

REFERENCE SPEECH BY HON'BLE THE CHIEF JUSTICE SHRI  
PRADEEP NANDRAJOG, HIGH COURT OF JUDICATURE AT BOMBAY  
AT THE FULL COURT REFERENCE TO LATE SHRI VISHWANATHY  
GOPAL PALSHIKAR, FORMER JUDGE OF RAJASTHAN HIGH COURT  
AND FORMER JUDGE AND ACTING CHIEF JUSTICE OF HIGH  
COURT, BOMBAY, ON FRIDAY 12<sup>TH</sup> JULY 2019 AT 10.30 A.M.

My Esteemed Sister and Brother Judges of the  
Bombay High Court.

Shri Ashutosh A. Kumbhakoni, Advocate General,  
State of Maharashtra and on behalf of Bar Council  
of Maharashtra & Goa

Shri Anil C. Singh, Additional Solicitor General  
of India,

Shri Milind Sathe, President, Bombay Bar  
Association,

Shri Sanjeev P. Kadam, President, Advocates'  
Association of Western India,

Shri Nilesh Modi, Hon. Secretary, Bombay  
Incorporated Law Society

Members of the Bereaved Family,

Distinguished Senior Advocates,

Members of the Bar,

Members of the Registry

Ladies & Gentlemen,

1. The assembly today, to pay respect to late  
Justice Vishwanath Gopal Palshikar who parted  
company with us on 21<sup>st</sup> April 2019, is itself a  
testament to the kind of man he was. Humility,  
perseverance, respect, honour, love, sacrifice,  
truth, compassion, bravery, fortitude, curiosity

and wisdom stand out as his sterling qualities. He was a source of strength and encouragement to all.

2. He had been a co-worker with us. In all these honest and honourable labour which made this garden and filled it with intelligence and refinement.

3. Born on 7<sup>th</sup> January 1945 at Dhule, he graduated in Arts from Hislop College, Nagpur, Obtaining a Bachelors Degree in Law from ILS, Pune, securing the third position in merit, he picked up his robes and started practice at the Nagpur Bench of the Bombay High Court.

4. As a lawyer he soon made his presence felt in the corridors of the court. His court-craft, legal acumen, skills of oratory and knowledge in Civil, Constitutional and Service Laws was immense. Recognizing his talent, he was invited to adorn the Bench and on 20<sup>th</sup> January, 1994 he became a Judge of this Court. As per the prevailing policy of 1/3rd Judges in High Courts being from outside he was transferred to the Rajasthan High Court and returned to his roots in the year 2001. He retired as a Judge of this Court on 7<sup>th</sup> January, 2007.

5. The cornucopia of the case law left behind by late Justice Palshikar is incapable of being encapsuled in a few minutes. It is recorded in the Law Journals and reveals His Lordship authored judgments on virtually every discipline of law.

6. Montesquieu said: In the state of nature, all men are born equal, but they cannot continue in this equality because society makes them lose it, and they recover it only by the protection of the law.

7. The roots of the concept of 'equal justice' or 'justice to all' can be traced to

ancient India where the Kings were supposed to uphold the Dharma (Righteousness) and Nyaya (Justice) for the common people. The King was under a moral obligation to serve the people with selfless service and dedication and an unjust King who failed in his duties, forfeited his right to rule and it was legitimate for the people to remove him by force. Justice thus accords the legitimacy and rational to the very existence of the State and it's ever lasting perpetuity. It is the true and ultimate test of the every civilization and every government. The primordial object of justice is to ensure a social order in which everyone has equality to justice and equal opportunity. It also aims at to distribute the resources and opportunities equally and according to the individual needs and claims justifiably sought.

8. The judicial philosophy of Justice Palshikar reflects what Montesquieu said and the ancient Indian philosophy of what is expected from a Judge.

9. Notwithstanding Justice Palshikar suffering a personal loss on 15<sup>th</sup> August 1996 when his wife, late Vidya Palshikar, unfortunately died at a very young age, leaving two daughters to his care, this personal loss was not allowed to be a hindrance by Justice Palshikar in the discharge of his constitutional obligation to render justice.

10. Post retirement, Justice Palshikar was appointed as a Chancellor of Tilak Maharashtra Vidyapeeth and in his capacity as the Chancellor he contributed immensely to the field of education.

11. Regretfully for me I did not have the privilege to personally interact with late Justice Palshikar, but at Jaipur and Jodhpur his colleagues shared with me the events they

witnessed showing the humane side of Justice Palshikar. Employees of the Principal Seat at Jodhpur went on strike and his sherer Hari Singh actively participated in the strike. To maintain law and order, employees of the Principal Seat at Jodhpur were arrested, this included Hari Singh. The same evening Justice Palshikar reached the Police Station and got his Usherer released. It is one illustration of the compassion in the great man.

12. The hour of death cannot be forecast. Death is not the end. For remembrance lives on. The flower he planted will blossom without end.

13. He survived by two daughters: the elder Ms. Neha Bhide carries on his legacy as a practicing lawyer in this court. The younger Ms. Priyadarshini Londhe is a Software Engineer.

14. I, on my own behalf and on behalf of my Sister and Brother Judges of the Bombay High Court and on behalf of this Assembly, offer heartfelt condolence to the members of the bereaved family. We pray to the Almighty to bestow fortitude upon the family members to bear irreparable loss.

15. May his soul rest in eternal peace. May his memories never failed.

\* \* \* \* \*

**ADDRESS BY SHRI ASHUTOSH KUMBHAKONI, ADVOCATE  
GENERAL OF MAHARASHTRA AT FULL COURT REFERENCE  
TO LATE HON'BLE SHRI JUSTICE VISHWANATH GOPAL  
PALSHIKAR, FORMER ACTING CHIEF JUSTICE OF THE  
HIGH COURT OF JUDICATURE AT BOMBAY ON FRIDAY,  
12<sup>th</sup> JULY 2019, 10:30 A.M. IN THE CENTRAL COURT  
HALL**

My Lord, Hon'ble the Chief Justice,

Hon'ble Judges of this Hon'ble High Court,

Shri Anil Singh, the Additional Solicitor  
General of India,

Respected office bearers of all the esteemed  
organizations of the legal fraternity,

My professional colleagues at the Bar

And the family members of Respected Late  
Justice Vishwanath Gopal Palshikar, whom  
everybody close to him would address as "Dear  
Arun".

Late Justice Palshikar had great  
affinity, towards me personally, if not for  
anything else, because of the commonality  
between us, as third generation Lawyers. He  
was classmate of my father in the Law College.

I was little bit surprised to know that,  
in fact, his first choice of vocation was to  
join the Indian Army. He was so serious about  
it that he made not just one, or two, but as  
many as six attempts to join the Armed Forces.  
Unfortunately, however, for the Indian Army and  
fortunately for all of us, his all attempts  
failed. I am told that, he was inspired to  
join the Armed Forces, by the younger brother

of his father, a medical professional, who had joined the 'Azad Hind Sena' of Dr. Subhashchandra Bose, as a Doctor.

In a lighter vein, he used to say that reading detective and mystery novels of Perry Mason, really gave him a final push to join a Law College. He was a voracious reader and had an enviable personal library, which one fine day, just before leaving Nagpur City, he gifted to one of his close friends.

He loved British humor. It is not surprising that P. G. Woodhouse was his favorite author. He himself had a terrific sense of humor. He was jovial, outgoing and a complete family man. He was very fond of Indian Classical music. Kumar Gandharva and Pandit Bhimsen Joshi were his favorites.

Charles Darwin once said "*A man's friendships are one of the best measures of his worth*". This quote aptly applied to Justice Palshikar, as he had large group of friends. After completing the academics, he, along with his five batchmates joined the Bar at Hon'ble Nagpur Bench. Amongst them, it was Late Justice Palshikar, who as a junior lawyer at the bar, worked out briefs of all the seniors, who were then leading at the Bar. He never remained attached to only chamber as such and therefore, in a very short span of time, he gathered vast experience in various branches of Law.

During his professional carrier at the bar, he not only assisted but also opposed various legal luminaries, Shri. Ram Jethmalani, Shri. Nani Palkhivala, Shri. Fali Nariman, to name a few. I am told that Shri Ram Jethmalani somehow continued to address him as "Palsaki" instead of "Palshikar".

Though, he practiced mainly on the civil side, after joining the bench, he delivered a large number of landmark Judgments, almost in

every branch of law, be it Constitutional Law, service law (relating to Pensions Schemes), Letter Patent Appeals etc. He settled various legal issues relating to the Criminal branch of law as well, Prevention of Terrorism Act 2002, Gold Control Act 1968 and especially the Maharashtra Control of Organized Crime Act 1999 (MCOC). Out of more than a dozen Full Benches that he presided over, in the case of Jamiruddin Ansari, wherein an issue was raised as to the maintainability of a private complaint, before a Special Court constituted under the MCOC Act, his minority view, in preference to the majority view of the Hon'ble Full Bench, was upheld by the Hon'ble Supreme Court.

His Judicial pronouncements delivered in the case of Rajabhau Vs Dinakr and Bharatkumar Vs Anita Trust reported in the year 2002, interpreting the Code of Civil Procedure (Amendment) Act 1999, especially relating to maintainability of the Civil Revision Applications, under Section 115 of the Code of non-permissibility of their conversion into Writ Petitions under Article 227, brought about a sea change, particularly in the Appellate Side litigation.

Like me, most of my colleagues have experienced his very firm view, on first exhausting the available alternative remedy, before invoking the Writ Jurisdiction, though he would follow the spirit of the law rather than just the letter of the law.

He was never a populist Judge. I would rather describe him as a very conservative Judge, with an orthodox approach. According to him, judicial activism ought to be resorted to only sparingly and so to say in 'a rarest of rare case'. In his view, most of the Public Interest Litigations filed in the Court, were Popular Interest Litigations.

In an interview that he gave to a leading newspaper 'The Hindu' he said:

*"Judicial activism has to have a limit. What judicial activism is, also needs to be defined. Constituting the Lodha Committee is unwarranted judicial interference. The first PIL by Justice Bhagwati, when he took up a letter by the prisoner : that was judicial activism. But you can't widen it so much that every letter is treated as a PIL and every malfunctioning of the government is treated as a PIL. You must realise your own limits and those of the institution for which you are working. But if I like to see my name in the newspapers, then there is a lot to say."*

In the same interview while answering the question "What makes for a good Judge ?" he said :

*"The quality of Judges does not depend on just brilliance and adequate knowledge of law. You must also have strong common sense. You must at least know the limits of your own capacity."*

He taught in the Government Law College, Nagpur for a pretty long time, mainly Law of Torts and Constitutional Law. Many Hon'ble Judges from Nagpur had been his students.

He was personally deeply hurt, by the then prevailing policy, relating to the transfer of High Court Judges. He was very open and vocal about it. He not only spoke bitterly about it, in his interviews, but also frontally attacked it, in his various articles. To mention a few : "Transfer Policy : a Utility

or Futility", "Constitution of India amended Unconstitutionally, basic structure destroyed", "Federal structure of the Constitution of India and Indian Judiciary".

Strict as he was in the Court, he was well known for his generosity in regular life. Almost as a ritual, every year, he used to donate in Lakhs but anonymously, for the children in need and to the Anand-dham. He sponsored the entire education of the children of all his staff members, the Driver, Peon, Clerk, everyone working in his office.

He had, not just views but firm opinions about every aspect of not just law but life and he used to unhesitatingly, as also fearlessly, express them, loud and clear. Be it Right to Privacy, Section 377, Religion. As a Judge of the Hon'ble Rajasthan High Court he specifically held, while dealing with a case of Bal-diksha that Courts ought not to interfere in the matters of religion.

Relating to his physical health, he followed three basic rules :

- (1) Only two meals a day, nothing in between, except may be a cup of tea, somewhat similar to the diet plan that has recently become very popular.
- (2) Fasting on every Thursday.
- (3) Never believer in physical exercise and enjoy the life to the fullest, without overt care for health.

Despite such a rebellious approach towards physical health, God was kind, in providing him excellent health. His leg was fractured in the year 1987, thereafter, the only time he was confined to bed, was in the month of January 2019.

As a true warrior, though he fought with injustice, throughout his life, he preferred not to contest the brutal invasion of a deadly disease. It reminds me of Justice Cordozo's quote that *"a man has the absolute right of self-determination"*.

His daughter, Advocate Mrs. Neha Bhide, who is presently rendering most valuable assistance to me, as an Assistant Government Pleader, informs me that, he firmly believed that, human beings are entitled to refuse medical treatment, when it is evident that "the remedy would be worse than the disease". He followed it in practice, in as much as, he refused to undertake any painful treatment, towards the fag end of his life.

We have lost a great judge, who was both fierce, outspoken and truly independent in the line of duty and off it, who was kind, charitable and loving.

I join in the sentiments expressed by My Lord Hon'ble the Chief Justice and express my deepest condolences to bereaved family.

May his soul rest in peace.

\*\*\*\*\*

Addressed by Shri Anil Singh, Additional  
Solicitor General of India at Full Court  
Reference to Late Shri Justice Palshikar,  
Former Judge and Former Acting Chief Justice of  
Bombay High Court at Central Court Room No. 46,  
Bombay High Court on Friday, 12<sup>th</sup> July, 2019 at  
10.30 a.m.

The Hon'ble Chief Justice Shri Pradeep  
Nandrajog,  
Hon'ble Judges of this Court,  
Shri Ashutosh A. Kumbhakoni, Advocate General  
of Maharashtra,

President of Bombay Bar Association Shri Milind  
Sathe,  
President of Advocates' Association of Western  
India  
Shri Sanjeev Kadam,

The Secretary of Bombay Incorporated Law  
Society Shri Nilesh Modi,

Family members of Late Justice Palshikar,  
Members of the Bar,  
Ladies & Gentlemen

I share the sentiments expressed by the  
Hon'ble the Chief Justice and the learned  
Advocate General. A great loss to the legal  
profession and to society in general has taken  
place, in the passing of Justice Palshikar.

Known as brilliant, frank, independent  
and clear headed Judge, Justice Palshikar was a  
great human being and a great jurist. He was  
also known for his quick sense of humor.

Justice Palshikar's contribution in the field of law and in its development has been immense. His contribution came from both sides i.e. the Bench and the Bar.

Born in Dhule, in the pre-independence era, he pursued his legal studies in Pune and then went on to practice law for 25 years in Nagpur. Thereafter, he came to be appointed as a Judge of the Bombay High Court followed by his appointment as a Judge of the Rajasthan High Court. Eventually, as destiny ordained he returned to his parent High Court in 2001 and thereafter, was the Acting Chief Justice of this Court for a period of 7 months.

Even after his retirement from the Bench, he did not cease to work but practiced in the Supreme Court where he was designated as a Senior Advocate and also acted as an Arbitrator in several matters.

His journey both as Advocate and as a Judge are marked with several celebrated judgments which show his invaluable contribution to the development of the law. Amongst the many issues that he handled in his career, his handling of the environmental issues in Mount Abu, Rajasthan and cases of organised crime in Maharashtra under MCOCA are well known.

After his retirement as Acting Chief Justice of this Hon'ble Court, he was appointed as a Chancellor of Tilak Maharashtra Vidyapeeth (Deemed University). He was also Chairman of the Advisory Board of Bala Saheb Apte Law College at Dadar. Justice Palshikar was a workaholic Judge and he had a strong view that although Judges and Advocates needed vacation yet the litigant should not suffer. He had in fact, in one of the interview said that Colonial way of having holiday should be done away with. He suggested that instead of Advocates and Judges going on Holiday at the same time it will be better if some judges go

on Holiday as per their choice and requirement for a particular period. He also felt that Judicial Activism has a limit and further that every malfunctioning of Government cannot be treated as PIL.

I am told that members of his staff at Mumbai and Jodhpur both looked up to him as a kind and caring father figure.

He is survived by his two daughters. His eldest daughter Mrs. Neha Bhide is a practising lawyer of this Court whilst his second daughter Mrs. Priyadarshini Londhe is a Software Engineer. I do believe that they would faithfully carry forward the legacy and ideas left behind by Justice Palshikar.

I express my deepest condolence to the Members of Late Justice Palshikar Family.

May his soul rest in eternal peace.

@@@@@

**BOMBAY BAR ASSOCIATION**  
**Addressed by Dr. Milind Sathe,**  
**President Bombay Bar Association**  
**At the Full Court Reference for**  
**Justice Vishwanath Gopal Palshikar**  
**At Central Court Room No. 46,**  
**Bombay High Court**  
**On Friday, 12<sup>th</sup> July, 2019 at 10.30 a.m.**

The Hon'ble Chief Justice Mr. Pradeep Nandrajog,  
Other Hon'ble Judges of the Bombay High Court,  
Advocate General Shri Ashutosh Kumbhkoni,  
Additional Solicitor General of India Shri Anil  
Singh,  
Mr. Sanjeev Kadam, Advocate, President of  
Advocates' Association of Western India,

Mr. Nilesh Modi, Secretary, Bombay Incorporated  
Law Society,  
Members of Late Shri Justice V.G. Palshikar  
Family,  
Ladies and Gentlemen.

We assemble this morning to mourn the  
sad demise of Hon'ble Justice V.G. Palshikar,  
Former Acting Chief Justice of this Court and  
Judge of this Court as well as Judge of  
Rajasthan High Court, who passed away on 21<sup>st</sup>  
April, 2019 at Mumbai at relatively young age  
of 74.

I fully associate myself with the  
sentiments expressed by the learned Chief  
Justice and my fellow speakers.

Justice Vishwanath Gopal Palshikar was  
born on 7<sup>th</sup> January, 1945. After graduating in  
Arts (BA) he pursued his law course and  
obtained LLB degree. He was enrolled as an  
Advocate on 26<sup>th</sup> June, 1968. He practised at  
the Nagpur Bench of the Bombay High Court on  
Civil Side. His special interest fields were  
Constitutional Law, Service Law and  
Administrative Law. Whilst he was in practice  
he was elected to Bar Council of Maharashtra  
and functioned as Bar Councillor and dealt with

issues concerning the practising Advocates very proactively. He was known for dealing with the Disciplinary cases against the Advocates very effectively, efficiently and to the satisfaction of both the parties.

He had gathered large practice at Nagpur. However, he accepted the call of duty and was appointed as an Additional Judge of the Bombay High Court on 20<sup>th</sup> January, 1994 and was transferred to the Rajasthan High Court on 14<sup>th</sup> February, 1994 as per the then transfer policy. He was appointed as a permanent Judge of the Rajasthan High Court on 10<sup>th</sup> March, 1995. He was re-transferred to the Bombay High Court on 1<sup>st</sup> June, 2001. He functioned as Acting Chief Justice of Bombay High Court between October, 2005 and February, 2006 and again between July and October, 2006. He retired on 7<sup>th</sup> January, 2007.

As a Judge he has dealt with variety of subjects like Revenue Laws, Cooperative Societies Act, Election Laws and of course, Administrative and Constitutional Laws. He has presided over several Full Benches and authored its judgments.

His notable Judgments include :

(1) In **Saquib Nachan V/s. State of Maharashtra- (2005 (1) Mah. L.J. 771)**, it was held that a confessional statement under Section 32 of the Prevention of Terrorism Act, 2002 is not substantive piece of evidence against co-accused unless such a statement is recorded under Sections 161 to 164 of the CR.P.C.

(2) In **Nitin Janardhan Raut v/s. State of Maharashtra - (2002 (6) Bom. C.R. 43)** a Police Constable was discharged from service for negligence in duty resulting in the escape of prisoner by taking recourse to Article 311 of the Indian Constitution without holding any

enquiry. Justice Palshikar held that avoiding enquiry under the guise of Article 311 in such a case was colourable exercise of power by the State.

(3) In **Madan Lal v/s. State of Rajasthan - (1996 (2) WLC 461)**, it was held that when the circumstantial evidence swings both ways and is beneficial to the accused and the prosecution both, the benefit of Doubt is to be given to the accused.

(4) In a case relating to Pre-conception and Pre-Natal Diagnostic Techniques Act, 1994 (PCPNDT Act)- **Vinod Soni v/s. Union of India - (2005 Cr. L.J. 3408)**, it was held that right to come into existence is guaranteed by Article 21 and no person shall have the right to choose the sex of the child.

(5) In **Naiknaware & Associates V/s. Union of India - (2006 (5) Mah. L.J. 488)**, he authored the judgment and upheld the constitutional validity of the Rules under the Ancient Monuments & Archaeological Sites & Remains.

The Collegiums system gave him a bad deal on his appointment in 1996 when he was seeking re-transfer to Mumbai for personal reasons. He suffered a tragedy, but he was not transferred. Despite this he did not have bitterness for the system or people and he remained a courteous, gentle and amiable judge. That was his character.

In death of Justice Palshikar, we have lost our respected and popular Judge and a noble human being. We are all going to miss his charming smile.

Our heartfelt condolences go out to the family of Justice V.G. Palshikar which include Mrs. Neha Bhide who is our colleague at the Bar.

On behalf of Bombay Bar Association I express our heartfelt condolences to the bereaved family. Let the departed soul rest in eternal peace.

\*\*\*\*\*

**ADDRESS BY SHRI SANJEEV P. KADAM, PRESIDENT OF  
ADVOCATES' ASSOCIATION OF WESTERN INDIA AT FULL COURT  
REFERENCE TO LATE SHRI JUSTICE V. G. PALSHIKAR, FORMER  
ACTING CHIEF JUSTICE, HIGH COURT, BOMBAY, ON FRIDAY  
12<sup>TH</sup> JULY 2019 AT 10.30 A.M. IN THE CENTRAL COURT ROOM  
NO.46.**

My Lord the Hon'ble Chief Justice and other Hon'ble Judges of the High Court of Judicature at Bombay, learned Advocate General Shri Ashutosh Kumbhakoni, learned Additional Solicitor General Shri Anil Singh, Shri Milind Sathe, President of the Bombay Bar Association, Shri Desai, Secretary of the Bombay Incorporated Law Society, Members of the family of late Former Acting Chief Justice Shri V. G. Palshikar, ladies and gentlemen.

Justice Vishwanath Gopal Palshikar, B. A. LL.B. was born on January 7, 1945. He completed his schooling at Dhule. He was enrolled as an Advocate on June 26, 1968. He practiced in the Nagpur Bench of the Bombay High Court in Constitutional and Service Laws. He was appointed as an Additional Judge of the Bombay High Court on January 20, 1994 and was transferred to the Rajasthan High Court on March 10, 1995 and then re-transferred to the Bombay High Court on 1<sup>st</sup> June, 2001. He retired on 7<sup>th</sup> January, 2007. After retirement he did arbitration work.

**SOME OF HIS LANDMARK JUDGMENTS ARE AS  
FOLLOWS:**

(Bharat Shantilal Shah Vs. State of Maharashtra) Bombay High Court (5<sup>th</sup> March, 2003).

Mumbai High Court today upheld the constitutional validity of Maharashtra Control of Organized Crime Act (MCOCA). The Court, however, struck down certain provisions of MCOCA which deal with interception of telephonic or electronic communication.

Justice V. G. Palshikar and S. A. Bobde were of the view that they were beyond the competence of State Legislature.

The provisions of MCOCA struck down by the Court are Section 13 (appointment of Competent Authority), Section 14 (authorisation of interception of wire, electronic or oral communication), Section 15 (constitution of review committee for review of authorization orders) and Section 16 (prohibition of interception and disclosure of wire, electronic or oral communications).

The Court also partially struck down Section 21(5) of MCOCA to the extent that an accused shall not be granted bail for alleged offences under this Act if he had been granted bail under any other Act.

**Ramchandra Ram Reddy Vs. The State of Maharashtra**  
**(5<sup>th</sup> March, 2004)**

We have, therefore, no hesitation in holding that Brain Mapping/P-300 or Lie Detector/polygraph tests can be administered to any accused or a witness. There is no statement coming out of the involuntary tests and the conclusions which come out of such tests are not statements, the conclusions are not proved in any manner to

be even likely to be incriminating to the maker of it, the expert can very well depose as an expert in relation to the tests in Court that the Brain Mapping of the accused or the witness discloses existence of knowledge about a crime in the brain of those persons undergoing the tests. What that information is nobody is going to say or anybody can say and therefore there is no question that even the statement coming via expert is incriminatory. The protection given by Article 20(3) gives protection from compulsory testimony it therefore cannot apply to these two tests. We therefore reject all the contentions in relation to these two tests.

That takes us to the third test which is called as Narco Analysis (Truth Serum Test). We stated above that in this test the person to whom it is administered does make a statement as stated above. It undoubtedly is a statement. The question which falls for consideration, therefore, is whether such statement can be forcibly taken from the accused by requiring him to undergo the Truth Serum Test against his will. It will be seen that such statement will attract the bar of Article 20(3) only if it is inculcating or incriminating the person making it. Whether it is so or not can be ascertained only after the test is administered and not before. In our opinion, therefore, there is no reason to prevent administration of this test also because there are enough protections available under the Indian Evidence Act, under Criminal Procedure Code and under the Constitution Article 20(3), to prevent inclusion of any incriminating statement if one comes out after administration of the test.

**Nitin Janardhan Raut Vs. State of Maharashtra and Anr. (2002)**

Constitution of India, Article 311(2) (b) - The Bombay Police Act, 1951, Section 26 proviso - Petitioner, a police constable, was discharged from service for negligence in duty resulting in the escape of prisoner - No enquiry was held, the reasons advanced for non-holding of enquiry being that the only witness of the negligence of petitioner was the prisoner who had escaped - Petitioner challenged his dismissal - Held, an opportunity to show cause was not given as required by proviso to Section 26 of Bombay Police Act - The reasons given in the instant case for not holding the enquiry are improbable - Taking recourse to Article 311(2) (b) is colourable exercise of power by State to avoid departmental enquiry - Petition of constable allowed - Order of dismissal quashed - Petitioner directed to be reinstated in service - Liberty given to State to proceed with the departmental enquiry as it wished in the circumstances of the escape of the accused.

2. Constitution of India, Article 226 - Laches - Condonation of - Petitioner, a police constable, who was dismissed from service on 11<sup>th</sup> March, 1993 approaching High Court in 1999 for relief - He pleaded poverty, non-availability of fund and proper legal advice as the cause for the delay in approaching High Court - Held, looking to the fact that petitioner is dismissed and is facing starvation, there is no reason to reject his submission and dismiss the petition only on ground of laches.

3. Back-wages - Denial of - Petitioner constable dismissed in 1993 approaching High Court under Article 226 in 1999 - Though reinstatement ordered back-wages denied as petitioner himself was to be blamed for the delay in approaching High Court.

**Nisha Eknath Shende & Ors. Vs. State of Maharashtra & Ors.**

Held : Under the Constitution of India, Article 226 - No writ can be issued against Dr. Babasaheb Ambedkar High School, Gondia, a private institution.

**Madhukar Gaikwad & Anr. Vs. General Insurance Corporation of India (2004)**

Constitution of India, Article 16 - Promotion - Claim for promotion on the basis of wrong seniority list - Held, Article 16 only confers right to be considered for promotion - No further right to appointment springs from it.

**Annarao Baloba Gaikwad Vs. Solapur Municipal Corporation & Ors. (2004)**

Held : That under the Land Acquisition Act (1 of 1894), Sections 3(f) and 4 - Acquisition of land for public purpose - Constructing memorials of National Heroes is a public purpose for which land can be acquired.

(c) Land Acquisition Act (1 of 1894), S. 3(f) - Construction of hospital on acquired land in the memory of national heroes - Plea that no public purpose would be served by total demolition of property and erection of new building cannot be accepted.

(d) Land Acquisition Act (1 of 1894), S. 4 - Acquisition of land for construction of memorial - Plea that there already exist four memorials in the city and fifth one was not necessary not tenable.

His love for nature is not an unknown fact. He also published two articles in the Hindu namely Vacation of Choice of Hon'ble Judges and Monsoon Love. Bits from his article is illustrated as follows:

**Judges need their vacations, but justice can't take a holiday**

-Article in The Hindu

"Instead of reducing the number of holidays, break it up in such a manner that renders the judge judicially more active than he is now. The High Court can so do it if 15 judges go on leave, and the 45 others can work. With this, there will not be any pressure on the judges and nobody will be overworked. Does it make sense to give Diwali vacations to Muslims? The same with our Christmas holidays.

It is absolutely incorrect to assume that all the 60 judges of the Bombay High Court will want to rest for 30 days in May. If you get the vacation slot of your liking, you enjoy it better than a compulsory sit-at-home vacation during the summer, winter and Diwali holidays. Bombay High Court has 60 judges; 45 of them will be willing to work during court vacations if they are given other slots of their choice to take their vacation. I, for

instance, would prefer to go out in the monsoon and would rather spend the summer time in the city.

Instead, keep 15 days for winter, 15 for Diwali, and there are 15 public holidays. Let the judge choose when to take the rest of the 75 days. The administrative committee of the High Court can decide this."

Justice Palshikar was a person with a great sense of legal acumen and his sharp mind helped all the members of the Bar. On behalf of A.A.W.I., I express my deep condolences for Justice Palshikar and pray to God that his family be given the courage by God to bear this loss. May his soul rest in peace.

Sanjeev P. Kadam,  
President, A.A.W.I.

**Addressed by Shri Nilesh Modi, Secretary of  
Bombay Incorporated Law Society at the Full  
Court Reference to Late Shri Vishwanath Gopal  
Palshikar, Former Judge and Former Acting Chief  
Justice of High Court, Bombay, at Central Court  
Room No.46, on Friday 12<sup>th</sup> July 2019 at 10.30  
a.m.**

My Lord the Hon'ble Chief Justice and

My Lords the other Hon'ble Judges

Learned Advocate General, Learned Additional  
Solicitor General

President of the Bombay Bar Association

President of the Advocates' Association of  
Western India

Family Members of Justice Palshikar

Learned Senior Colleagues and friends.

We are today gathered to mourn the loss of Justice Vishwanath Gopal Palshikar. He was born on 7<sup>th</sup> January 1945, at Dhule in Maharashtra State. He obtained his degree of Bachelor of Arts from Nagpur University in 1965 and acquired the degree in law from Pune University, having secured 3<sup>rd</sup> position in merit.

On 28<sup>th</sup> June 1968, he started practice before the Nagpur Bench of the Bombay High Court. Practicing on all branches of law, actively participated in improvement of the legal profession. Justice Palshikar was elected as a member of the Committee of the Bar Council of Maharashtra and Goa in 1977. He was the Vice Chairman in 1984.

He liked writing educative articles in law and several of his articles are published in law journals throughout the country. He has his own blogging site whereby the title to the articles is "Majhe Mokaat Vicchaar" ("My free thoughts"). Many of his articles are published in the eminent newspapers as well. His article the amendment of the Constitution of India was reported in The Indian Journal of Legal Studies.

From the year 1975 to 1984 he was Honorary Lecturer of Law in the University College of Law at Nagpur.

On 20<sup>th</sup> January 1994, he was appointed as an Additional Judge of the Bombay High Court and was transferred to the High Court of Rajasthan till May 2001. In June 2001, he was transferred back to Bombay High Court and functioned as a judge of the Bombay High Court till 7<sup>th</sup> January 2007. In the year 2008, he was designated as a Senior Counsel by the Supreme Court of India. Thereafter on several occasions he has appeared as senior counsel in the Supreme Court of India and other High Courts. Later, he was appointed as the Chancellor of Tilak Maharashtra Vidyapeet, Pune.

During his career as Judge he decided several important matters like validity of the Maharashtra control of Organized Crime Act, 1999, Abolition of Revenue Tribunal Act, etc. I had the opportunity to appear before him and found him to be an upright, thorough and sharp Judge.

Since, 2003, he was Chairman of the advisory committee in relation to preventive detention under the Maharashtra Prevention of Dangerous Activities Act, whereunder Slumlords, bootleggers, and extortionists were detained who's representations were considered by the Advisory Board. During this period, he was also chairman of the Advisory Board under the

COFEPOSA. In the year 2006, 2 more Advisory Boards pertaining to preventive Detention were also claimed by him.

Justice Palshikar had decided many issues of national importance during his tenure as a judge of the Bombay High Court. He had dealt with the issue of Brain Mapping of accused for evidence to be used against him, reported in 2004(1) Bom. C.R. 657.

In the case of Bharat Shah V/s State of Maharashtra, Justice Palshikar held that although some provisions like sec. 13 and 14 were required to be struck down, the entire Maharashtra Control of Organised Crime act was enacted for better control of organized crime and hence the same needs to be upheld. This judgment has been upheld by the Supreme Court of India. Justice Palshikar has also decided many cases pertaining to administrative law and his known in the Judiciary for his experience in the fields of Constitution, Administrative law and criminal Laws.

Justice Palshikar was a firm believer of Alternate Remedies and was a chairman of the Maharashtra State Legal aid and Services Authority Committee and propagated, by popular means, the necessity for alternate systems of dispute resolution.

He was appointed as chairman of the selection committee for the selection of vice-chancellor of Solapur University. He was also the Chairman of the committee for implementation of the Schedule Caste & Scheduled Tribes Prevention of Atrocities Act, 1989 for the last 3 years. Further he had also headed the Committee formed by the Maharashtra Education Minister for ensuring a firm enforcement of the fee regulation law in the educational institutions.

On behalf of the Bombay Incorporated Law Society I express my heartfelt condolences to the bereaved family and pray for the departed soul of Justice Palshikar to rest in peace.

Thank you,

Nilesh Modi, BILS

\*\*\*\*\*