the alleged errors.<sup>3</sup>

Byelaw 69.1 of the CBSE Examination Byelaws as it stood Post 2007 Amendment stipulates that the applicant was allowed to change his name, father’s/mother’s name, date of birth consistent with school records within 10 years from the date of declaration of the result whereas no change was permitted with respect to the change in name/surname of either the applicant or his father’s/mother’s name.<sup>4</sup>

Assailing the decision of the Delhi High Court, the appellant has contended that byelaw 69.1 is invalid, being unreasonable and arbitrary, and violates article 14<sup>5</sup> of the Constitution, as it puts a blanket embargo on corrections other than those which are necessary for bringing the documents in conformity with the school record. It was also contended that the amended byelaw does not address the possibility of error in the school record itself and leaves the student with no opportunity to correct the error committed by the parents in the school records. To

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<sup>2</sup> *Id.*, para 38.

<sup>3</sup> *Id.*, para 59.

<sup>4</sup> *Id.*, para 157.

<sup>5</sup> The Constitution of India, art. 14.

buttress this submission, the appellant submitted that the resultant hardship caused to her is an infringement of her right guaranteed in article 19(1)(g),<sup>6</sup> right to freely express one's identity as per article 19(1)(a),<sup>7</sup> and right to dignity in article 21<sup>8</sup> of the Constitution.

Similar cases with questions relating to correction/change in name/surname/date of birth of candidates or their parents in the certificates issued by the CBSE have been raised before various High Courts. A batch of 22 petitions was thus clubbed together in the present matter before the Supreme Court. The facts of each case are not being repeated here for the sake of brevity. The High Courts have given different conflicting opinions in those cases involving the CBSE byelaws. The Supreme Court examined the factual matrix of each of the cases and framed the following issues for its consideration:

1. Whether the CBSE Examination bye-laws have the force of law?
2. Whether examination byelaws impose reasonable restrictions on the exercise of rights under article 19 of the Constitution including fail the test of rationality for excessively restricting the scope of permissible corrections/changes?
3. Whether the Board is obliged to carry out corrections/changes in the certificates issued by it owing to correction/updation of public records/documents which have statutory presumption of genuineness?
4. Whether the examination byelaws in force on the date of examination conducted by CBSE or the date of consideration of the application for recording correction/change would be relevant? And, Whether the effect of correction or change, as the case may be, will have retrospective effect from the date of issue of the original certificate?
5. Whether writ of mandamus issued for effecting corrections in CBSE certificates can be in the teeth of explicit provisions in the examination byelaws, without examining validity of the byelaws?

In the opinion of the researcher, the court could have also framed the issues pertaining to the constitutionality of bye-laws and examined them on touchstone of articles 14 and 21 of the Constitution. As stated above, constitutionality of the bye-laws was also challenged by the

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<sup>6</sup> *Id.*, art. 19(1)(g).

<sup>7</sup> *Id.*, art. 19(1)(a).

<sup>8</sup> *Id.*, art. 21.

appellant on the ground that the same are arbitrary, unreasonable and infringe her right to dignity guaranteed by article 21 of the Constitution.

### III. Bye-laws have the force of Law?

The court stated that in order to have the force of law, the byelaws must qualify the tests laid down in article 13<sup>9</sup>. Considering the nature of functions performed by the CBSE, the court concluded that CBSE falls squarely within the meaning of “State” under article 12<sup>10</sup> of the Constitution of India, and as such, its actions would have to conform to Part III of the Constitution. However, the court held that the fact that the Board is State under article 12 does not automatically mean that the byelaws framed by it would have the force of law within the meaning of article 13.

In order to determine the status of the byelaws, the court delved into a further examination of article 13. Observing that the tenor of article 13 obviously suggests that “law” includes all statutory enactments, the court accounted for an administrative reality that there are enactments other than statutory laws as well. It was stated:<sup>11</sup>

The underlying purpose of defining “law” under article 13 is to encompass a practical administrative reality that there can be laws other than ordinary statutory laws. It, therefore, takes within its sweep those matters (declaration in the form of Byelaws in this case) as having the “force of law” *albeit* not enacted by the legislature as such.

Examining the substance of the expression “having in territory of India, the force of law”, the court observed that any rule, notification, order, byelaw made or issued by the state or its instrumentalities would have the force of law. The rules dealt with here are ones which are made by an instrumentality of the State in performance of a public function. This gives rise to the question of whether or not CBSE is an instrumentality of the State and whether the functions performed by CBSE are public functions. In determining the characteristics of public

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<sup>9</sup> *Id.*, art. 13.

<sup>10</sup> *Id.*, art. 12.

<sup>11</sup> Jigyā Yadav, *supra* note 1 at para 109.

functions, the reliance was placed upon *Binny Ltd v. Sadasivan*,<sup>12</sup> wherein the court arrived at the following principles associated with a public function:<sup>13</sup>

1. Extension of collective benefit to the public by a public authority;
2. Participation in social or economic affairs including health, education, social services etc; and
3. Private bodies or charitable institutions performing public functions could also be regulated in the same manner as a public authority.

The court was of the opinion that CBSE is the only central body for conducting examinations. It secures the right to education and performs an essential role in educational affairs around the country. It is thus, a public authority functioning in public interest and performing a public function. Moreover, as per the constitution of the Board itself, ultimate control over its functioning is exercised by the Ministry of Human Resource Development (now renamed as the Ministry of Education).

Regarding the byelaws, the court held that they provide for all essential aspects related to formal school education and bind the parties. They are enforceable in court of law even by way of writ remedies. Thus, the byelaws have force of law. For a student deriving their education at an institution affiliated to CBSE, the only body of rules dealing with all aspects of their education is the byelaws in question. Several body-corporates, registered societies etc. have been held to be instrumentalities of state in order to serve the ultimate constitutional goal of protecting fundamental rights. Constitutionally guaranteed fundamental rights cannot be allowed to suffer at the hands of the State, directly or indirectly.<sup>14</sup> Thus, it is important to pierce the veil and look beyond the outer form of organisation and its functions and their implications must be examined in greater detail in order to determine its nature. The Court ought to intervene with circumspection even when the public body derives its authority from a government resolution. The court said so, for the reason that a presumption of constitutionality is extended to statutes enacted by the legislature. However, the same presumption is not extended to subordinate legislation in any form. The court observed:<sup>15</sup>

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<sup>12</sup> (2005) 6 SCC 657.

<sup>13</sup> *Id.*, at para 11.

<sup>14</sup> *Jigyā Yadav*, *supra* note 1 at para 120.

<sup>15</sup> *Id.*, at para 121.

...because there is an evolving body of jurisprudence enunciating that the principle of presumption of constitutionality attached with statutes ought not to be extended to subordinate legislations with the same vigour. For, the legislature enjoys the sacred backing of people's will and naturally, every act of legislature is presumed to be constitutional. In other words, the Courts generally do not look upon duly enacted laws with suspicion at the first glance as they enjoy legal presumption of its validity. Nevertheless, circumspect intervention on the part of the Court is to advance constitutional protection for guarantees under Part-III of the Constitution.

The court has referred to an evolving body of jurisprudence which argues that the presumption of constitutionality should not be extended to all those instruments having the force of law which are not enacted by a duly elected legislature. On the same lines, presumption cannot be extended to ordinances promulgated by the executive and subordinate legislations.<sup>16</sup> However, the courts in India have not applied this principle and they have treated ordinances and subordinate legislations at par with laws enacted by elected legislative bodies.

This observation of the apex court is very significant, especially at a time when the scope of delegated legislation is increasing. The application of presumption of constitutionality to subordinate legislations provides a deference from judiciary to the executive at the time of judicial review.<sup>17</sup> The courts in India do not differentiate between a law duly enacted by the legislature and rules or regulations made by the executive and follow the same standards of judicial review for both. The burden to establish the *ultra vires* of a provision/rule/regulation etc. under challenge is ordinarily on the person who assails it. If the court does not employ the doctrine of constitutional validity and shifts that burden to the State, the court can compel the State to justify the restrictions placed on fundamental rights as being constitutionally valid. In the case at hand, bye-laws have been framed by the CBSE which is an executive body and there is no procedure for the legislative approval of bye-laws in the Rules governing the functioning of CBSE.

The present case is an example of a missed opportunity by the court in as much as the court could have used this to lay down a precedent and streamlined the law on standards of judicial review of delegated legislation. Instead, the court opted for a simple passing observation to the

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<sup>16</sup> Vijay K. Tyagi and Bhanu Sambyal "Invocation of Scrutiny Test in Delegated Legislation and Ordinance: A Relook at the Doctrine of Presumption of Constitutionality" 7 *Delhi Law Review (Student Edition)* 30, 35 (2020).

<sup>17</sup> *Id.*, at 28.

effect that standards of judicial review for duly enacted legislation and delegated legislation ought not to be the same. This, however, has laid the groundwork for consideration of this issue by courts in future decisions.

#### **IV. Whether Restrictions under the Bye-Laws fall within the purview of Reasonable Restrictions under article 19(2)?**

At the centre of the examination involved in this issue is the question of an individual's control over a cardinal element of their identity. A person's name forms the very core of their identity and is an essential element of their existence. Relying upon the verdict delivered in a range of landmark cases like *National Legal Services Authority v. Union of India*,<sup>18</sup> *Navtej Singh Johar v. Union of India*,<sup>19</sup> and *K.S. Puttaswamy v. Union of India*,<sup>20</sup> the court recognised the sanctity of an individual's identity as one of the most closely guarded areas of the constitutional scheme in India.<sup>21</sup> The court stated:<sup>22</sup>

Article 19(1)(a) of the Constitution provides for a guaranteed right to freedom of speech and expression. In light of *Navtej Singh Johar*, this freedom would include the freedom to lawfully express one's identity in the manner of their liking. In other words, expression of identity is a protected element of freedom of expression under the Constitution.

The court then observed that as opposed to what was dealt with in *Navtej Singh Johar*, a person's name is not their natural identity. It is only their acquired identity and a change can only be complete after fulfilment of certain conditions. A change in name cannot be complete without recognition from the State and its agencies. This change also needs to be reflected in the individual's official records. This gives rise to the question of whether the State and its agencies are unconditionally bound to enforce this right of a person to change their identity and alter the records accordingly. To this effect, the court held that by the very nature of article 19, no right recognised therein can be absolute. Certain reasonable restrictions are placed on this right under article 19(2) in order to rule out confusion and deception and to maintain consistency. The byelaws act as that restriction. The court recognized that expression of

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<sup>18</sup> (2014) 5 SCC 438.

<sup>19</sup> (2018) 10 SCC 1.

<sup>20</sup> (2017) 10 SCC 1.

<sup>21</sup> *Jigyada Yadav*, *supra* note 1 at para 115.

<sup>22</sup> *Id.*, at para 116.

identity is protected under article 19(1)(a). However, there is no specific discussion on under which restriction out of the eight enumerated in article 19(2), the restriction under CBSE byelaws falls. The Supreme Court, from time to time, has held that the freedom of speech and expression under article 19(1)(a) can be curtailed only by reasonable restrictions placed under article 19(2).<sup>23</sup> The restriction must fall in atleast one of the categories mentioned under article 19(2). The general idea of balancing the concerns related to administrative efficiency with one's freedom of expression of identity without specifically mentioning the category of restriction is not in line with the precedents laid down by the court.

The court then delved into an examination of whether or not the restrictions placed by the byelaws are reasonable. The court observed:<sup>24</sup>

The test of reasonableness requires that the impugned law is intelligently crafted in such a manner that it is able to justify the ultimate impact of the law on its subjects. If it restricts, it must restrict on the basis of reason and if it permits, it must permit on the basis of reason.

It is pertinent to note that the byelaws permit change of name only after permission has been sought from court prior to publication of result. There is an absolute restriction on any change of name without prior permission before the publication. The court noted the following reasons for the adjudging stipulation in the byelaws as problematic:

1. It is more than a simple restriction. It is a “complete embargo” on the right of an individual to alter their name after publication of the result.<sup>25</sup>
2. This fails to account for any genuine need to change names.
3. It also does not take into consideration the fact that it may not be possible for a candidate to obtain permission from court prior to publication due to factors beyond their control.

The argument presented by CBSE for maintaining such a position was that the restriction is required to maintain administrative efficiency. The argument of the respondent rests on the premise that if the Board allows students to make a change at any time after the publication of result, Board's efficiency and accuracy of records will suffer. The court partially rejected this

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<sup>23</sup> *Ramlila Maidan Incident*, In Re (2012) 5 SCC 1, para 30.

<sup>24</sup> *Jigyada Yadav*, *supra* note 1 at para 131.

<sup>25</sup> *Id.*, at para 123.



argument and observed that administrative efficiency cannot be used as an excuse to avoid the performance of an essential function.<sup>26</sup>

The court rightly held that in order to maintain a balance between the student's right to be identified in a specific manner and the board's need for administrative efficiency, the board can limit the number of times such alterations can be made. However, the court stated that it would be untenable to maintain the *status quo* wherein it is impossible for a candidate to make a change after publication of result for such a restriction is unreasonable. Similarly, a realistic time limit needs to be set to determine the maximum period upto which changes can be permitted. In response to the board's argument that permitting frequent changes can lead to abuse and misuse, the court held that the mere possibility of abuse cannot be cited as a legitimate reason to deny rights to citizens.<sup>27</sup>

Further, the court relied upon rules and regulations that allow changes in Aadhar card and passport and observed that the government recognizes the need to update identity records to keep up with the changing requirements of citizens. Even though CBSE certificates are not strictly identity documents, they are heavily relied upon to corroborate academic qualifications.<sup>28</sup>

In conclusion, without discussing the aspects of constitutionality, the court held the provisions regarding change of name "post publication of examination results" as excessively restrictive and that it imposes an unreasonable restriction on the rights granted under article 19.<sup>29</sup> In the opinion of the researcher, the byelaw that provided for a complete embargo on name change/correction after the publication of examination result could be better tested on touchstone of articles 14 and 21. As the provision is unreasonable and arbitrary, it is violative of the principles of equality enshrined in article 14. Similarly, the right to dignity has been recognized as a part of right to life under article 21.<sup>30</sup> Depriving a person from changing their name after a particular time would result in violation of right to dignity.

## V. Statutory Presumption of Genuineness

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<sup>26</sup> *Id.*, at para 135.

<sup>27</sup> *Id.*, at para 128.

<sup>28</sup> *Id.*, at para 150.

<sup>29</sup> *Express Newspaper (P) Ltd. v. Union of India*, AIR 1958 SC 578; *Bennett Coleman & Co. v. Union of India* (1972) 2 SCC 788, *Shreya Singhal v. Union of India* (2015) 5 SCC 1.

<sup>30</sup> *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981) 1 SCC 608, para 8.

The court here considered whether CBSE is obligated to make changes in the certificates merely upon production of updated public documents? In response, the board argued that it would be untenable for them to do so because they do not have any independent mechanism to verify the genuineness of those documents. As far as public documents are concerned, the court rightly noted that as per provisions contained in Chapter V of the Indian Evidence Act, 1872, Birth Certificate, Aadhar Card, Official Gazette etc. enjoy a legal presumption of correctness. Accordingly, the court held that the CBSE has no justifiable cause for not taking notice of such public documents relied upon by a candidate to record a change.<sup>31</sup>

#### **VI. Applicability of Bye-Laws to an Application for Correction & Effect of Correction or Change**

The CBSE has amended its bylaws from time to time. As regards the point of time which would determine the applicability of bylaws, various High Courts have given conflicting opinions. The question considered by the court was whether the bylaws as on the date of publication of result would apply or bylaws as on the date of application for changes would apply. The court held that the bylaws existing on the date of publication of result would be applicable while considering applications for changing particulars in the certificates issued by CBSE.<sup>32</sup>

#### **VIII. Conclusion and Directions**

The court noted that broadly, there are two situations that might arise requiring a correction or change in certificates issued by the board - First is where a current student wants a correction in certificates in order to make the same consistent with school records. The court observed that there is no reason for the board to turn down such a request or attach any precondition except a "reasonable period of limitation".<sup>33</sup> In doing so, the board can require the student to fulfil certain requirements like filing a sworn affidavit.<sup>34</sup>

The court however also held that it would be unreasonable for the CBSE to maintain its position requiring that an application for change on the basis of school record can only be entertained if it is made prior to publication of the result.<sup>35</sup> A situation may arise where a request for

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<sup>31</sup> Jigyasa Yadav, *supra* note 1 at paras 167-173.

<sup>32</sup> *Id.*, at paras 174-177.

<sup>33</sup> *Id.*, at para 193.1.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Id.*, at para 193.2.

recording change is made based on school records after publication of result and issue of certificate. In such a case, the court held that a candidate shall be allowed to make an application for change within a reasonable limitation period prescribed by the board itself.<sup>36</sup>

A request for change of particulars in CBSE certificates presupposes that the certificate is inconsistent with school records. Such a request can be made in two different cases:

1. On the basis of public documents like Aadhaar card, voter ID etc. - In this case, the documents relied upon enjoy a legal presumption of correctness. Taking note of the documents furnished by the applicant, the board may entertain their request.<sup>37</sup> However, the board may require the candidate to fulfil certain reasonable conditions (as have been stated above).
2. Due to acquired name by choice - Where change is to be made on the basis of a new acquired name and without any supporting school record or public document, the board may entertain a request for change upon permission by a court of law and a publication in the official gazette.

The court concluded its verdict with a direction to the board to process applications for correction in cases under consideration. The court held:<sup>38</sup>

In light of the above, in exercise of our plenary jurisdiction, we direct the CBSE to process the applications for correction or change, as the case may be, in the certificate issued by it in the respective cases under consideration. Even other pending applications and future applications for such request be processed on the same lines and in particular the conclusion and directions recorded hitherto in paragraphs 193 and 194, as may be applicable, until amendment of relevant Byelaws. Additionally, the CBSE shall take immediate steps to amend its relevant Byelaws so as to incorporate the stated mechanism for recording correction or change, as the case may be, in the certificates already issued or to be issued by it.

In the opinion of the researcher, these directions strike a balance between one's freedom of expression of identity and Board's administrative efficiency. However, the court's direction to

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<sup>36</sup> *Ibid.*

<sup>37</sup> *Id.*, at paras 193, 194.

<sup>38</sup> *Id.*, at para 195.

take immediate steps to amend the concerned byelaws has not yet been implemented.<sup>39</sup> Due to inaction on part of the Board, both parties – students as well as the Board are facing issues. The students are still approaching high courts because concerned authorities are not responding to their applications as per directions of the court given in the present case.<sup>40</sup> At the same time, high courts have disposed of petitions involving similar issues in terms of the abovementioned directions.

The court did not waive the application of presumption of constitutionality to CBSE Examination bye-laws. However, the observations of the court regarding the application of presumption of constitutionality to subordinate legislations will pave the way for advancement of the jurisprudence on this issue. The courts in future cases might look at the subordinate legislations from a different lens and apply different standards of judicial review such as by applying the intermediate scrutiny test and strict scrutiny test etc.

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<sup>39</sup> Examination Bye Laws, available at: <https://www.cbse.gov.in/newsite/examinationbyelaws.html> (last visited on July 23, 2022).

<sup>40</sup> *Dharm Kumar Shivani v. Central Board of Secondary Education*, W.P.(C) 5724/2022.