



The Unconstitutionality of Curfews and Ankle Bracelets

Following the High Court's decision in *NZYQ*, which resulted in the release of certain immigration detainees, the government introduced a new law creating the Bridging Visa R (BVR). This visa required restrictions on released detainees, such as curfews and ankle bracelet monitoring. The legislation authorising the BVR required that the minister impose these restrictions unless satisfied that the visa holder did not pose a risk to the community.

Recently, this provision faced a legal challenge. In *YBFZ v. Minister for Immigration, Citizenship and Multicultural Affairs & Anor (YBFZ)*, the High Court ruled that mandating curfews and ankle bracelets on the released detainees was unconstitutional. The court's reasoning can be summarised as follows:

1. Punitive Nature

The restrictions significantly limited individual liberty and bodily integrity in ways that resemble punishment. Per the judgement in *NZYQ*, measures which would ordinarily be classified as punitive may not be lawfully exercised by the Executive unless they are reasonably necessary to serve a legitimate, non-punitive purpose.

2. Indiscriminate Application

The restrictions applied automatically to all BVR holders unless the minister was satisfied that they posed no risk to any part of the community. This meant that if there was any ambiguity or lack of evidence regarding a detainee's criminal history, the minister was required to impose restrictions by default.

3. Broadness of the alleged non-punitive purpose

The court held that the purpose - "protection of any part of the Australian community" - was too broad. It did not specifically target the risk of future criminal acts by former detainees, and therefore did not qualify as a legitimate non-punitive purpose.

The Judgement

The court concluded that punitive restrictions aimed at community protection must address a specific non-punitive purpose and be reasonably necessary for the achievement of that legitimate, non-punitive purpose. Since the restrictions were applied indiscriminately and the stated purpose was too vague, the restrictions could not be justified as necessary for protecting the community. As a result, the court struck down the law as invalid.

The doctrine of the Separation of Powers prevents arbitrary punishment and upholds an independent and impartial judiciary to oversee the lawful exercise of executive power. The High Court's ruling acknowledged that while no constitutional freedom exists against all interference with bodily integrity or liberty, any punitive measure must align with constitutional boundaries. The decision serves as a reminder to Parliament and the Executive to respect these limits in future legislation.