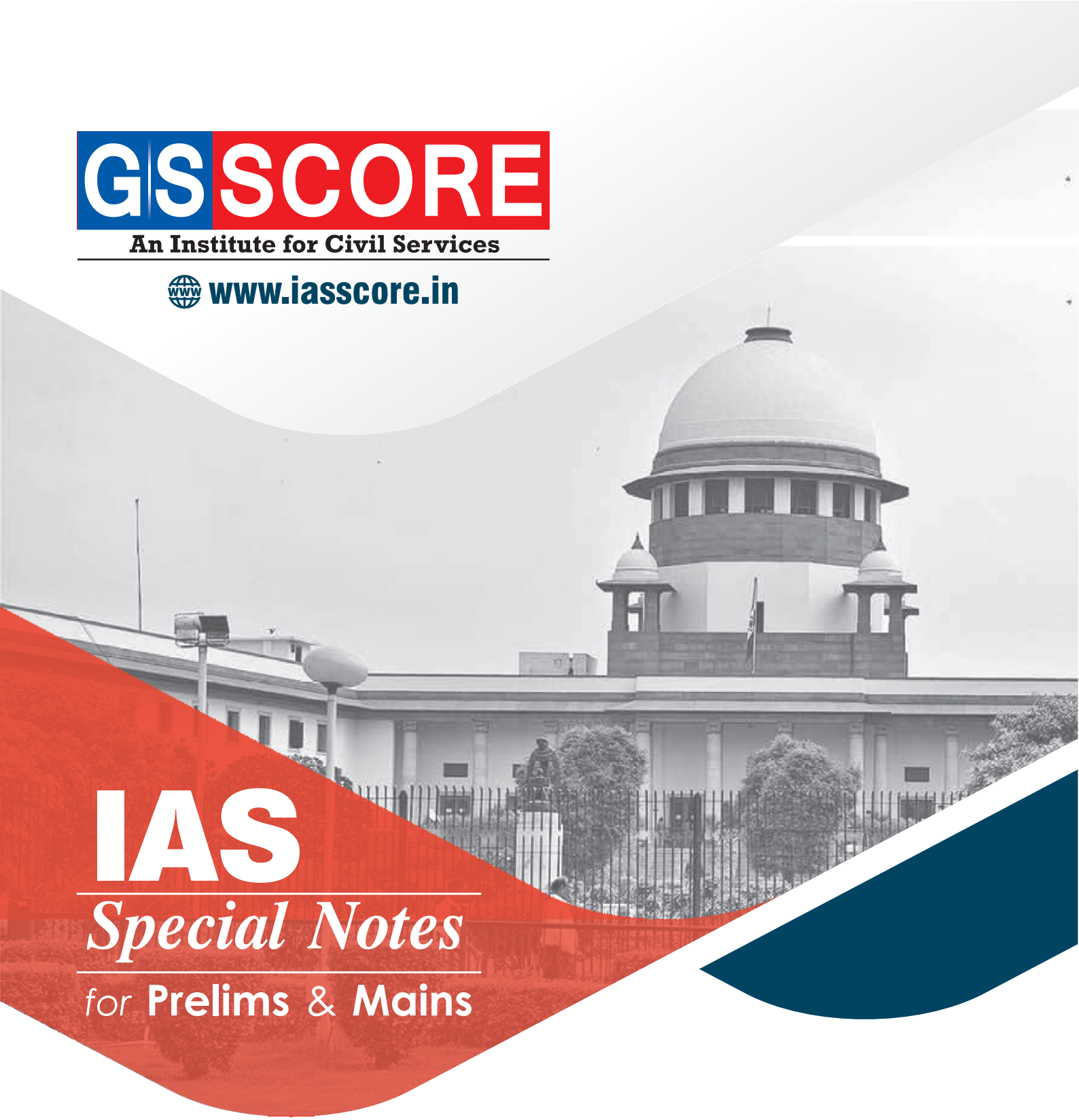
GS SCORE

An Institute for Civil Services

www.iasscore.in



IAS

Special Notes

for Prelims & Mains

Landmark Judgments

Passed by the

Supreme Court

in Recent Times

GS SCORE

An Institute for Civil Services

IAS 2021

LIVE & INTERACTIVE CLASSES

IAS 2021-22 GS FOUNDATION

BATCH STARTS 28 MAY, 2020

OPTIONAL FOUNDATON

POL. SCIENCE FOUNDATION

by: Dr. Piyush Choubey

BATCH STARTS 15 JUNE

PUB. ADMN. FOUNDATION

by: Ashutosh Pandey

BATCH STARTS 29 JUNE

HISTORY FOUNDATION

By: Piyush Kumar

BATCH STARTS 29 JUNE

IAS 2021 MAINS ADVANCE

BATCH STARTS 19 JULY 2020

IAS 2021 INTEGRATED TEST SERIES

PRELIMS CUM MAINS

BATCH STARTS 25 JULY 2020

IAS 2021 PRELIMS TEST SERIES

BATCH STARTS 2 AUGUST 2020

IAS 2021 MAINS TEST SERIES GS MAINS Q&A

BATCH STARTS 8 AUGUST 2020

1B, 2nd Floor, Pusa Road Karol Bagh, New Delhi-110005,
(Adjacent to Karol Bagh Metro Gate No. 8)

info@iasscore.in /iasscore

Visit: www.iasscore.in

8448496262

CONTENTS

- Aadhaar Verdict: 1
- Adultery Verdict: 4
- Sabarimala Verdict: 5
- Section 377 Partly Struck Down (Decriminalization): 8
- Euthanasia Verdict: 10
- Supreme Court upholds SC/ST Amendment Act: 14
- Reservation in Promotion is not a Fundamental Right: 15
- Ayodhya Verdict: 17
- Chief Justice of India under Right to Information: 19
- Supreme Court declared Private Property is a Human Right: 22
- No Double Jeopardy Bar if there was No Trial: 23
- Supreme Court modifies its order on Dowry Harassment Law: 23
- Centre can't withhold docs under RTI citing National Security: 25
- SC upholds constitutional validity of Insolvency and Bankruptcy Code: 26
- SC declared seeking vote to the Religion and Caste illegal A Corrupt Act: 27
- Live-Streaming of Court Proceedings: 28
- Dismissal of Nirbhaya Rapist's Review Petition: 28

Landmark Judgments Passed By the SUPREME COURT in Recent Times

Laws of country not only shape the governing institutions but also have profound impact on society. They liberate, provide more choices or narrow down it. In past years saw the country's biggest institutions, from the CBI to the RBI face a credibility crisis. But one institution proved rightfully why it has the word supreme in its name. The Supreme Court with its milestone judgments in several cases **- from granting the right to love freely to secure citizen's privacy, won citizen's hearts with its verdicts.**

Here are some of the landmark judgments delivered:

Aadhaar Verdict

In a significant move, the Supreme Court constitution bench struck down several provisions in the Aadhaar Act in September 26 2018.

> The Supreme Court **upheld the Aadhaar scheme as constitutionally valid**. However, the apex **court's five-judge constitution bench also struck down several provisions in the Aadhaar Act**.

Court's Verdict:

- The Supreme Court upheld the validity of Aadhaar saying sufficient security measures are taken to protect data and it is difficult to launch surveillance on citizens on the basis of Aadhaar.
- A **five-judge** bench led **by former CJI Dipak Misra** asked the government to provide more security measures as well as reduce the period of storage of data.
- The SC asked the Centre to bring a robust law for data protection as soon as possible.
- The SC said **Aadhaar cannot be made mandatory for openings of a bank account** and for getting **mobile connections**.
- The SC said that **Aadhaar must not be made compulsory for school admission and the administration cannot make it mandatory**.

- The SC has made **linking of Aadhaar and PAN mandatory**. The apex court also made **Aadhaar mandatory for filing of Income Tax Return (ITR)**
- The SC directed the government to **ensure that illegal migrants are not issued Aadhaar to get benefits of social welfare schemes.**
  - The apex court **struck down the provision** in Aadhaar law allowing **sharing of data on the ground of national security.**
  - The SC said there is a **fundamental difference between Aadhaar and other identity proof as Aadhaar cannot be duplicated and it is a unique identification**.
  - It added that **Aadhaar is to empower the marginalised sections of the society, and it gives them an identity.**

- Aadhaar has a superior 2048-bit encryption whereas the standard encryption rate is 256.
- The UIDAI (Unique Identification Authority of India) has two data centers in India located at :Hebbal (Bengaluru), in the state of Karnataka and, At Manesar (Gurugram), in the state of Haryan
- An Indian citizen can enrol for Aadhar at any age. Finally 73% to those registered are above 18 Years of age.

Impact of the Judgement

- **Striking down of Regulation 27(1)** and reducing storage period of authentication data from five years to six months will ensure personal data is not misused. Amending Regulation 26 and making metabase relating to a transaction impermissible will prevent fake profiling of an Aadhaar holder**.**
- Now citizens can file a complaint in case of data theft, which earlier could be done by the government (i.e. UIDAI) alone due to **Striking down of Section 47**.
- Now Aadhaar may only be used by the government, and not by private parties as portion of **Section 57 of the Aadhaar Act** which enables body corporate and individual to seek authentication is held to be **unconstitutional**.
- Aadhaar could unleash its potential for good governance and effective distribution of social welfare services. Aadhaar was launched for the "inclusion" of the marginalised section of society and it cannot be crucified on the possibility of failure in authentication. Aadhaar gives dignity to the marginalised. Dignity to the marginalised outweighs privacy.
- The constitution bench strikes down the **National security exception (Section 33(2))** under the Aadhaar Act while giving citizens the opportunity of being heard before disclosure of information **under section 33(1) of the Aadhaar Act.** This will indirectly ensure greater privacy of individual's Aadhaar data while restricting the government accessibility to it.
- The Supreme Court has made exception for children saying that no child can be denied benefits of any scheme if he or she doesn't have Aadhaar card. Students of CBSE, NEET, UGC also do not require Aadhaar number to appear in exams. Even schools cannot seek Aadhaar card for admissions.

Review Petition

A **review petition was filed in the Supreme Court seeking re-examination of its verdict by which the centre's flagship Aadhaar scheme was held as constitutionally valid.**

The review petition was filed against the September 26, 2018 (mentioned above) verdict of the five-judge constitution bench which had said there was nothing in the Aadhaar Act that violated right to privacy of an individual. The court had also upheld the passage of the Aadhaar Bill as a Money Bill by the Lok Sabha

Challenges that still remains

Already shared data

- This remains to be a grey area as the judgement **doesn't mention that banks or mobile companies will have to delete the collected information.**
- It also upheld the **validity of Section 59** that also validates all Aadhaar enrolment **done prior to the enactment of the Aadhaar Act, 2016.**
- The court said that data collected between **2009 and 2016 was not forced but those who specifically refuse to give consent would be allowed to exit the Aadhaar scheme**.

Mandating Aadhaar on the poor

- Rather than enabling easier access, it may end up harming them by denying them their rights due to technical authentication problems.
- It is still needed in **Mid-Day meal for children, Assistance/Scholarship given by Department of Empowerment of Persons of Disabilities, Supplementary Nutrition Programme under ICDS Scheme, Payment of honoranium to AWWs and AWHs under ICDS Scheme, ICDS Training Programme, Supplementary Nutrition for Children offered at creche centres, honoranium for creche workers and helpers, maternity benefit programme, scheme for adolescent girls, Ujjwala scheme, Swadhar scheme, STEP Programme, Rashtriya Mahila Kosh, Pradhan Mantri Matru Vanana Yojana, Painting and essay competitions under IEC**.

Single Identifier

- If the Aadhaar number is 'seeded' into every database (train travel, air travel, bank account, mobile phone, employment history, health and so on.), it integrates these data silos. Aadhaar becomes the bridge across the hitherto disconnected data silos. People in government will be able to 'profile' the citizens, by pulling in information from various databases using that single identifier. Just the possibility of **such profiling is likely to lead to self-censorship and, is likely to stifle dissent.**

- **Section 33(1)** allows disclosure of information, including identity and authentication records, if ordered by a court not inferior to that of District Judge.
- **Section 33(2)** allows identity and authentication data to be disclosed in the interest of national security on direction of an officer not below the rank of Joint Secretary to the Government of India
- **Section 47** of the Aadhaar Act refers to cognizance of offences. Under this section, no court is allowed to take cognizance of any offence punishable under this Act, except on a complaint made by the authority of officer or person authorised by it.

The verdict ensure that the country has some unique document to ensure transparency and improve delivery of services however some reasonable conditions and restrictions on private usages have been imposed as safeguards that would further strengthen Aadhaar as the unique identity in the service of the people especially the poor.

Adultery Verdict

In a landmark judgement in 2018, the Supreme Court scrapped the 150-year old adultery law.

The Verdict

- **Supreme Court in unanimous verdict said Adultery law deprives women of dignity, has to go.**
- The five-judge bench (headed by former CJI Deepak Misra) held that Section 497 was **an archaic law that violates of the right to equality and destroys and deprives women of dignity**
- The court held that the 158-year-old law was unconstitutional and fell foul of **Article 21** (Right to life and personal liberty) and **Article 14** (Right to equality). It destroys and deprives women of dignity and offends sexual freedom of women.
- The judgment said that **making a special provision for women to escape culpability was constitutionally valid under Article 15(3) that allows such a law.**
- Adultery cannot be a crime unless it **attracts the scope of Section 306 (abetment to suicide) of the IPC**. It can be ground for civil issues including dissolution of marriage but it cannot be a criminal offence**.**
- Unequal treatment of women invites the wrath of the Constitution.

Adultery

The act of adultery is a ***voluntary sexual intercourse between a married person and someone other than that person's current spouse or partner.***

Section 497 of the IPC

- Section 497 gives a husband the exclusive right to prosecute his wife's lover. A similar right is not conferred on a wife to prosecute the woman with whom her husband has committed adultery.
- Secondly, the provision does not confer any right on the wife to prosecute her husband for adultery. Further, the law does not take into account cases where the husband has sexual relations with an unmarried woman.

What were the ambiguities in the adultery law?

- Adultery law under Section 497 views **women as a property of men.** The law was discriminatory**. The** right under the act was not available to an aggrieved wife if her husband was found to be in an adulterous relationship.
- A woman committing adultery is not deemed to be an "abettor" to the offence. Also it legalises the act of Adultery if committed by with the consent or connivance of the husband of the woman who is party to the act.
- The dominant argument in the court hearing was that Section 497, governing adultery law, discriminated against men by not making women equally culpable in an adulterous relationship. It was also argued that adultery **law gave a license to women to commit the crime**.

- Adultery law violated the **fundamental right of equality guaranteed under Articles 14 and 15 of the Constitution.**

What can be concluded?

- Adultery is a relic of the past.
- Adultery might not be cause of unhappy marriage, it could be **result of an unhappy marriage**.
- **Adultery can be a ground for divorce**. It can be part of **civil law involving penalties** but **not criminal offence.**
- The Supreme Court also rejected the argument that **unmarried women** should be brought under the purview of the adultery law.
- The argument was that if an unmarried men establishes adulterous relationship with a married woman, he is liable for punishment, but if an unmarried woman engages in a sexual intercourse with a married man, she would not be held culpable for the offence of adultery, even though both disturb the sanctity of marriage.
- The Supreme Court held that bringing such an **unmarried woman in the ambit of adultery law under Section 497 would mean a crusade by a woman against another woman**. The ambiguity related to adultery law remained unresolved.

Striking down the 158yr old law based on Victorian values, in Sec 497 of Penal code, which treats women as property of husbands & criminalises adultery, is a welcome step to break the patriarchal control over women's body.

Sabarimala Verdict

Judgement:

In **a 4-1 majority decision**, the Supreme Court on September 28, 2018 **lifted the ban, which it termed as a violation of women's right to practice religion.** Former Chief Justice Dipak Misra, Justice AM Khanwilkar, Justices Rohinton F Nariman and Dhananjaya Y. Chandrachud concurred with each other **while Indu Malhotra dissented** saying that courts shouldn't determine which religious practices should be struck down or not**.**

Sabarimala temple

The Sabarimala temple in Kerala is a shrine to Lord Ayappa. It had an **age-old tradition of not allowing women between the age of 10 and 50 years to enter the premises**.

The reason?

The women, who fall in the menstruating age group, were considered to be "impure".

Observation made by the Court at various bench

- **Top quotes: "In the theatre of life, it seems, man has put the autograph and there is no space for a woman even to put her signature", "Patriarchy in religion cannot be allowed to trump right to pray and practise religion" and "To treat women as children of lesser god is to blink at the Constitution**
- Restrictions on women in religious places are not limited to Sabarimala alone and are prevalent in other religions too. The issue of entry of women into mosques and Agiyari could also be taken by the larger bench.

- Both sections of the same religious group have a right to freely profess, practise and propagate their religious beliefs as being integral part of their religion by virtue of Article 25 of the Constitution of India.
- Devotion cannot be subjected to gender discrimination.

Present Situation

- In 2019 five-judge bench of the Supreme Court referred review pleas in the Sabarimala temple issue to a larger seven-member bench.
  - In 3:2 majority verdict, two judges stuck to their earlier stand of (2018 Judgement) quashing the custom which barred entry of women between the ages of 10 and 50 years.
  - The split decision came on 65 petitions – 56 review petitions, four fresh writ petitions and five transfer pleas – which were filed after the apex court verdict of September 28, 2018 sparked violent protests in Kerala.
- Recently **A nine-judge Constitution Bench of the Supreme Court upheld the decision of the Sabarimala Review Bench to refer to a larger Bench questions on the ambit and scope of religious freedom practised by multiple faiths across the country.**

The Bench also framed seven questions of law which the nine-judge Bench would decide now. These are:

- What is the scope and ambit of religious freedom under Article 25 of the Constitution?
- What is the interplay between religious freedom and rights of religious denominations under Article 26 of the Constitution?
- Whether religious denominations are subject to fundamental rights?
- What is the definition of 'morality' used in Articles 25 and 26?
- What is the ambit and scope of judicial review of Article 25?
- What is the meaning of the phrase "sections of Hindus under Article 25 (2)(b)?
- Whether a person not belonging to a religious group can question the practices, beliefs of that group in a PIL petition?

Understanding the arguments against the temple entry

- According to two women's groups, **People for Dharma and Chetana**, Ayyappa in Sabarimala is a celibate and his **individual rights should be protected under Article 25 of the Constitution**. It was argued the rule is not discriminatory for it is neither based on **misogyny nor menstrual impurity**; rather **Ayyappa's celibacy is a fundamental character of the temple.**
- Religious communities/denominations should decide what constitutes an essential religious practice: It should not be decided by judges on the basis of their personal viewpoints**.**
- Such points should certainly be considered, as they lead to a conclusion that in a secular, democratic **state, religious orthodoxy should be protected just like other freedoms, as long as such orthodoxy is not oppressive toward other fundamental values**.

- By determining which particular practice or custom is essential or integral to a religion, the court enters into the realm of theology, thus leading to judicial overreach and leaving its world of laws and constitutional rights.
- According to **Travancore Devaswom Board**, Prohibition is not because of **male chauvinism**. It is linked to the **penance and character of the deity. Women accept the prohibition. It is not imposed on them.**
- According to Justice Indu Malhotra (from the 5-Judge bench), Court should not interfere unless if **there is any aggrieved person from that section of religion" or if a tradition is a "pernicious, oppressive, or a social evil.**

Key Points to decode

- The ruling of the Supreme Court has attracted praise as well as criticism. Two ideas that lay at the foundation of the Indian Constitution – **equality and secularism** – have been brought to bear during this debate.
- Secularism, however, is understood differently in India than it is in Europe or the United States. It does not focus on separation of Church and state.
- In Hinduism, there is no church to separate the state from, and the same more or less applies to Indian Islam as well.
- While there is more than one interpretation of the idea of secularism in India, it is often understood that the state should treat all religious communities in the same way. It should, in other words, keep equidistance.
- But what is a **more secular approach**: non**-interference in the customs of religious communities or the interference in them?** The **paradox of non-interference** is that the secular **state cannot not reform the orthodox traditions** that function within it. **The paradox of interference** is that the secular state, by involving itself in **reforming religious traditions, becomes a kind of religious authority itself.**
- Beyond secularism, **another important idea in the Republic of India's Constitution** is the **equality of all of its citizens**. Treating every community, the same way may perhaps be understood as following both equality and secularism. **But can equality of all citizens be achieved while maintaining the equality of all communities?**
- Let us take the **case of women's entry into temples**. **Equality of religious communities could be understood as letting them practice their customs, including barring women from entering religious places. But such equality of communities means the inequality of genders (and this applies not only to the issue of women entry)**.
- **Equidistance of the state toward religious communities should mean that either the state interferes in all of their customs in the same way or lets them equally keep them**. Whether one supports the court judgment or not, it should be pointed out that it is a piecemeal legislation.
- Decades ago, the Indian Republic forced conservative Hindu temples to open their doors to Dalits (untouchables) but the same was not done with regard to shrines that do not admit women (the ruling of the **Bombay court in 1950s retained the access rules of Sabarimala**).
- Sabarimala may now join the list of temples open to women, but **there are other Hindu temples that keep their gates shut to them**. Moreover, there are possibly even more **shrines of Muslim saints (tombs called dargahs) that traditionally disallow women from entering the inner sanctum**. In **2016,** the Supreme Court **similarly forced the famous Haji Ali Dargah to open itself to women**, but the same did not apply to **other Islamic places of worship**. The **principle of equidistance has been continuously broken.**
- Justice Malhotra's point was that the court should not interfere unless there is "any aggrieved person." Her approach is legally sound but on the other hand this is exactly what leads to piecemeal legislation: **Only those religious communities that face legal proceedings (because of people that demand**

changes) can be reformed with state interference. It is, in a way, a moderately **conservative approach**. There is no change unless somebody demands it. This approach may be legally correct, but it is against the spirit of treating every community and every citizen in the same way.

- Secondly, while Justice Malhotra has full right to a dissenting voice, the entire judgment was declared precisely because there were "**aggrieved persons**." The ruling about Sabarimala was a response to a writ petition of women lawyers.
- Similarly, the opening of Haji Ali Dargah was a reaction to actions of a **movement of Muslim women**. Some votaries of tradition claim that the activists that strive for women entry act as provocateurs who attack customs from anti-religious positions and not because there are believers. Past incidents such as those in Sabarimala suggest, however, that there are indeed devout women that do want to gain access to their places of worship.
- Article 26 of India's constitution claims that "**every religious denomination or any section thereof shall have the right** (a) **to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion**." Article 25, however, declares that "all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion." But "(2) Nothing in this article shall affect the **operation of any existing law or prevent the State from making** (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."
- The last sentence, therefore, is a yet another example of violating the idea of equal treatment of religions as it obliges the state **to open only Hindu religious institutions**.
- But it also makes it transparently clear, that all Hindus should be given access to all temples. If one should go by this article alone, the state should force all Hindu temples to be open to women, but only Hindu women. Once again, all unequal approaches create further dichotomies and space for further precedents.

It may seem that in cases **where equality and secularism come into conflict**, **a democratic state should put equality first. And if the rights of citizens would come into conflict with the rights of communities, the former should be given primacy**. Using a "community" as a legal denomination will always remain problematic if the state wants to secure equal rights of all citizens, while the communities retain different customs. At same time, however, an absolute realization of such attempts certainly does mean large-scale interference of the state in the existence of conservative communities.

Section 377 Partly Struck Down (Decriminalization)

The Supreme Court in a landmark judgment **legalised gay sex by holding that sex between two consenting adults is not a crime**. A five-judge bench of the Supreme Court headed by CJI Dipak Misra gave the final verdict in 2018.

The Verdict

- SC made it clear that **Article 14 of the Constitution guarantees equality before law and this applies to all classes of citizens** thereby restoring '**inclusiveness' of LGBTQ Community.**
- SC upheld **the pre-eminence of Constitutional morality in India by observing that equality before law cannot be denied by giving precedence to public or religious morality**.

- SC noted that modern psychiatric studies and legislations recognise that gay persons and **transgender do not suffer from a mental disorder and therefore cannot be penalized**.
- SC observed that **homosexuality is not unique to humans, which dispels the prejudice that it is against the order of nature.**
- Supreme Court stated that the 'Yogyakarta Principles on the Application of International Law in Relation to Issues of Sexual Orientation and Gender Identity' should be applied as a part of Indian law.
- Any kind of sexual activity with animals and children remains a penal offence.

Section 377

- Section 377 of the Indian Penal Code 1860, a relic of British India, states that "whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished." This included private consensual sex between adults of same sex. **Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offense described in this section.**
- After the SC judgement, provisions of Section 377 remain applicable in cases of non-consensual carnal intercourse with adults, all acts of carnal intercourse with minors, and acts of bestiality.

Section 377 & LGBT Activism in India

- It was through Section 377 that for the first time, homosexuality (LGBT) was criminalised explicitly as 'unnatural sex', with a serious punishment leading up to life imprisonment.
- The opposition to this state of marginality towards homosexuals gave birth to a queer (LGBT) political consciousness forged in the crucible of struggles around the law.
- The first collective and public reaction to the various injustices perpetrated on queer people was when the **AIDS Bedhbhav Virodhi Andolan (ABVA)** organised a public demonstration in 1992 against police harassment of gay people.
- **Lucknow Four Case:**
  - Ten years later, when a case under Section 377 was filed against staff of an organization working with HIV/AIDS, it resulted in widespread protests. The case popularly known as the '**Lucknow four',** refers to the arrest of four HIV/ AIDS activists and the sealing of two organizations working with HIV/AIDS on grounds of conspiracy to promote homosexuality.
  - **The Lucknow case also demonstrated that the very presence of Section 377 on the statute books meant that the potential for its use was always there.**
  - The campaign against the arrests in Lucknow represented a new activist zeal. It resulted in the formation of **People for the Rights of Indian Sexual Minorities (PRISM),** one of the first political groups focusing on queer rights in Delhi, which later played a crucial role in the formation of a coalition called Voices against 377. As **an intervener in the Delhi High Court**, Voices was instrumental in highlighting the abuse of human rights implicit in Section 377.
- In July 2009, in **Naz Foundation** case the **Delhi High Court had decriminalised homosexuality** among consenting adults, holding it in **violation of Article 14, 15 and 21 of the Constitution of India.**
- The Supreme Court in 2013 in the **Suresh Kumar Koushal versus Naz Foundation** case **overruled the Delhi High Court's order on the basis of the fact that "miniscule fraction of the country's population constitute LGBTQ,"** and that in over 150 years less than 200 people were prosecuted for committing offence under the section. Thus, the Supreme Court **reinforced the criminalisation of homosexuality.**

Analysis of the judgement

- Court held that LGBTQ possess **full range of constitutional rights, including sexual orientation and partner choice**, LGBTQ has equal citizenship and equal protection of laws. It will help in enforcing principles of social justice, based upon the importance of diversity and human rights**.**
- Courts must protect dignity of an individual as right to live with dignity is recognised as fundamental right.
- There is an addition of new test of constitutional morality to examine the constitutionality of laws enacted by Parliament. The verdict enlarges the scope of personal freedom by giving preference to constitutional morality over social morality.
- The verdict is a vital measure for **HIV prevention in the country**.The decision entail **access to health services and treatment facilities**. It asks for sensitive counsellors and health workers "to help individuals, families, workplaces and educational and other institutions" to understand sexuality and foster equality, non-discrimination and a respect of human rights
- Legally, the decision will make **persecution of same-sex couples more difficult**, and organisations working on issues of sexual rights with LGBT communities now have more freedom to operate without police harassment.
- The SC also emphasised **that attitudes and mentality have to change to accept the distinct identity of individuals and respect them** for who they are rather than compelling them to become who they are not.

Issues not Addressed

- **Regulation:** Decriminalisation is not deregulation. Family and employment law, for example, may continue to discriminate against people based on their sexual orientation. Questions like How will inheritance and tax laws apply for same-sex couples? Will workplace discrimination be outlawed, and will such laws be strictly enforced? These issues remain silent.
- The issue of HIV raises a further important legal question**.** Question of whether HIV-positive individuals can face criminal prosecution for passing on the virus either deliberately or for having failed to disclose their HIV status to their sexual partners.
- Since the ruling would not be retrospective, **so people convicted under Section 377 are left without any effective remedy**. According to data from the National Crime Records Bureau (NCRB) between 2014 and 2016, there were 4,690 cases of persons being booked under Section 377.

Reform of Section 377 will make such discrimination harder, but full equality will only come if the government actively reaches out to LGBT individuals with health programmes, HIV and other sexually transmitted disease prevention and treatment programmes, counselling services, and legal support.

Euthanasia Verdict

The Supreme Court said passive euthanasia is permissible. The Supreme Court **gave legal sanction to passive euthanasia in a landmark verdict, permitting 'living will' by patients** on withdrawing medical support if they slip into irreversible coma. Supreme Court recognised the right to **die with dignity as a fundamental right.**

What is Passive euthanasia/Active Euthanasia?

- Passive euthanasia is **a condition where there is withdrawal of medical treatment with the deliberate intention to hasten the death of a terminally-ill patient.**

- Active euthanasia, on the other hand, is when doctors intentionally intervene to end a patient's life. This practice is still illegal in India.

Background:

- **The 196th Law Commission of India report in 2002** advocated passive euthanasia. However, it decided not to make any laws on euthanasia.
- In 2011, the court recognised passive euthanasia in Aruna Shanbaug case by which it had permitted withdrawal of life-sustaining treatment from patients not in a position to make an informed decision. According to the Court, the decision of the patient must be an informed decision.
- The **Law Commission, later in its 241st report came out in favour of allowing withdrawal of life support for certain categories of people** — like those in persistent vegetative state (PVS), in irreversible coma, or of unsound mind, who lack the mental faculties to take decisions.

What is a Living will?

Living will is a written document that **allows a patient to give explicit instructions in advance about treatment to be administered when he or she is terminally ill or no longer able to express consent.**

Aruna Shanbaug Case

Aruna Ramchandra Shanbaug, a nurse working at the King Edward Memorial Hospital in Mumbai's Parel, was brutally raped and gagged with a dog chain by a ward boy - Sohnlal Bhartha Walmiki. The incident that jolted the nation happened on November 27, 1973.

Shanbaug suffered serious brain and cervical cord injuries and cortical blindness due to asphyxiation. The medical condition left her in a vegetative state for the next 42 years until she died on May 18, 2015.

Guidelines laid down by the court:

Who can execute the Advance Directive (Living Will) and how?

- It can be executed only by an adult of a sound and healthy state of mind. It must be voluntarily executed and without any coercion or compulsion.
- It shall be in writing clearly stating as to when medical treatment may be withdrawn or no specific medical treatment shall be given which will have the effect of delaying the process of death that may otherwise cause pain and suffering.

What should it(Living will) contain?

- It should clearly indicate the decision relating to the circumstances in which withdrawal of medical treatment can be resorted to.
- It should mention that the executor may revoke the authority at any time.
- It should specify the name of a guardian or close relative who, in the event of the executor becoming incapable of taking a decision, will be authorised to give consent for withdrawal of treatment.

How should it be recorded and preserved?

- The document should be signed by the executor in the presence of two attesting witnesses and countersigned by the jurisdictional Judicial Magistrate of First Class (JMFC).
- The witnesses and JMFC shall record their satisfaction that the document has been executed voluntarily and without any coercion.

- The JMFC shall preserve one copy of the document in his office and shall forward one copy to the registry of the jurisdictional district court for being preserved.
- The JMFC shall inform the immediate family members of the executor, if not present at the time of execution. A copy shall be handed over to the competent officer of the local Government.

When and by whom can it be given effect to?

- In the event, the executor becomes terminally ill with no hope of recovery and cure of the ailment, the treating physician shall ascertain its authenticity from the jurisdictional JMFC.
- If the physician is satisfied that the instructions need to be acted upon, he shall inform the executor or his guardian /close relative about the nature of the illness, the availability of medical care and consequences of alternative forms of treatment and the consequences of remaining untreated.
- The hospital shall then constitute a Medical Board consisting of the head of the treating department and at least three expert doctors with at least twenty years experience who, in turn, shall visit the patient in the presence of his relative and form an opinion whether medical treatment should be withdrawn or not.
- If Medical Board certifies that the instructions be carried out, the hospital shall inform the collector about the proposal. The collector shall then immediately constitute another Medical Board comprising the Chief District Medical Officer and three expert doctors. The board shall examine the patient and may allow withdrawing treatment after ascertaining the wishes of the executor or his family members if the patient is not in a position to communicate.
- The board shall convey the decision to JMFC before allowing to withdraw the treatment. The JMFC shall visit the patient and, after examining all aspects, may permit to implement the directive.

What if permission is refused by the Medical Board?

- If permission is refused by the Medical Board, **it would be open to the executor or his family members or even the treating doctor or the hospital staff to approach HC.** The court shall take a call on the plea at the earlies

Revocation or inapplicability of Advance Directive

- A person may withdraw the Advance Directive at any time. Withdrawal or revocation of Directive must be in writing.
- If the Directive is not clear and ambiguous, the Medical Boards shall not give effect to the same and when the Hospital Medical Board declines the plea then an application shall be made before the Medical Board constituted by the Collector for appropriate direction.

In case where there is no Advance Directive

- When a patient is terminally ill which is incurable, the hospital shall constitute a Medical Board which shall discuss with the family members and record the minutes of the discussion in writing.
- The family shall be apprised of the pros and cons of withdrawal of further medical treatment to the patient and if they give consent in writing, then it may certify the course of action to be taken.
- The hospital shall immediately inform the jurisdictional collector who shall then constitute a Medical Board which shall examine the patient. The board then shall inform its decision to the JMFC and the family members. JMFC shall visit the patient and examine the condition of the patient and may endorse the decision of the Board to withdraw the treatment.
- **In case of difference of opinions between two medical boards, the nominee of the patient or the family member can seek permission from the high court to withdraw life support.**

Passive euthanasia could be carried out by

- not carrying out a life-extending operation.
- not providing the patient with life-extending drugs.
- by switching off life-support machines.
- by disconnecting a feeding tube.

How will India accept passive euthanasia?

- Even though the Supreme Court has recognised the right to die with dignity as a fundamental right, **major hurdles might be posed by religious communities.**
- **"**In Hinduism **Atma-gatha meaning suicide**—the intention to voluntary kill—**was prohibited in Hindu culture**. **Indian Muslims also don't favour euthanasia** however they haven't made any public statements on the subject. Muslims believe that no one has a right to die before the time decided by the God**.**
- According to both Sunnis and Shias, killing a terminally ill person, whether through active euthanasia (physician assisted suicide) or passive euthanasia (stopping life support or medicine), is considered as **an act of disobedience against God**.
- Similarly, Indian Christians, especially **the Catholic Bishops Conference of India, are against euthanasia**. The Catholic Church **forever promotes the sanctity of life**; thus, euthanasia is contrary to its teachings.
- The government has already been promoting palliative care policies for elderly, poor and terminally ill patients who are most likely to opt for euthanasia. There are several programs for health and welfare of elderly, people inflicted with AIDS, cancer, terminal kidney disease and neurological disorders.
- The latest National Health Protection Scheme is an answer to quality healthcare for poor managing serious terminal diseases. The government views that Patients want good care and if we provide it to them, **why would they opt for euthanasia**?
- Public health experts believe that it is essential to assess the mental health status of the individual seeking euthanasia. "The main reasons for opting euthanasia are depression, hopelessness, pain and lack of care. Patients can overcome their decision on euthanasia or to receive natural death when they are well taken care of. Studies show that when patients receive adequate palliative care, requests for euthanasia decrease. Many of them are not aware of modern pain management techniques.
- Experts that does not favour passive euthanasia views that there is no 'right' to be killed'. Opening the doors to voluntary euthanasia **could lead to non-voluntary and involuntary euthanasia, by giving doctors the power to decide when a patient's life is not worth living.**
- The assumption that patients should have a right to die would impose on doctors a duty to kill, thus restricting the autonomy of the doctor. Also, a 'right to die' for some people might well become a 'duty to die' by others, particularly those who are vulnerable or dependent upon others.

Arguments in favour of Passive Euthanasia:

- **Medical professionals hold that passive euthanasia is already a common event in majority of the hospitals all across the country** as many poor terminally ill patients or their family members choose to withdraw treatment because of the huge costs involved in treatment to keep them alive. However, for the few who can afford such treatment, **maintaining life with advanced medical technologies** and palliative care has become more routine.
- According to doctors from National Institute of Mental Health & Neuro Sciences (NIMHANS), earlier diseases outcome was discussed in terms of cure but in the contemporary world of diseases such

as cancer, AIDS, diabetes, hypertension and mental illness are debated in terms of care, since cure is distant.

Proponents believe that euthanasia can be safely regulated by government legislation. Passive euthanasia has already been practised in various cases around the world. In case of palliative sedation, widely used across the world, many of the sedatives used carry a risk of shortening a person's lifespan. So, it could be argued that palliative sedation is a type of euthanasia.

Supreme Court upholds SC/ST Amendment Act

Supreme Court has upheld the amended SC/ST Amendment Act of 2018 in which preliminary inquiry is not a must and no prior approval is also required for senior officers to file FIRs in cases of atrocities on SC and ST. The Court **upheld the constitutionality of Section 18A** of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act of 2018.

The sole purpose of Section **18A was to nullify a controversial March 20, 2018, judgment of the Supreme Court diluting the stringent anti-bail provisions of the original Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989**.

Views of the Court:

- A High Court would also have an "**inherent power**" to grant anticipatory bail in cases in which prima facie an offence under the anti-atrocities law is not made out.
- Besides, a High Court, in "**exceptional cases**", could also quash cases to prevent the misuse of the anti-atrocities law.
- However, **the courts should take care to use this power to grant anticipatory bail "only sparingly and in very exceptional cases**". It should not become a norm lest it leads to miscarriage of justice and abuse of the process of law.
- A bench headed by Justice Arun Mishra said a preliminary inquiry is not essential before lodging an FIR under the act and the approval of senior police officials is not needed.
- The Act also does not provide for **anticipatory bail** to the accused being charged with SC/ST Act. Courts can, however, quash FIRs in exceptional circumstances.
- The court added that pre-arrest bail should be granted only in extraordinary situations where a denial of bail would mean miscarriage of justice.

Section 18A of the SC/ST Amendment Act of 2018 states that:

- For the Prevention of Atrocities Act, the preliminary enquiry shall not be required for registration of a First Information Report against any person.
- The provision of section 438 (pre-arrest bail) of the Code of Criminal Procedure (CrPC) shall not apply to a case under the Act, notwithstanding any judgment or order or direction of any Court.

Anticipatory bail

S. 438 of the Code of Criminal Procedure, 1973, lays down the law on anticipatory bail: "When any person has **reason to believe that he may be arrested on an accusation of having committed a non-bailable offence,** he may apply to **the High Court or the Court of Session** for a direction under this section; and that **Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.**

The provision **empowers only the Sessions Court and High Court to grant anticipatory bail**

Salient Features of the Amendment Act, 2018

- It added Section 18A to the original Act.
- It delineates specific crimes against Scheduled Castes and Scheduled Tribes as atrocities and describes strategies and prescribes punishments to counter these acts.
- It identifies what acts constitute "**atrocities" and all offences listed in the Act are cognizable**. The police can arrest the offender without a warrant and start an investigation into the case without taking any orders from the court.
- The Act calls upon all the states to convert an existing sessions court in each district into a Special Court to try cases registered under it and provides for the appointment of Public Prosecutors/Special Public Prosecutors for conducting cases in special courts.
- It creates provisions for states to declare areas with high levels of caste violence to be "atrocity-prone" and to appoint qualified officers to monitor and maintain law and order.
- It provides for the punishment for wilful neglect of duties by non-SC/ST public servants.
- It is implemented by the State Governments and Union Territory Administrations, which are provided due central assistance.

Reservation in Promotion is not a Fundamental Right

Court's Views

- The Supreme Court has ruled that **reservation in promotion is not a fundamental right and the states cannot be compelled to make laws in this regard for Scheduled Castes (SC) and Scheduled Tribes (ST).**
- **Article 16 (4) and 16 (4A) of the Constitution are in the nature of enabling provisions, vesting a discretion on the state government to consider providing reservation, if the circumstances so warrant.**
- It is **settled law that the state cannot be directed to give reservations for appointment in public posts.**
- It further added that the **state is not bound to make a reservation for SCs and STs in matters of promotions.** However, if the state wishes to exercise its discretion and make such provision, it has to collect quantifiable data showing 'inadequacy of representation of that class in public services'.

- Articles 16 (4) and 16 (4-A) of the Constitution did not confer individuals with a fundamental right to claim reservations in promotion.
- The Articles empower the State to make reservations in matters of appointment and promotion in favour of the Scheduled Castes and Scheduled Tribes only "if in the opinion of the State they are not adequately represented in the services of the State".
- Thus, the **State government has discretion "to consider providing reservations, if the circumstances so warrant".**

Background

- The case **pertains to a decision by the Uttarakhand government in 2012**. Back then, the government had decided to fill up posts in public services without providing reservation to members of the Scheduled Caste (SC) and Scheduled Tribe (ST) communities.
- The Uttarakhand High Court directed the state government in 2019 to implement reservations in promotion by promoting only SCs and STs to maintain the quota earmarked for the said categories. **This decision was challenged in the Supreme Court**

What does the Constitution say on reservations?

- **Article 14** of the Constitution guarantees equality before law and equal protection of laws to everyone. Similarly**, Article 16(1) and 16(2)** assure citizens equality of opportunity in employment or appointment to any government office.
- **Article 15(1)** generally prohibits any discrimination against any citizen on the grounds of religion, caste, sex or place of birth.
- Additionally, **Article 29(2) bars discrimination against any citizen with regard to admission to educational institutions** maintained by the government or receiving aid out of government funds on grounds of religion, race, caste.
- However, **Articles 15(4) and 16(4)** state that **these equality provisions do not prevent the government from making special provisions** in matters of admission to educational institutions or jobs in favour of backward classes, particularly the Scheduled Castes (SCs) and the Scheduled Tribes (STs).
- **Article 16(4A) allows reservations to SCs and STs in promotions, as long as the government believes that they are not adequately represented in government services**.

What do the precedents say?

- There are several major Supreme Court judgments that have, in the past**, ruled that Articles 15(4) and 16(4) do not provide a fundamental right per se.**
- A five-judge apex court bench, as early as **1962 in the M.R. Balaji v. State of Mysore** had ruled that Article **15(4) is an "enabling provision", meaning that "it does not impose an obligation**, but merely leaves it to the discretion of the appropriate government to take suitable action, if necessary".
- The court was hearing a challenge to an order passed by the erstwhile state of Mysore reserving 68 per cent of seats in engineering and medical colleges for educationally and socially backward classes and SCs and STs.
- Five years later, in **1967, another five-judge bench in C.A. Rajendran v. Union of India** reiterated this position, holding that the government **is under no constitutional duty to provide reservations for SCs and STs, either at the initial stage of recruitment or at the stage of promotion**.
- The court observed that **Article 16(4) does not confer any right on the citizensand is an enabling provision giving discretionary power to the government to make reservations.**

- The position went on to be reiterated in several other decisions, **including the nine-judge bench ruling in Indra Sawhney v. Union of India (1992) and the five-judge bench decision in M Nagaraj v. Union of India (2006).**

Interpreting the obligations of the state

- To interpret the obligations of the state purely from the textual foundations of **Article 16** is not an appropriate approach. Fundamental rights are not isolated provisions and ought to be looked into as an interconnected whole.
- As there are less avenues for the direct appointment in higher posts, reservations play a major role for the representation of backward classes in higher posts.
- According to a Parliament, last year, only one of the 89 secretaries posted at the Centre belonged to the SC, while three belong to the ST. The court order may go against the substantive equality in higher posts.
- The Supreme Court is not wrong in saying that a writ of mandamus cannot be granted by any court in order to enforce an enabling provision. The writ of mandamus is issued only to compel an authority to discharge a binding duty**.**

Ayodhya Verdict

The centre was directed (**November 2019)** by five-member bench headed by former CJI Ranjan Gogoi to form within given time (three months) a trust, which will build a temple at the disputed site in Ayodhya. SC directed the Centre to allot a 5-acre plot to the Sunni Waqf Board for building a mosque.

The issue in brief

- A section of Hindus claims that the disputed land in the present-day Ayodhya, Uttar Pradesh is the site of Rama's birthplace where the Babri Masjid once stood. The mosque was constructed during 1528-29 by demolishing the Hindu shrine by Mir Baqi, a commander of the Mughal Emperor Babur.
- The political, historical and socio-religious debate over the history and location of the Babri Mosque, and whether a previous temple was demolished or modified to create it, is known as the Ayodhya dispute.
- In 1992, the demolition of Babri Masjid by Hindu nationalists triggered widespread Hindu-Muslim violence. Since then, the archaeological excavations have indicated the presence of a temple beneath the mosque rubble, but whether the structure was a Rama shrine (or a temple at all) remains disputed.

The verdict in detail

- The **Ram Janmabhoomi-Babri Masjid land** title case was awarded in favour of "the deity of Lord Ram" who was held to be a "juristic person".
- The court directed that the **disputed 2.7-acre land is to be handed over to a trust formed by the Central Government.** This trust will build a temple on the disputed property**.**
- The Muslim party is to be given a five-acre piece of land "either by the Central Government out of the acquired land or by the Government of Uttar Pradesh within the city of Ayodhya**.**

- The court directed that the Centre will, within three months, form the scheme of setting up a board for a trust, which will formulate rules and powers for the construction of the temple.
- The possession of the inner and outer courtyard is to be handed over to the trust for the management and development of the temple. A "statutory receiver" will be in possession of the land till completion of the scheme**.**
- The court directed the State and Centre to act in consultation with each other to adhere to the orders of the court and for formulation and maintenance of the trust.

Some facts related to the case

- In 1934, a riot took place in Ayodhya and Hindus demolished a portion of the structure of the disputed site. The portion was rebuilt by the Britishers.
- On July 1, 1989, a suit was filed by former **Allahabad High Court Judge Deoki Nandan Agarwal as "next friend" of Ram Lala Virajman** (**the deity, deemed a minor legal person**) before the civil judge in Faizabad.
- It prayed that the whole site be handed over to Ram Lala for the construction of a new temple. In 1989, Shia Waqf Board also filed a suit and became a defendant in the case.
- On October 7 and 10, 1991, the BJP state government acquired premises in dispute along with some adjoining area (total 2.77 acres of land) to develop it for tourism purpose under the land acquisition Act.

Article 142, invoked by SC to give land for a mosque

The Supreme Court, implicitly referring to the demolition of the Babri Masjid at the disputed site, said that it was invoking Article 142 "to ensure that a wrong committed must be remedied".

Article 142(1) states that "The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so **passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament** and, until provision in that behalf is so made, in such manner as the President may by order prescribe".

- This acquisition was challenged by Muslims through six writ petitions. The acquisition was quashed by the high court on December 11.
- On December 6, 1992, the mosque was demolished despite interim orders passed by the Supreme Court and the high court.
- In July 2003, the Allahabad High Court ordered excavation at the disputed site.
- **The Archaeological Survey of India (ASI)** did the excavation and submitted its report on August 22, 2003. In its report, ASI said that there was a massive structure beneath the disputed structure and there were artifacts of Hindu pilgrimage.

On September 30, 2010, the three-judge bench of Justice Dharamveer Sharma, Justice Sudhir Agarwal and Justice SU Khan of the Allahabad High Court gave its judgment in the title suit. It divided the disputed land into three parts, **giving one each to Ram Lala, Nirmohi Akhada and Sunni Waqf Board.** All the parties — Ram Lala Virajman, Sunni Waqf Board and Nirmohi Akhada — appealed in the **Supreme Court against the Allahabad High Court judgment.**

Chief Justice of India under Right to Information

Justice Sanjiv Khanna said the independence and accountability go hand in hand and that independence of the judiciary can't be ensured only by denying information.

In Central public information officer, **Supreme Court of India vs Subhash Chandra Agarwal** case a five-judge Constitution Bench of Supreme Court declared that the Office of the Chief Justice of India (CJI) is a '**public authority' under the Right to Information (RTI) Act.**

Background of the Case:

- In 2007, Subhash Chandra Agarwal, RTI activist had sought the information regarding a 'resolution passed by Supreme Court (SC) judges in 1997' that said "**every Judge should make a declaration of all his/her assets in the form of real estate or investment".**
- This declaration of assets was made to the Chief Justice of India and was not even voluntary in nature to put it out in public domain**.**
- In 2009, Agarwal had sought information regarding details of correspondence between the Collegium and the government on the appointment of three SC judges.
- In both the cases SC refused to share the information. Agrawal then moved to the Central Information Commission (CIC), which ruled that the office of the Chief Justice of India falls under the ambit of the RTI Act and the Supreme Court cannot deny information sought under the RTI Act.
- The SC moved the Delhi High Court in 2009 challenging the CIC ruling. The Supreme Court's argument was that declaration of assets to the CJI was "personal information" of the judges and hence not covered under the RTI Act. Also, it held that "too much transparency can affect independence of judiciary".
- However, in 2010, Delhi High Court upheld the CIC ruling pronouncing that the CJI came under the ambit of the RTI Act.
- The Supreme Court approached itself by filing a petition against the Delhi High Court ruling, which was subsequently referred to five-judge Constitution bench.

Highlights from the Ruling:

- Independence and accountability go hand in hand and that independence of the judiciary cannot be ensured only by denying information.
- There should be a **balance between RTI and privacy**, and that information-seeking should be calibrated.
- **Principal consideration should be public interest** and that **judges are not above the law**. The Information Officer should weigh competing claims and decide.
- On the issue related to the appointment of judges, the Supreme Court held that only the names of the judges recommended by the Collegium for appointment can be disclosed, not the reasons.

What is Public Authority?

- Under **Section 2(f) of the RTI Act**, information means "any material in any form, including records, documents, memos, e-mails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force".

- It upheld the Delhi High Court judgment of 2010 that the **CJI does not hold information on the personal assets of judges in a fiduciary capacity** (Relationship of confidence and trust). Thus, disclosure of details of serving judges' personal assets was not a violation of their right to privacy. The information about assets of judges does not constitute personal information and thus cannot be exempted from RTI.
- SC held that the right to know under RTI was not absolute and ought **to be balanced with the right to privacy of individual judges.**

> - "**Public authority**" means any authority or body or institution of self-government established or constituted by or under the Constitution; by any other law made by Parliament/State Legislature and by a notification issued or order made by the appropriate Government.

- Thus, it asked Information commissioner to apply test of proportionality, keeping in mind right to privacy and independence of judiciary.
- The judgment mentions that **marks obtained, grades and professional records, qualification, performance, evaluation reports, ACRs etc. are personal information**. Such personal information is entitled to protection from unwarranted invasion of privacy. (under section 8 of RTI Act)
- In this context, the judgement gave list of '**non-exhaustive factors' to be considered by Public Information Officer (PIO)while assessing public interest under section 8 of RTI**, which include: nature and content of information, consequences of non-disclosure, freedom of expression and proportionality etc.

> **Section 8 (1) (j)** of the RTI Act says that personal information, which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual shall be disclosed only if the appellate authority is satisfied that the larger public interest justifies the disclosure of such information**.**

Understanding Judicial Independence and Judicial Accountability

- It took nine years for the Supreme Court to acknowledge that **judicial independence is inseparable from judicial accountability, and that its resistance to disclose information in public interest will erode its credibility as an institution.**
- The Constitution bench comprising the Chief Justice of India, Ranjan Gogoi, and Justices NV Ramana, DY Chandrachud, Deepak Gupta and Sanjiv Khanna examined a batch of three civil appeals raising **questions of constitutional importance bearing on the right to know, the right to privacy and the transparency, accountability and independence of the judiciary.**
- In the first appeal, the respondent sought information relating to **complete correspondence between the then CJI and Justice R Reghupati of the Madras High Court in 2009**, following a story in The Times of India that a Union minister had approached the latter through a lawyer, to influence his judicial decisions.
- In the second appeal, the respondent sought **details of Collegium file notings relating to appointment** of Justice HL Dattu, Justice AK Ganguly and Justice RM Lodha to the Supreme Court.
- In the third appeal, the respondent sought information concerning **declaration of assets made by the puisne judges of the Supreme Court to the CJI, and the judges of the High Courts to the chief justices of the respective High Courts.** The administrative wing of the Supreme Court was the appellant in all the three.

- The court held that the independence of the **judiciary is not limited to judicial appointments to the Supreme Court and High Courts, as it is a much wider concept which takes within its sweep independence from many other pressures and prejudices**. It consists of **many dimensions, including fearlessness from other power centres, social, economic and political, freedom from prejudices acquired and nurtured by the class** to which the judges belong and the like. **Judicial independence and accountability go hand in hand as accountability ensures, and is a facet of judicial independence.**
- While **applying the proportionality test** (that is, how much to disclose), the type and nature of information are relevant factors. The bench reasoned that **distinction must be drawn between the final opinion or resolutions passed by the Collegium with regard to appointment/elevation and transfer of judges with observations and indicative reasons and the inputs/data or details which the Collegium had examined.**
- The rigour of public interest in divulging the input details, data and particulars of the candidate would be different from that of divulging and furnishing details of the output, that is, the decision, the bench held.
- In the former, public interest test would have to be applied keeping in mind the fiduciary relationship (if it arises), and also the invasion of the right to privacy and breach of the duty of confidentiality owed to the candidate or the information provider, resulting from such disclosure, the bench explained**.**
- The bench justified the recent decision of the **Collegium not to disclose reasons for non-selection of certain candidates for the posts of judges of High Courts and the Supreme Court because disclosure would compromise their right to privacy. Regarding information relating to judicial appointments, it observed :**
  - Here, SC drew distinction between 'input' and 'output'. Output is the final outcome of collegium resolution, while input is the observations, indicative reasons, inputs and data collegium examined.
  - Here, only names of judges recommended by the Collegium (output) can be disclosed, not the reasons (input). SC said "Right to information should not be allowed to be used as a tool of surveillance."
  - Thus, while the government discloses its reasons for not accepting the collegium's recommendations, the judiciary's defence remains absent from public debate.
  - Also, SC said the information relating to collegium deliberations is treated as confidential third-party information.
  - In such cases, the PIO should follow the procedure mandated in Section 11 of the RTI Act. That is, a notice should be first issued to the third party — the judge concerned — about the RTI request for information. The view of the third party should be considered before the PIO takes a call.

The court held that **right to information and right to privacy are two faces of the same coin**. Having ascertained whether the information is private or not, **a judge is required to adopt a balancing test to note whether public interest justifies disclosure of such information under Section 8(1)(j) of the RTI Act, he suggested.** The exemption of public interest occurring under Section 8(1)(j) requires a balancing test to be adopted. The two separate concepts **"interest of the public" and "something in the public interest" need to be distinguished.** Those matters which affect political, moral and material welfare of the public need to be distinguished from those for public entertainment, curiosity or amusement. Section 8(1)(j) requires to hold that only the former is an exception to the exemption. However, the bench in favour of pro-active disclosure of information has to be tested in practice, especially when the centre is unwilling to notify the revised Memorandum of Procedure (MoP) in the light of the Supreme Court's judgment in 2015, to regulate appointments and transfers of judges of the higher judiciary.

Supreme Court declared Private Property is a Human Right

Key points from the judgement

- The state **cannot deprive citizens of their property without the sanction of law** in a democratic polity governed by the rule of law.
- The court ruled that to forcibly dispossess citizens of their private property, without following the due process of law, would be to violate a human right, as also the constitutional right under Article 300A of the Constitution.
- **Doctrine of Adverse Possession:** The state cannot trespass into the private property of a citizen and then claim ownership of the land in the name of 'adverse possession.
- **Grabbing private land** and then claiming it as its own **makes the state an encroacher.**
- In 1967, when the government forcibly took over the land, 'right to private property was still a fundamental right' under Article 31 of the Constitution.
  - Right to Property ceased to be a fundamental right with the 44th Constitution Amendment in 1978.
  - It was made a Constitutional right under Article 300A. Article 300A requires the state to follow due procedure and authority of law to deprive a person of his or her private property.

The Case

- The case was of an 80-year-old woman whose 3.34-hectare land was forcibly taken by the Himachal Pradesh Government in 1967, for constructing a road.
- The Court used its jurisdiction under **Article 136 and Article 142 of the Constitution** to direct the government to pay the woman compensation of 1 crore rupees.

Doctrine of Adverse Possession

It is a legal doctrine that allows a person who possesses or resides on someone else's land for an extended period of time to claim legal title to that land.

In India, a person who is not the original owner of a property becomes the owner because of the fact that he has been in possession of the property for a minimum of 12-years, within which the real owner did not seek legal recourse to oust him.

Article 142

It provides discretionary power to the Supreme Court as it states that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.

Article 136 (Special Leave Petition)

It allows the Supreme Court to hear, at its discretion, an appeal against any order from any court or tribunal in the territory of India. However, this does not apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

No Double Jeopardy Bar if there was No Trial

More from the judgement

In a recent judgment (State of Mizoram vs. Dr. C. Sangnghina), SC has held that the bar of **double jeopardy will not apply if the person was discharged due to lack of evidence.**

- SC held that, where the accused has not been tried at all and convicted or acquitted, the principles of "double jeopardy" cannot be invoked at all.
- The principle of Double Jeopardy: Double Jeopardy is a legal term and it means that a person cannot be punished for the same offense more than once.
- Both Article 20(2) of the Constitution of India and Section 300 of the Criminal Procedure Code say that no person shall be prosecuted and punished for the same offense more than once**.**

What does the constitution say?

- Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation.
- Article 20 (2) of the Constitution mandates that a person cannot be prosecuted or punished twice for the same offence. This is called No double jeopardy.
- The protection against double jeopardy is available **only in proceedings before a court of law or a judicial tribunal.** In other words, it is not available in proceedings before departmental or administrative authorities as they are not of judicial nature

Article 20 contains other provisions too:

- **No ex-post-facto law**: No person shall be (i) convicted of any offense except for violation of a law in force at the time of the commission of the act, nor (ii) subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.
- **No self-incrimination**: No person accused of any offense shall be compelled to be a witness against himself.

Supreme Court modifies its order on Dowry Harassment Law

The Supreme Court restored an immediate arrest provision in the dreaded Section 498A, IPC, with the rider that those arrested for cruelty to a married woman over dowry can approach the courts for bail to prevent the alleged misuse of the law.

Background:

- In July, 2017, a two-judge bench of the apex court, led by Justice Adarsh K Goel, had voiced concern over "**abuse" of the anti-dowry law and directed that no arrest should "normally be effected" without verifying allegations as violation of human rights of innocents cannot be brushed aside.**

- The two-judge bench had also directed that in every district, one or more **family welfare committees should be constituted by the District Legal Services Authorities (DLSA) and every complaint received by police or the magistrate under this provision should be referred to the committee** and looked into by it.
- The 'family welfare committees' were supposed to act as a **vanguard against "disgruntled wives**" using the anti-dowry harassment provision of Section **498-A of the Indian Penal Code (IPC) as a "weapon" against their husbands and in-laws, young and old, rather than as a "shield".**
- It had held that no arrest should normally be affected on dowry harassment complaints until the committee confirms the genuineness. Even the police could register an FIR only after the committee concerned cleared the complaint as valid and not frivolous.

The Verdict:

- Supreme Court did away with the requirement of a family welfare committee to examine veracity of complaints under Section 498A of IPC. It advocated for balancing interests of both the sides in dowry harassment cases.
- The court **refrained from issuing any directive for automatic or mandatory arrest of husband** and his family members under these cases, noting that false cases also lead to "social unrest".
- The court restored the power of the police to decide whether or not to make arrest under Section 498A after it modified an earlier order of the apex court.
- The court held that there **is no need for a family welfare committee to examine complaints** and that police officers, based on facts of the case and governed by the legal provisions, should decide on their own.
- It also said **that anticipatory bail provision shall remain intact for the husband and his family members.** Those arrested for cruelty to a married woman over dowry can approach the courts for bail to prevent the alleged misuse of the law.
- The offence is both **non-cognisable and non-bailable**, which implies that bail can only be granted at the discretion of a magistrate. The bail petitions will be heard the same day as far as possible

Arguments Against Section 498A IPC

- The law has become a source of blackmail and harassment of husbands and others. As once a complaint (FIR) is lodged it becomes an easy tool in the hands of the Police to arrest or threaten to arrest the husband and other relatives without even considering the intrinsic worth of the allegations and making a preliminary investigation.
- Police visit the office premises of men and his reputation is harmed. Police can also pick up the relatives if the complaint is harmed. Also, it does not require any proof before arrest. Even no investigation is required. So, if there is a small dispute woman can use the section to seek revenge.
- Gifts are sometimes misunderstood as dowry. So, this can again pose a problem.
- When the members of a family are arrested and sent to jail, with no immediate prospect of bail, the chances of amicable re-conciliation or salvaging the marriage, will be lost once and for all.
- Pragmatic realities have to be taken into consideration while dealing with matrimonial matters with due regard to the fact that it is a sensitive family problem which shall not be allowed to be aggravated

Need for Section 498A

- Women have always been subject to cruelty by male society. Laws like these help women to fight back. Women feel they are being heard. There is a lot of need for laws like these in a country like India.

- Women are continuously forced, tortured, threatened or abused for demand for something or the other. The Section 498A of the IPC helps women to approach the court of law and punish the wrongdoer.
- In many cases, women are also subject to mental cruelty. There is no law which can help the woman to ease the mental pain caused to her. Acts like these help women in every possible ways.
- **Section 498A and legislations like Protection of Women from Domestic Violence** Act have been specifically enacted to protect a vulnerable section of the society who have been the victims of cruelty and harassment. The social purpose behind it will be lost if the rigour of the provision is diluted.
- The abuse or misuse of law is not peculiar to this provision. The misuse can however be curtailed within the existing framework of law. For instance, the Ministry of Home Affairs can issue 'advisories' to State Governments to avoid unnecessary arrests and to strictly observe the procedures laid down in the law governing arrests.

The power to arrest should only be exercised after a reasonable satisfaction is reached as to the bona fides of a complaint and the complicity of those against whom accusations are made. The "Crime Against Women Cells" should be headed by well trained and senior lady police officers. These steps would go a long way in preventing the so-called misuse. Counselling of parties should be done by professionally qualified counsellors and not by the Police.

Centre can't withhold docs under RTI citing National Security

Views of the Court:

- The Supreme Court said the Centre **cannot withhold documents from disclosure under the RTI Act citing national security if it is established that retention of such information produces greater harm than disclosing it.**
- Justice Joseph said the RTI Act through Section 8(2) has conferred upon the citizens a "**priceless right by clothing them**" with the **right to demand information even in respect of such matters as security of the country and matters relating to relation with foreign state.**
- The premise for disclosure in a matter relating to security and relationship with foreign state is public interest.
- It was observed that the **Section 8(2) of the RTI Act manifests a legal revolution** that has been introduced in that, **none of the exemptions declared under sub-section(1) of Section 8 or the Official Secrets Act, 1923can stand in the way of the access to information if public interest in disclosure overshadows, the harm to the protected interests**
- **Section 24 of the RTI Act** also highlights the **importance attached to the unrelenting crusade against corruption and violation of human rights.**
- Ability to secure **evidence forms the most important aspect in ensuring the triumph of truth and justice.** It is **imperative therefore that Section 8(2) must be viewed in the said context. Its impact on the operation on the shield of privilege is unmistakable**

Section 8 (2) of RTI Act provides for disclosure of information exempted under Official Secrets Act, 1923 if larger public interest is served.

Official Secret Act Vs RTI

- The OSA was enacted in 1923 by the British to keep certain kinds of information confidential, including, but not always limited to, information involving the affairs of state, diplomacy, national security, espionage, and other state secrets.
- Whenever there is **a conflict between the two laws, the provisions of the RTI Act override those of the OSA.**
- **Section 22 of the RTI Act states that its provisions will have effect notwithstanding anything that is inconsistent with them in the OSA**.
- Similarly, under Section 8(2) of the RTI Act, a public authority may allow access to information covered under the OSA, "if the public interest in disclosure outweighs the harm to the protected interest".

SC upholds constitutional validity of Insolvency and Bankruptcy Code

The verdict

- The court upheld the constitutional validity of the code "**in its entirety**". The court not only upheld the ban on promoters' bids for the defaulting company undergoing the insolvency process but also rejected pleas to treat operational creditors at par with financial creditors.
- The Supreme Court's verdict furthermore upheld Section 29A of the IBC that bars promoters of bankrupt companies - as well as people related to them - from bidding to regain control of their assets at a discount.
- Specifically, **section 29A dictates that promoters of companies, which have been classified as non-performing assets** for over a year **can't participate in the resolution process of any company unless the dues are repaid.**

The issues related to the Insolvency and Bankruptcy Code

- **Operational creditors**, such as the **suppliers of products and services to bankrupt companies** and contractors, have long complained of landing a raw deal under the IBC.
- Currently, the Committee of Creditors (CoC) constituted for bankrupt firms only comprise all **financial creditors, like banks**. And since operational creditors don't have a place in the CoC, they have no voting rights when the committee decides on what to do with an asset.
- That's why several operational creditors had previously moved to the court arguing that the bankruptcy code violates Article 14.
- The petitioners against IBC had argued that in the event of liquidation of the company or its sale, the dues of operational creditors rank below those of financial creditors, which was violative of the Article 14 of the constitution.
- SC said that if an intelligible differentiation can be established between two classes of creditors, then legislation is not violative of Article 14.

- Further, SC said that deciding the threshold to allow withdrawal of insolvency case pertains to the domain of legislature. Moreover, the Act already contains provisions to set aside arbitrary decisions of CoC through NCLT/NCLAT.

SC declared seeking vote to the Religion and Caste illegal A Corrupt Act

More from the judgement

- The Supreme Court reaffirmed the secular character of the Indian state, ruling that election candidates cannot seek votes on the grounds of the religion, caste, creed, community or language of voters. (2017)
- It has ruled that an election **could be annulled if candidates seek votes in the name of their religion or that of their voters**. The apex court's view has enlarged the scope of the Representation of People Act 1951.
- The court observed that the Constitution forbids state from mixing religion with politics.
- It was also observed by the court that the **state being secular** in character **cannot identify itself with any one of the religions or religious denominations.** This necessarily implies that religion will not play any role in the governance of the country which must at all times be secular in nature.
- **Election is a secular exercise** just as the functions of the elected representatives must be secular in both outlook and practice.
- The **court interpreted Section 123(3)** of the Representation of People Act to mean that this provision was brought in with anintent "to clearly proscribe appeals based on sectarian, linguistic or caste considerations".
- Section 123(3) deals with abiding to "corrupt practices" for canvassing votes in an election.
- The bench had at hand the task of the interpreting the word "his" in section 123(3) in RPA.
  - The majority believed that "his" here refers to the any candidate or his agent or any other person making the appeal with the consent of the candidate or the elector. To justify this interpretation, the bench took cues from various amendments of RPA.
  - It also said that to maintain the "purity" of the electoral process; certain arguments must be taken off the table such as religion, caste and language.
  - The dissenting judges on other the hand believed that Section 123(3) of the RPA does not require such abroad interpretation and the word "his" does not include the elector/voter.
  - The dissenting judges remarked that markers such as religion are deeply rooted in the structure of the Indian society.
- The bench abstained from commenting on the "Hindutva" case.

Section 123(3) defines as "corrupt practice" appeals made by a candidate or his agents to vote or refrain from voting for any person on the ground of "his" religion, race, caste, community or language.

The word "his" was included through an amendment in 1961

Background

- The case reached the apex court after there were claims that several candidates **elected in the 1992** Maharashtra assembly polls had appealed to voters on religious grounds.
- Similar cases were also brought before the apex court in 1996. However, that bench decided to refer the case to a larger bench. The five-judge bench set up in 2014, in turn referred it to a seven-judge bench.
- The landmark judgment came while the court revisited earlier judgments, including one from 1995 that equated Hindutva with Hinduism and called it a "way of life" and said a candidate was not necessarily violating the law if votes were sought on this plank.

Criticism:

- It is difficult to define what kind of an appeal is religious appeal.
- This interpretation violates the right to freedom of speech under Article 19.
- RPA already has provisions to curb hate speech or speech that spreads enmity.
- A broad interpretation "outlaws" parties like Akali Dal whose very name violates this interpretation

Live-Streaming of Court Proceedings

The Supreme Court said "Sunlight is the best disinfectant" and agreed to the live-streaming and video recording of court proceedings.

The verdict

- The three-judge bench agreed that it would serve as an instrument for greater accountability and it formed a part of the Code of Criminal Procedure and Code of Civil Procedure**.**
- No such express provision is found in the Constitution regarding "open Court hearing" before the Supreme Court, but can be traced to provisions such as Section 327 of the Code of Criminal Procedure, 1973 (CrPC) and Section 153-B of the Code of Civil Procedure, 1908 (CPC).
- **Section 327** of the Code of Criminal Procedure, 1973 (CrPC) states that the place in which any Criminal Court is held for the purpose of inquiring into or trying any offence **shall be deemed to be an open Court.**
- **Section 153-B of the Code of Civil Procedure**, 1908 (CPC) states the place in which **any Civil Court is held for the purpose of trying any suit shall be deemed to be an open Court.**
- The **SC asked the government** to frame "**comprehensive and holistic guidelines**" and favoured the start of exercise on pilot basis in one court.

Dismissal of Nirbhaya Rapist's Review Petition

The Supreme Court (SC) dismissed Nirbhaya gangrape and murder case convict Akshay Kumar Singh's review plea. The top court said that there are no grounds to reconsider his death penalty.

Court's Views:

- The three-judge bench headed by Justice R Banumathi said there are no grounds to review the apex court's 2017 verdict and that the contentions raised by convict Singh were already considered by the top court in the main judgement**.**
- It was observed that review petition is not re-hearing of appeal over and over again. Thecourt had already considered the mitigating and aggravating circumstances while upholding the death penalty to the convict in the 2017 verdict.
- It observed that it found "no error" on the face of the main judgement requiring any review.

****

GS SCORE

An Institute for Civil Services

IAS PRELIMS 2020

ONLINE

01 **TARGET PT 2020**
45 Days Online Prelims Classes through 400+ MCQ

02 **PRELIMS Test Series**
SECTIONAL +MOCK + CURRENT AFFAIRS | TOTAL: 31 TESTS

03 **CSAT Online Classes**
4 WEEKS CSAT ONLINE CLASSES

04 **PRELIMS MOCK TEST**
TOTAL: 20 TESTS

05 **PRELIMS Test Series**
(COMPLETE REVISION TESTS | TOTAL: 32 TESTS

06 **Current Affairs Classes**
Complete Revision of Prelims Current Affairs in 60 Hrs.

1B, 2nd Floor, Pusa Road Karol Bagh, New Delhi-110005,
(Adjacent to Karol Bagh Metro Gate No. 8)
info@iasscore.in /iasscore

Visit: www.iasscore.in
8448496262