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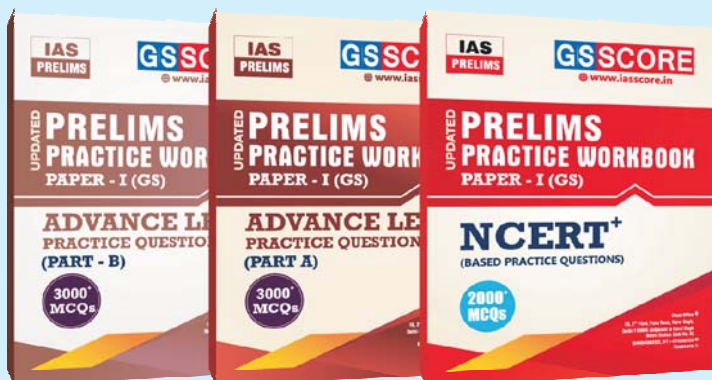
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Recent Judgments

By

SUPREME COURT

The past year 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 by the Supreme Court:

Aadhaar Verdict

In a significant move, the SC constitution bench struck down several provisions in the Aadhaar Act on 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 based on Aadhaar.
- A **five-judge** bench led **by former CJ 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.**

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 the 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

Adultery Verdict

- In a landmark judgment 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 the right to equality and destroys and deprives women of dignity.**
- Unequal treatment of women invites the wrath of the Constitution.
- Adultery is a relic of the past.
- Adultery might not because of an unhappy marriage, it could be a result of an unhappy marriage.
- Adultery can be a ground for divorce. It can be part of civil law involving penalties but not a criminal offence.

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.

Sabarimala Verdict

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”.

Judgment

- In a **4-1 majority decision**, the Supreme Court on September 28, 2018, **lifted the ban, which is 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.**

Observation made by the Court at the 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 practice religion” and “To treat women as children of a 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, practice, and propagate their religious beliefs as being an integral part of their religion under **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

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?

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 question on the ambit and scope of religious freedom practiced by multiple faiths across the country.**

Decriminalisation of Gay Sex - Section 377 Partly Struck Down

- 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 DipakMisra gave the final verdict in 2018.

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 judgment, **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.**

The Verdict

- SC made it clear that **Article 14 of the Constitution guarantees equality before the law and this applies to all classes of citizens** thereby restoring the ‘inclusiveness’ of the LGBTQ Community.
- SC upheld **the pre-eminence of Constitutional morality in India by observing that equality before the 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.**

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 a pilot basis in one court.

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 an irreversible coma.

What is a Living will?

- A 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.
- What is Passive euthanasia?
- Passive euthanasia is a condition where there is a withdrawal of medical treatment with the deliberate intention to hasten the death of a terminally-ill patient.
- The top court had in 2011 recognised passive euthanasia in the Aruna Shanbaug case by which it had permitted withdrawal of life-sustaining treatment from patients not in a position to make an informed decision.

Guidelines lay down by the court:

- Medical directive or living will:
- It is a medical power of attorney that allows an individual to appoint a trusted person to take health care decisions when the patient is not able to take such decisions.
- The trusted person is allowed to interpret the patient’s decisions based on their mutual knowledge and understanding.
- The trusted person can decide on the patient’s behalf how long the medical treatment should continue when the patient is unconscious or in a coma state is not in a position to decide.

The ‘will’ be recorded and preserved

- The document should be signed by the executor in the presence of two attesting witnesses, preferably independent, and counter-signed the jurisdictional Judicial Magistrate of First Class (JMFC) so designated by the concerned district judge.

- The JMFC shall preserve one copy of the document in his office, keep another in digital format, forward one copy of the document to the registry of the jurisdictional district court, inform the immediate family members of the executor.
- A copy would be handed over to the competent officer of the local body. A copy of the directive is handed over to the family physician if any.

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, the 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 inquiry 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.**

Centre can't withhold documents 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 a foreign state.**
- The premise for disclosure in a matter relating to security and relationship with the 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, 1923 can stand in the way of the access to information if the 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 the RTI Act provides for disclosure of information exempted under the Official Secrets Act, 1923 if the 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 inconsistent with them in the OSA.**
- Similarly, under Section 8(2) of the RTI Act, a public authority may allow access to the information covered under the OSA, "if the public interest in disclosure outweighs the harm to the protected interest".

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 appointments 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".**

Dismissal of Nirbhaya Rapist's Review Petition

- The Supreme Court (SC) dismissed the 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 judgment.

- It was observed that the review petition is not re-hearing of appeal over and over again. The court 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 judgment requiring any review.

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.**
- The office of the Chief Justice of India will come under the ambit of the Right to Information Act as CJI is a **public authority under the RTI Act.**

What is the 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”.
- **“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.

Few 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 the appointment can be disclosed, not the reasons.**

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 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 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 the formulation and maintenance of the trust.

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.

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 DeokiNandanAgarwal 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 is handed over to Ram Lala for the construction of a new temple. In 1989, the 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 purposes under the land acquisition Act.
- 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, NirmohiAkhada, 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.**

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”.

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 the insolvency case pertains to the domain of legislature. Moreover, the Act already contains provisions to set aside arbitrary decisions of CoC through NCLT/NCLAT.

Illegal to appeal to the religion and caste of both candidates and voters in elections or Seeking votes on the religious basis a corrupt act: SC

More from the judgment

- 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.**
- 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 the 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 intent "to clearly proscribe appeals based on sectarian, linguistic or caste considerations".
- **Section 123(3) defines "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.**

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.

Private property is a human right: Supreme Court

More from the judgment

- 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.

- **The 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.**

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.

Note

- The right to private property was previously a fundamental right' under Article 31 of the Constitution.
- It ceased to be a fundamental right with the 44th Constitution Amendment in 1978.

No Double Jeopardy Bar If There was No Trial

More from the judgment

- 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.

Lifted ban on Crypto currency

- In March 2020 The Supreme Court struck down RBI's curbs on cryptocurrency trade in India, calling them 'illegal'. The order in effect lifted the ban on trading in virtual currency, cryptocurrency and bitcoins.
- The FATF defines cryptocurrency as a math-based decentralised, convertible virtual currency which is protected by cryptography. Such a definition unambiguously communicates that cryptocurrency is a digital medium of exchange, which has an convertible value in real currency, but instead of being validated by an entity like a central bank, is secured using cryptographic technology of blockchains.
- The lifting of restrictions on trading of cryptocurrencies due to the SC ruling and the absence of any defined regulatory framework led to an explosion of the industry during the covid-19 induced lockdown in the country.
- Trading volumes of cryptocurrencies increased 400 times during the lockdown months with estimates suggesting that the daily trading volume in India may be \$10-\$30 million.

Reservation for PwDs extended to Promotion

- There was a question whether the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" (PwD Act), can be given reservation in promotion.
- Supreme Court held that reservations provided under the 1995 PwD Act extend to promotions as well.
- Supreme Court cited Indra Sawhney, Rajeev Kumar and other relevant cases to differentiate between reservation under Article 16(1) and Article 16(4).
- It pointed out that reservation of persons with disabilities is horizontal while reservation based on class/ caste, etc., is vertical. It also stated that reservation applies to the full cadre strength, and not just to the identified posts. For PwDs, the Court concluded that there is no bar for reservation in promotions, and that principles laid down for Article 16(4) do not apply to reservation for persons with disabilities.

Order on Criminalisation of politics

- The Supreme Court (SC) has ordered political parties to publish the entire criminal history of their candidates for Assembly and Lok Sabha elections along with the reasons that forced them to field suspected criminals.
- The order was a reply to the contempt petition about the general disregard shown by political parties to a 2018 Constitution Bench judgment (Public Interest Foundation v. Union of India) to publish the criminal details of their candidates in their respective websites and print as well as electronic media for public awareness.
- The SC passed an order while exercising powers under Articles 129 and 142 of the Constitution which deals with the contempt power of the Supreme Court and enforcement of its decrees and orders.
- The information regarding individuals with pending criminal cases needs to be published in a local as well as a national newspaper as well as the parties' social media handles.
- The information mandatorily to be published either within 48 hours of the selection of candidates or less than two weeks before the first date for filing of nominations, whichever is earlier.
- The political parties need to submit compliance reports with the Election Commission of India within 72 hours.
- In 2004, 24% of the Members of Parliament (MPs) had criminal cases pending against them. This number has increased to 43% of MPs in 2019.

Scope of Section 304-B widened

- According to Section 304-B of IPC to make out a case of dowry death, a woman should have died of burns or other bodily injuries or "otherwise than under normal circumstances" within seven years of her marriage. She should have suffered cruelty or harassment from her husband or in-laws "soon before her death" in connection with demand for dowry.
- Court indicated in a judgment that a straitjacket and literal interpretation of Section 304-B, a penal provision on dowry death may have blunted the battle against the "long-standing social evil."
- The bench said, "The phrase 'soon before' as appearing in Section 304 B cannot be construed to mean 'immediately before'. The prosecution must establish the existence of 'proximate and live link between the dowry death and cruelty or harassment for dowry."
- It advised trial courts not to take a pigeon-hole approach to section 304B categorising death as homicidal or suicidal or accidental. While tightening the procedure to be adopted by trial court in deciding dowry death cases, including confronting the accused with evidence.

IMPORTANT CASES FROM 2020

Chebrolu Leela Prasad Rao v. State of AP – Government order providing 100% reservation for tribal teachers in Scheduled Areas unconstitutional

The Court held that the Government Order issued by the State of Andhra Pradesh providing 100% reservation to Scheduled Tribe candidates in posts for teachers in schools located in scheduled areas was unconstitutional and that there was “no rhyme or reason” for the State government to resort to 100% reservation.

Christian Medical College Vellore Association v. Union of India – Rights under Article 30 of the Constitution are not absolute, could be exercised as per regulation of the State

The Court noted that the right conferred on religious and linguistic minorities to administer educational institutions of their choice is not an absolute right and is not free of regulation from the State. Article 30 does not prevent the State from imposing reasonable regulations to make the administration of minority institutions transparent.

Chief Information Officer v. High Court of Gujarat- Regarding right to access court records through RTI

The Supreme Court restricted the application of the Right to Information Act, 2005 when it came to obtaining court records at the Gujarat High Court. A three-judge Bench held that citizens cannot file RTI requests to obtain copies of pleadings, judgments, documents, decrees or orders, deposition of the witnesses, etc. Instead, citizens must resort to using the procedure established by the Gujarat High Court Rules.

Rambabu Singh Thakur v. Sunil Arora – Political parties to publish pending criminal cases of selected candidates

The Court gave various directions to political parties both at the Central and State level to mandatorily upload on their websites the detailed information of candidates along with pending criminal cases against them, state reasons for selecting candidates and also why individuals who did not have any criminal antecedents could not be selected.

This information has to be published on a local and national newspaper and on the official social media platforms of the political party. Political parties have to submit a report of the Election Commission within 72 hours of the selection of the said candidate.

Vineeta Sharma v. Rakesh Sharma – Daughters shall have coparcenary rights irrespective of whether their father was alive when Hindu Succession (Amendment) Act, 2005 came into force

A three-judge Bench of the Supreme Court held that the amended Section 6 of the 2005 Act confers the status of coparcener on daughters born before or after amendment in the same manner as sons, with the same rights and liabilities. It also held that since the coparcener right is by birth, it is not mandatory that the father coparcener should be living as on November 9, 2005, when the amended provision came into force.

Abhilasha v. Prakash & Ors – Unmarried Hindu daughter can claim maintenance from her father till she is married

The Court held that an unmarried Hindu daughter can claim maintenance from her father till she is married, relying on Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956, provided she proves that she is unable to maintain herself. For enforcement of the right, her application/suit has to be under Section 20 of the Act.

Anuradha Bhasin v. Union of India – Access to Internet as a Fundamental Right

The Supreme Court ruled that the freedom of speech and expression through the internet, and the freedom to practice any profession, occupation, trade and commerce through the internet is a fundamentally guaranteed right, under Article 19(1)(a) and Article 19(1) (g) of the Indian Constitution. The Court also added that indefinite suspension of the internet is not permissible, and banning the internet repeatedly by orders under Section 144 CrPC, is an abuse of power.

The ruling came in a plea challenging internet shutdowns in Kashmir.

Prithviraj Chauhan v. Union of India – Constitutional validity of SC/ST Act, 1989

A three-judge bench of the Supreme Court upheld the Constitutional validity of Section 18-A of The Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 (no need of preliminary enquiry before registration of FIR or requirement of seeking approval of any authority prior to arrest of an accused).

It was further held that no anticipatory bail can be given for offences under the SC/ST Amendment Act.

Secretary, Ministry of Defence v. Babita Puniya – Permanent Commission for Women in Navy and Army

The Court ruled that Short Service Commissioned (SSC) women officers in the Indian Army are entitled to permanent commission (PC) and that they have to be considered for PC irrespective of their having exceeded fourteen years of service.

Denying them PC would be a violation of right to equality under Article 14, the Court held.

Important Cases from 2021

Laxmibai Chandaragi v. The State of Karnataka – Consent of family not needed once two adults decide to marry

The Court observed that educated younger boys and girls are choosing their life partners which is a departure from traditional norms of society. The consent of the family or the community or the clan is not necessary once two adult individuals agree to enter a wedlock and their consent has to be piously given primacy.

The Chief Election Commissioner of India v. MR Vijayabhaskar –

Freedom of press relating to Court proceedings

The Court held that freedom of speech and expression also extends to reporting the proceedings that happen in courts including oral observations made by judges.

“Article 19(1)(a) covers freedom of press. Freedom of speech and expression covers freedom to cover court proceedings too...Now people are more digital oriented and hence look to internet for information. Hence it would do no good to prevent a new medium to report proceedings. Constitutional bodies will do better than complain about this,” the Court said.

Jayamma v. State of Karnataka – Admissibility of Dying Declaration

The Supreme Court held that dying declarations are admissible in evidence on the principle of necessity as there is little hope of the maker surviving. Dying declaration can form the basis of conviction if recorded in accordance with law and if it gives a cogent and plausible explanation of the occurrence, it can be relied on as the solitary piece of evidence to convict the accused.

Mohammad Salimullah v. Union of India – ‘Right not to be deported’ is concomitant to Article 19 and available only to Indian citizens

The Supreme Court, while hearing a case challenging the decision to deport Rohingya refugees, held while fundamental rights under Articles 14 and 21 are available to all persons whether citizens or not, the ‘right not to be deported’ is ancillary or concomitant to the right to reside or settle in any part of the territory of India guaranteed under Article 19(1) and is available only to citizens.

Farzana Batool v. Union of India – Right to Professional Education

The Court held that though the right to pursue higher education has not been spelt out as a fundamental right under Part III of the Constitution, it bears emphasis that access to professional education is not a governmental largesse, and that the State has an affirmative obligation to facilitate access to education at all levels.

Dr. Jaishri Laxmanrao Patil v. The Chief Minister – Reservation for the Maratha community

A Constitution Bench of the Supreme Court struck down the Maratha reservation quota and held there were no exceptional circumstances justifying the grant of reservation to Maratha community in excess of 50 percent ceiling limit as laid down in the Indra Sawhney judgment.

Vikas Kishan Rao Gawali v. State of Maharashtra – OBC reservation cannot exceed 50 percent

The Supreme Court also laid down a triple test to be complied with by the State before reserving seats in local bodies for OBCs.

The three conditions prescribed are:

To set up a dedicated Commission to conduct rigorous inquiry into the nature and implications of the backwardness of local bodies, within the State;

To specify the proportion of reservation required to be provisioned local body wise in light of recommendations of the Commission; and

In any case such reservation shall not exceed aggregate of 50% of the total seats reserved in favour of SCs/STs/OBCs taken together.

Aparna Bhat v. State of Madhya Pradesh – Judgment of Madhya Pradesh High Court which prescribed tying Rakhi as condition for bail set aside

The Court observed that using Rakhi tying as a condition for bail transforms a molester into a brother by judicial mandate and is wholly unacceptable. It has the effect of diluting and eroding the offence of sexual harassment. The Bench also issued guidelines for dealing with bail in sexual harassment cases and insisted that sensitivity must be displayed by judges in such cases.

The Court directed training and sensitization of judges by mandating a module on gender sensitization as part of the foundational training of every judge.

Kerala Union of Working Journalists v. Union of India – Fundamental Right To Life unconditionally embraces even an undertrial

While deciding a petition seeking release of Kerala journalist Sidique Kappan , the Supreme Court held that the fundamental right to life is available to undertrial prisoners as well.

Union of India v. KA Najeeb – Bail in UAPA cases where undertrial accused has been subjected to prolonged imprisonment

Emphasizing on the right to speedy trial under Article 21 of the Constitution, the Supreme Court allowed the grant of bail to an accused who had spent over 5 years in jail as undertrial in a case under the Unlawful Activities Prevention Act (UAPA).

The Court accepted that there was a bar under Section 43D (5) of UAPA against grant of bail. However, the Court made it clear that the provision does not oust the jurisdiction of constitutional courts to grant bail on grounds of violation of fundamental rights.

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24	26	28	30	31	36	38	41	45	50	
51	52	55	56	58	59	67	68	70	71	73
74	76	78	83	84	85	86	89	93	98	100

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3	6	10	11	16	17	21	22	28			
30	33	38	39	42	44	46	53	54	59	66	69
70	72	77	78	80	82	84	86	87	94	97	98

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CSE 2018

2	3	5	7	27	36	37	40	44	49		
51	52	56	58	62	74	81	89	92	94	98	100

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CSE 2017

3	10	19	31	33	35	40	41	44	45	48		
54	57	63	64	68	71	75	77	80	83	93	97	100