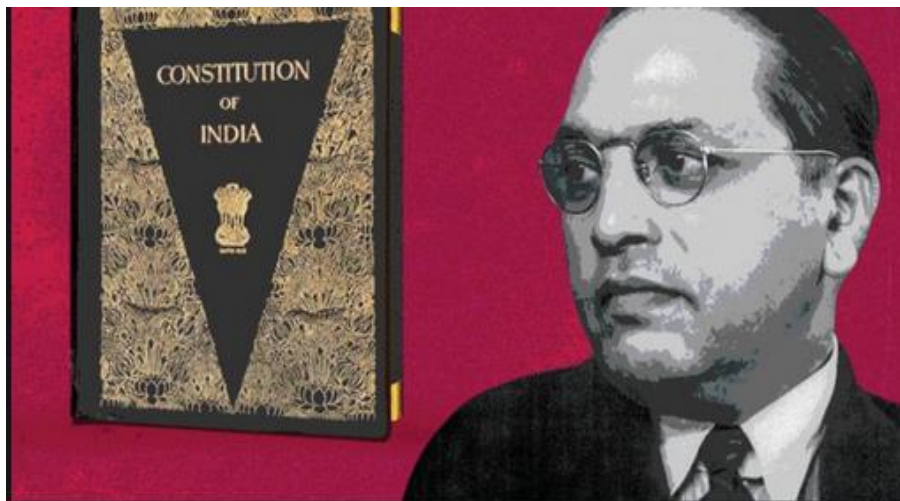




LAWYERS CLUB INDIA AN INTERACTIVE PLATFORM FOR LAWYERS AND PUBLIC

# 100 LANDMARK CONSTITUTIONAL LAW JUDGMENTS





## **1. Dr. Janet Jeyapaul v. SRM University**

**DATE OF JUDGMENT:** 15/12/2015

**COURT:** Supreme Court of India

**JUDGES:** Justice Chelameswar and Justice Abhay Manohar Sapre

**REFERENCE:** CIVIL APPEAL No. 14553 OF 2015

### **PARTIES**

**Appellant:** Dr. Janet Jeyapaul

**Respondent:** SRM University

**SUBJECT:** The judgment revolves around the question of whether the respondent University fall within the ambit of State under Article 12 of the Indian Constitution?

**FACTS:** The respondent University served a memo to the appellant on 14.02.2012 stating that she failed to take classes properly. Denying the contents of the memo the appellant submitted her reply. However, on 22.02.2012 the appellant was again served a notice for which she sent her reply. Dissatisfied with her reply the respondent University called for an Enquiry Committee, appearing before which the appellant stated that, she was not furnished with the complaint copy. Followed by which the appellant was again served a notice on 04.04.2012 which was treated as a month's notice, on the expiry of which the appellant will be dismissed from her position in the college. **Challenging the validity of the notice the appellant filed a petition in the HC under Article 226 of the Constitution.** The single judge bench accepted her petition and directed the respondents to take her back in work. However, the respondents filed a Writ Appeal before the Division Bench of the HC, where the Court held that, the correctness of the dismissal cannot be brought before the HC as the **respondent University is neither State nor other authority with the ambit of Article 12,** therefore the **Court refused to hear it on merits but directed the appellant to move to the Tribunal** for ventilating of her grievance on merits.



## **IMPORTANT PROVISIONS:**

### **The Indian Constitution:**

- **Article 136(1):** Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.
- **Article 12:** In part III, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

## **ISSUES:**

1. Whether the **respondent University is State** within the ambit of Article 12 of the Indian Constitution?

## **ANALYSIS OF THE JUDGEMENT:**

It is general principle of law that, a **prerequisite to file a Writ Petition under Articles 226 and 32 is that the violator must be State within the ambit of Article 12 of the Constitution.** This is due to a general understanding that, fundamental rights under Part III of the Constitution is guaranteed to the citizens only by the State therefore any remedy for the violation of the said fundamental rights can be claimed only against the State.

The petitioner contended that, the respondent University performs “**public function**” by way of running an educational institution and imparting education and knowledge. Therefore, it falls well within the ambit of State under Article 12.

However the respondents contended that, the appellant be granted liberty to approach the **District Judge/Additional District Judge of the concerned District which is designated as Tribunal** till formation of regular Tribunal for redressal of her grievances as directed by the Constitution Bench in **T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.**

Upon hearing the parties the Court held that, it would not be proper to direct the appellants at this stage to approach the Tribunal to get the case decided on merits, therefore **the Court sent back the case to the Division Bench to decide the case on merits.**

- 2.



## 2. Ramana Dayaram Shetty v. The International Airport Authority & Ors.

**DATE OF JUDGMENT:** 04/05/1979

**COURT:** Supreme Court of India

**JUDGES:** P.N. Bagawathy, V.D. Tulzapurkar, R.S. Pathak

**REFERENCE:** 1979 AIR 1628

### **PARTIES**

**Petitioner:** Ramana Dayaram Shetty

**Respondent:** The International Airport Authority

**SUBJECT:** The judgment revolves around the question of whether the **International Airport Authority is “State”** under Article 12 of the Constitution and the **validity of a tender accepted by the respondents.**

**FACTS:** The International Airport Authority called for tenders to put up a second-class restaurant and two Snack bars at the International Airport Bombay. The tender of the 4<sup>th</sup> respondent was accepted by the authorities; however it was later found that he did not satisfy the **condition of having at least 5 years’ experience as a registered second class hotelier as mentioned in the tender invitation.** Therefore, the Airport authorities called the 4<sup>th</sup> respondent to submit his documents and evidence for **reconsideration.** However, his tender **was reconfirmed** as he had **sufficient experience** with reputed clients though not a registered as a second-class hotelier. The appellant who **desired to offer** his quotation to the tender **dropped his thought as he did not fulfil certain conditions** as mentioned in the invitation of the Airport authorities. Upon hearing that, the 4<sup>th</sup> respondent was a successful bidder **despite of him not fulfilling** the required conditions, the appellant filed a case before Bombay the High Court under Article 226 of the Constitution but the case was dismissed. Therefore, he appealed to the SC under Article 136 of the Constitution.

### **IMPORTANT PROVISIONS:**

**The Indian Constitution:**



- Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India
- Article 136(1): Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India

### **ISSUES:**

1. Whether the **International Airport Authority is State** under Article 12 of the Indian Constitution?
2. Whether the **tender confirmed** by the respondents is constitutionally **valid**?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner contended that,

- The tender granted to the 4<sup>th</sup> respondent is **not valid** as he did not completely fulfil all the conditions mentioned under the tender invitation.
- It was **mandatory** for the Airport authorities to **abide** by the invitation
- **Had he known** that compulsory adherence to the rules was not mandatory he would have also given his tender offer.
- The arbitrary **procedure followed** by the Airport authorities is violative of **Article 14** to the Constitution.

The respondents contended that,

- The Bombay Municipal Corporation **rank**s a hotel or restaurant depending on the **ability of the organisation** and not the owner being a registered hotelier or not.
- Since the invitation given by the respondents **do not have statutory force** a deviation from the conditions would not hamper the process
- As per the invitation the decision of the Airport authorities would be final as they **reserved the authority** to accept or reject the offers made.

Upon hearing the parties to the case, the Court held that, the first question to be considered is **whether the respondent is State** within the meaning of Article 12 of the Constitution. This question comes into picture to determine the **maintainability** of the petition, as a remedy for



fundamental right violation can be claimed **only against the State** and not private authority. The Court upon verifying the **International Airport Authority Act, 1971** was clarified that, the Central government exercises **deep and pervasive control** over the administrative affairs of the respondent therefore it is State within the ambit of Article 12 of the Constitution.

Moving on with the validity of the concluded tender, the Court held that it was a clear violation of equality under Article 14. The Court justified its stand on the following grounds:

- The tender **never mentioned about the capability** of running a second-class hotel but laid down conditions to be fulfilled which is the **basic eligibility** criteria and the same **cannot be disregarded** by the Airport authorities.
- The power reserved by the authorities was only to **completely reject the tender** offers and enter into a direct negotiation with a dealer. But in the present case the tender offers were **taken for consideration** out of which 4<sup>th</sup> respondent was selected. Therefore, the power reserved in the invitation does not apply.

Hence the concluded tender **was invalid**.

### **3. Zee Tele Films Ltd. and Anr v. Union of India and Ors.**

**DATE OF JUDGMENT:** 02/02/2005

**COURT:** Supreme Court of India

**JUDGES:** N. Santosh Hegde, S.N. Variava, B.P. Singh, H.K. Sema and S.B. Sinha

**REFERENCE:** Writ Petition (civil) 541 of 2004

**PARTIES:**

Petitioner: Zee Telefilms Ltd. and Anr.

Respondent: Union of India and Ors.

**SUBJECT:** The Judgment brings out various judicial interpretations given to the term “other authorities” under Article 12 of the Indian Constitution which defines the term “State”. In this case, the question before the Hon'ble SC was whether the Board of Control for Cricket in India (BCCI) was State within the ambit of Article 12 of the Constitution.

**FACTS:** The Board of Control for Cricket in India (BCCI) is a Society registered under the Tamil Nadu Societies Registration Act which is said to be recognized by the Union of India, Ministry of Youth Affairs and Sports. On 07.08.2004 the Board floated a notice inviting tender



for grant of exclusive television rights for a period of four years. Pursuant to the notice several entertaining groups including Zee Telefilms Ltd. and ESPN Star Sports gave their offers. The Board accepted the offer of Zee Telefilms after holding several negotiations. However, this was challenged by ESPN Star Sports before the Bombay High Court under Article 226 of the Indian Constitution. Later on 21.9.2004, the Board stated that it purported to have cancelled the entire tender process on the premise that no concluded contract was reached between the parties as no letter of intent had therefore been issued. Owing to the cancellation of the tender, ESPN Star Sports withdrew its petition from the Bombay HC. However, Zee Telefilms filed a writ of mandamus under Art.32 of the Indian Constitution to direct the Board to act as per the terms and conditions of the tender. They also stated that such a withdrawal of the tender notice by the Board was an arbitrary act and stands against the principles of Article 14 of the Constitution.

### **IMPORTANT PROVISIONS:**

#### Constitution of India

- Article 12: Definition In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.
- Article 19(1)(a): right to freedom of speech and expression.
- Article 19(1)(g): to practise any profession, or to carry on any occupation, trade or business.
- Article 32: Remedies for enforcement of rights conferred by part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

### **ISSUES:**

The main questions for consideration before the hon'ble SC were:



1. Whether the writ petition filed by the petitioners Zee Telefilms Ltd. is maintainable under Article 32 of the Constitution?
2. Whether BCCI is State within the meaning of the term “other authorities” under Article 12 of the Indian Constitution?
3. Whether BCCI performs public function?

### **ANALYSIS OF THE JUDGEMENT:**

The fundamental rights under Part III of the Indian Constitution are guaranteed by the State to its citizens hence it is only the State who must protect the same. Therefore, a writ petition which is filled to claim a remedy for the violation of fundamental right is enforceable only against the State and not against any private entity. In other words, the pre-requisite for invoking the enforcement of a fundamental right under Article 32 is that the violator of that right should be a State first.

Mr. KK. Venugopal the counsel for the board raised a preliminary issue in the case contending that, the Board was not State under Article 12 and hence the petition is not maintainable. He also raised the following objections:

- BCCI is not a statutory body but is only registered under the Societies Registration Act, 1860 and hence the Board has the autonomy to handle its administrative affairs.
- Neither does BCCI take any financial assistance from the government nor is it subjected to any financial control by the Government or its accounts are subject to the scrutiny of the Government.
- It is an accepted fact that, BCCI enjoys monopoly status in the field of Cricket but the same is not conferred on it by any statute or any order of the Government. It enjoys that monopoly status only by virtue of its first mover advantage and its continuance as the solitary player in the field of cricket control. Also, there is no law which prohibits the coming into existence of any other parallel organisation.
- No part of the share capital of the Board is held by the Government.
- The Board is not under a deep and pervasive State control.
- All functions of the Board are not public functions nor are they closely related to governmental functions.





- The Board is not created by transfer of a Government owned corporation. It is an autonomous body.

Placing reliance on *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & Ors*<sup>1</sup> and *Ajay Hasia & Ors v. Khalid Mujib Sehravardi & Ors*<sup>2</sup>, the respondents contended that, a body will be considered as State under Article 12 only if the Government of India has deep and pervasive control over its administrative affairs, but the minimal amount of control that the Government has over the Board is just regulatory in nature and not pervasive.

Addressing the Contentions raised by the respondent the petitioner submitted that,

- As per the Memorandum, Articles of Association, rules and regulations of the Board the BCCI has extensive powers in selecting the “members to the Indian national Cricket team”.
- The Board is the sole authority for organising major cricketing events in India and has the disciplinary power over the players/umpires and other officials involved in the game and sports which being a subject under the control of the States under Entry 33 of List II of the Seventh Schedule of the Constitution of India, in substance the Board exercises governmental functions in the area of Cricket. And this monopoly status is conferred on it by the Government of India.
- The Board has the authority to determine whether a player would represent the country or not. Further, since playing cricket is a profession the Board controls the fundamental right of a citizen under Article 19 (1) (g) of the Constitution.
- Prior approval from the government of India is a mandate which the Board has to obtain before sending the players to represent India internationally and also to host international matches in India.
- The players wear uniform that carries the national flag and are treated as sports ambassadors of India.
- The petitioners also pointed out an occasion where the team selected by the Board was rejected permission to represent India for a match in Pakistan. Hence, the Government of India has pervasive control over the Board.

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<sup>1</sup> 2002 5 SCC 111.

<sup>2</sup> 1981 1 SCC 722.



The petitioner placed reliance in the case of Secretary, Ministry of Information & Broadcasting, Government of India and Others etc. v. Cricket Association of Bengal and Others etc,<sup>3</sup> where the court held that, “a person desiring to telecast sports events when he is not himself a participant in the game, does not seek to exercise his right of self-expression. However, the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. The former is the right of the telecaster and the latter that of the viewers. The right to telecast sporting event will therefore also include the right to educate and inform the present and the prospective sportsmen interested in the particular game and also to inform and entertain the lovers of the game. Hence, when a telecaster desires to telecast a sporting event, it is incorrect to say that free- speech element is absent from his right”.

Being satisfied by the arguments advanced by the petitioner the Court concluded that BCCI is State within the meaning of “other authorities” under Article 12 as it performed public function and held that the writ petition is maintainable.

**CONCLUSION:** The judicial system has always proved that words of a legislation may be the same, but it will adapt itself towards the changing circumstances by way of judicial interpretation. Considering that India is a mixed economy with welfare motives, rights of the citizens is of utmost importance to the State. The judiciary has widened the ambit of the term State in the present judgment in such a way that any organisation which performs public function has to abide by the principles of justice and equity as enshrined in the Constitution.

#### **4. Anuj Garg & Ors v. Hotel Association of India & Ors**

**DATE OF JUDGMENT:** 06/12/2007

**COURT:** Supreme Court of India

**JUDGES:** S.B. Sinha and Harjit Singh Bedi

**REFERENCE:** AIR 2008 SC 663

**PARTIES:**

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<sup>3</sup> (1995) 2 SCC 161



Petitioner: Anuj Garg & Ors

Respondent: Hotel Association of India & Ors

**SUBJECT:** The judgment revolves around gender equality in the workplace. For decades together women were considered inferior to men, when such ideologies reflect in legislations enacted by the Parliament they will be subjected to judicial scrutiny.

**FACTS:** The petitioners in the Instant case challenged the validity of section 30 of the Punjab Excise Act, 1914 which prohibits employment of "any man under the age of 25 years" or "any woman" in any part of such premises in which liquor or intoxicating drug is consumed by the public. The petitioners carry on business in hotels where liquor is served not only in the bar but also in the restaurant. Liquor is also served in rooms as part of room service.

**IMPORTANT PROVISIONS:**

The Indian Constitution

- Article 13(1): All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of Part III, shall, to the extent of such inconsistency, be void
- Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- Article 16: Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State

The Punjab Excise Act, 1914

- Section 30 prohibits employment of "any man under the age of 25 years" or "any woman" in any part of such premises in which liquor or intoxicating drug is consumed by the public.

**ISSUES:**



1. Whether section 30 of the Punjab Excise Act, 1914 constitutionally valid?

**ANALYSIS OF THE JUDGEMENT:**

As per Article 13 of the Indian Constitution even pre constitutional laws will be subjected to judicial scrutiny if it abridges the fundamental rights of the citizens. In the present case, section 30 of the 1914 Act prohibits the employment of men below 25 years and women of any age in places where public may consume liquor. Supporting the legislation, the respondents in the instant case argued as follows:

- That the impugned enactment act as a measure to protect women and men of tender age.
- That nobody has any fundamental right to deal in liquor, being 'res extra commercium', the State had the right to continue the old law imposing reasonable restrictions on the nature of employment therein.

The respondents also cited the murder case of Jessica Lal, where Ms. Lal was murdered by the accused as she refused to offer him alcohol after the working hours of the Bar that she was running.

Objecting all the contentions of the respondents the petitioners submitted that,

- The impugned legislation does not protect them from violence but only leaves them unemployed. They also made a special mention of students who graduate in the course of hotel management stating that, they will be forced towards unemployment due to such biased legislations.
- Also, the restriction placed under the Act falls outside the principle of res commercium. Abiding to the principle the State may impose restriction on the sale, manufacture and hoarding of liquor however it cannot impose restrictions on employment in the places where liquor is served.
- Right of employment itself may not be a fundamental right but in terms of both Articles 14 and 16 of the Constitution of India, each person similarly situated has a fundamental right to be considered for employment. When a discrimination is sought to be made on the purported ground of classification, such classification must be founded on a rational criterion. The criteria which in absence of any constitutional provision and, it will bear repetition to state, having regard to the societal conditions as they prevailed in early 20th century, may not be a rational criteria in the 21st century.



Hearing both the parties to the case the Court concluded that, section 30 of the 1914 Act stands unconstitutional as it is against the principle of justice and equity. The Court also stated the following:

- The present law ends up victimizing its subject in the name of protection.
- A restriction placed on the fundamental rights of the citizens should be proportionate to the legitimate aims. The standard for judging the proportionality should be a standard capable of being called reasonable in a modern democratic society.
- Instead of putting curbs on women's freedom, empowerment would be a more tenable and socially wise approach. This empowerment should reflect in the law enforcement strategies of the state as well as law modelling done in this behalf.

**CONCLUSION:** Even if words of a legislation remains the same judicial interpretation must take place from time to time to adapt the changing circumstances of the society. Snatching the rights of individuals in the guise of protecting them will only affect the development of the nation. Hence the right to equality is rightly called as a part of the basic structure of the Indian Constitution.

## 5. **Chandanmal Chopra And Anr. v. State of West Bengal**

**DATE OF JUDGMENT:** 17/05/1985

**COURT:** Supreme Court of India

**JUDGES:** B C Basak

**REFERENCE:** AIR 1986 Cal 104

### **PARTIES**

**Petitioner:** Chandanmal Chopra And Anr

**Respondent:** State of West Bengal

**SUBJECT:** The Judgment revolves around the **validity of Koran** which is a holy book as per the Islam community.

**FACTS:** The Petitioners in the present case challenged the validity of Koran contending that, it **violates the religious feelings** of people who follow different religions except Islam. Therefore, they have preferred a petition under Article 226 of the Constitution before the



Calcutta HC to direct the respondents to **declare each copy whether original or reciprocated to be declared as unconstitutional.**

### **IMPORTANT PROVISIONS:**

#### **The Indian Penal Code**

- **Section 153A** : Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.
- **Section 295A**: Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to 4 years, or with fine, or with both.

#### **The Code of Criminal Procedure:**

- **Section 95(1)**: (1) Where- (a) any newspaper, or book or (b) any document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable under Section 124A or Section 153A or 153B or Section 292 or Section 293 or Section 295A of the Penal Code (45 of 1860), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

### **ISSUES:**

1. Whether **Koran violates the religious believes** of religions except Islam which are protected under Article 25 of the Constitution?

### **ANALYSIS OF THE JUDGEMENT:**



The Petitioner contended that,

- Certain phrases in the Koran not only send the Muslims to tears and ecstasy but arouse in them the worst **communal passions and religious fanaticism**, which have manifested themselves in murder, slaughter, loot, arson, rape and destruction or desecration of holy places in historical times as also in contemporary period not only in India but almost all over the world.
- Publication of Koran whether in its original form in Arabic or any other translation amounts to an **offence under Section 153A and 295A of IPC**
- Koran looks to destroy idol worship which is one of the most integral part of few other religions. It **stimulates violence**, crime, and insults the religious feelings of non-Muslims.

The respondents contended that,

- Koran being a **holy book of Islam is an integral part** of the Islamic community. Declaring the book as unconstitutional is similar to that of outraging the religious believes of the Community.
- **Justice in the present case stands otherwise**, 295A of IPC is not attracted in the present case as per the prayer of the petitioners but if the holy Koran is declared invalid then section 295A will be invoked by the respondents for outraging the age old believes of the Islamic community.
- Koran is a basic text, which lays the **firm foundation** for the Islamic community therefore the Court should not entertain such frivolous petition at the first sight as it is an insult to the Muslim community.

Upon hearing the parties, the Court held that, Koran is an object which comes within the phrase “**objects held sacred by the religion under Section 295 IPC**” therefore no action can be taken against it. Further, declaring the holy Koran as unconstitutional will infringe upon the **secular principles of the Nation** which affirms all religions to exercise their religious believes in accordance with constitutional morality. As Bible is for Christianity, Gita is for Hindus, Koran is for Islam therefore such books and believes **are protected under Article 25**. Hence the Court dismissed the petition.



## 6. Chintaman Rao v. The State of Madhya Pradesh

**DATE OF JUDGMENT:** 08/11/1950

**COURT:** Supreme Court of India

**JUDGES:** Kania, Hiralal J. (Cj), Mahajan, Mehr Chand, Mukherjea, B.K., Das, Sudhi Ranjan, Aiyar, N. Chandrasekhara

**REFERENCE:** 1951 AIR 118

### **PARTIES**

**Petitioner:** Chintaman Rao

**Respondent:** The State of Madhya Pradesh

**SUBJECT:** The judgment revolves around the question of what constitutes a **reasonable restriction** under Article 19(6) of the Constitution.

**FACTS:** Section 3 and 4 of the Central Provinces and Berar Regulation of Manufacture of Bidis (Agricultural Purposes) Act, 1948 authorised the **Deputy Commissioner to notify a particular period of time during the agricultural season to prohibit the manufacture of Bidis**. The object of the Act was to provide sufficient and uninterrupted supply of labourers to boost the agricultural productivity. Further the provisions penalised the manufacturer if he violated the rules and also barred him from **employing any person** while the order prohibiting manufacture of Bidi is made by the Deputy Commissioner. The petitioners in the instant case challenged the above stated provisions under Article 32 stating that they violated the right to freedom of trade and profession under Article **19(1)(g)** of the Constitution.

### **IMPORTANT PROVISIONS:**

**The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed





(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 19(1)(g): To practise any profession, or to carry on any occupation, trade or business.
- Article 19(6): Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

### **ISSUES:**

1. Whether section 3 and 4 of the Central Provinces and Berar Regulation of Manufacture of Bidis (Agricultural Purposes) Act, 1948 constitutionally valid?

### **ANALYSIS OF THE JUDGEMENT:**

**The petitioners contended that**, the Act unreasonably restrains them from manufacturing Bidis during the agricultural season. The provisions do not have a **rational nexus** with the object sought to be achieved by the legislation in question. The object of the Act is to provide an uninterrupted supply of labourers during the agricultural seasons which can be achieved by imposing restrictions on those who work as **agricultural labourers alone**. But the Act imposes an unreasonable restriction on the entire manufacture of Bidis and all the **non-agricultural workers also**. Therefore, it does not constitute a valid reasonable restriction under Article 19(1)(g). The only reason that the Act was enacted before the enactment of the Constitution does not prevent the application of constitutional validity test.

The respondent contended that, the **legislature of Madhya Pradesh** would only be the proper judge in deciding this matter as they only know the prevailing conditions of



agriculture and Bidi manufacture in the State. Since the **Court does not know the prevailing** hindrances the issue is to be left to the discretion of State legislature.

Upon hearing the parties to the case, the Court held that, the restriction laid down in the Act is excessive in nature. Further the **argument of the respondent run counter to the principles of the Constitution** and therefore cannot be entertained. Hence the Court declared that the **complete restraint was unconstitutional**.

## 7. Chiranjit Lal Chowdhuri vs The Union Of India And Others

**DATE OF JUDGMENT:** 04/12/1950

**COURT:** Supreme Court of India

**JUDGES:** Kania, Hiralal J. (Cj), Fazal Ali, Saiyid, Sastri, M. Patanjali, Mukherjea, B.K., Das, Sudhi Ranjan

**REFERENCE:** 1951 AIR 41

### **PARTIES**

**Petitioner:** Chiranjit Lal Chaudhary

**Respondent:** The Union Of India & Ors.

**SUBJECT:** The judgment highlights the concept of class legislation under Article 14.

**FACTS:** The petition is filed by Chiranjit Lal, who is a shareholder of the company, Sholapur Spinning and Weaving Company Limited. The directors of this company gave out a notice on 29 July 1949 stating that the mills were going to shut down. On January 9, 1950, the Governor-General of India promulgated an Ordinance. The preamble to the ordinance read, “on account of **mis- management and neglect**, a situation has arisen in the affairs of the Sholapur Spinning and Weaving Company Limited which has prejudicially affected the production of an essential commodity and has caused serious unemployment amongst a certain section of the community ”.

This ordinance, was later replaced by an Act of Parliament called the “Sholapur Spinning and Weaving Company (Emergency Provisions)Act”. (referred to as The Act)

This Act allowed the government to interfere in the functioning and regulation of the mill.



The petitioner challenged the pith and substance of both the ordinance and The Act.

The petitioner asked for an injunction and a writ of mandamus against the UOI.

### **IMPORTANT PROVISIONS:**

#### The Indian Constitution

- Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- Article 19(1) (f): Freedom to acquire, hold and dispose of property
- Article 31: Compulsory acquisition of property- clause (1) No person shall be deprived of his property save by authority of law.

Clause (2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition of the property for an amount which shall be fixed by such law; and no such law be called in question in any court on the ground that the amount so fixed is not adequate

#### Sholapur Spinning and Weaving Company (Emergency Provisions) Act

Section 13: "(a) It shall not be lawful for the shareholders of the company or any other person to nominate or appoint any person to be a director of the company.

(b) No resolution passed at any meeting of the shareholders of the company shall be given effect to unless approved by the Central Government.

(c) No proceeding for the winding up of the company or for the appointment of a receiver in respect thereof shall lie in any court unless by or with the sanction of the Central Government."

#### Ordinance:

- **Section 3**: of the Ordinance, the Central Government may, at any time, by notified order, appoint as many persons as it thinks fit, to be directors of the company for the purpose of taking over its management and administration and may appoint one of such directors to be the Chairman.



- **section 12** :that so long as the management by the statutory directors continues, the shareholders would be precluded from nominating or appointing any person to be a director of the company and any resolution passed by them will not be effective unless it is approved by the Central Government. This section lays down further that during this period no proceeding for winding up of the company, or for appointment of a receiver in respect thereof could be instituted in any court, unless it is sanctioned by the Central Government, and the Central Government would be competent to impose any restrictions or limitations as regards application of the provisions of the Indian Companies Act to, be affairs of the company.
- **Section 12**, under which the Central Government may, by notified order, direct that all or any of the powers exercisable by it under this Ordinance may be exercised by the Government of Bombay.

#### **ISSUE:**

1. Whether the impugned act infringes upon Article 14 or not?

#### **ANALYSIS OF THE JUDGEMENT:**

Chiranjit Lal contends that,

- The shareholders of the Sholapur company have been subjected to **discrimination** and that the Act is violative of article 14.
- The Act has selected one company, and taken complete control of it, thereby causing class legislation.
- All other companies which are similar to the mill, have not been met with the same fate.
- Petitioner calls the act, “**arbitrary**” and “**unreasonable**” and asks the court to take “**judicial notice**” of the matter.
- Also, it was stated that there were unreasonable restrictions placed on the right of the petitioner to acquire property under article 19(1)(f).
- There was also a claim of violation of article 31.

#### **Contention of UOI and others.**

- The situation that existed in the Mills was “**unsual**” and “**distinct**”.



- A special enquiry had been undertaken, and it was on the grounds of the enquiry, that an ordinance and further an Act was brought out.
- The management of the company kept it from running smoothly, and hence, government intervention was highly needed.
- Under article 14, it is not only important to apply the law equally to all persons, it is also essential to classify, where classification is based on reasonable grounds.

The court's view:

- The facts relating to the mill were of “**extraordinary**” character.
- The Act justifiably treated the Mill as a **separate class**.
- The mill dealt with essential commodities and hence, it was a situation of emergency for the larger public interest to formulate an Ordinance followed by an Act.
- The **intelligible differentia** exercised has a rational relation with the object sought to be achieved.
- With respect to article 19(1)(f), the court held that, the government has not usurped the rights of the share holders, or vested it in any authority. The rights have only been restricted and not taken away.
- W.r.t. the argument relating to Article 31, the judges thought of it as irrelevant.
- The burden to prove that the Act was unconstitutional and arbitrary laid on the petitioner and having failed to prove it, the petition by Majority opinion was dismissed.

The court finally held that, the presumption of the judiciary should always be in favour of the constitutionality of the legislation. However, the burden to prove that a particular legislation is guided by unfettered and unguided power, is on the petitioner. Here, since the petitioner was unable to do so, the court was of the opinion that the class legislation was based on reasonable grounds.

**CONCLUSION:** Any act formulated must follow the proportionality test and the Wednesbury principles in order to fall within the constitutional ambit of Article 14. The Act here is appropriate and necessary as per the proportionality test and also reasonable, devoid of any unjust power or authority, according to the Wednesbury doctrine.



Even a single company could form a separate class based on reasonable classification.

**8. Sir Chunilal V. Mehta And Sons, Ltd v. The Century Spinning and Manufacturing Co, Ltd.**

**DATE OF JUDGMENT:** 05/03/1962

**COURT:** Supreme Court of India

**JUDGES:** Sinha, Bhuvneshwar P, Kapur, J.L., Hidayatullah, M., Shah, J.C., Mudholkar, J.R.

**REFERENCE:** 1962 AIR 1314

**PARTIES**

**Petitioner:** Sir Chunilal V. Mehta And Sons, Ltd

**Respondent:** The Century Spinning and Manufacturing Co, Ltd.

**SUBJECT:** The judgment answers the question of what constitutes a **substantial question of law under Article 133 of the Constitution.**

**FACTS:** The appellants were appointed managing agents of the respondents for 21 years. Under cl. 10 of the agreement the appellants were entitled to a remuneration equal to 10% of the gross profits of the respondents subject to a minimum of Rs. 6,000 per month. Clause 14 provided that if the agreement was terminated otherwise in accordance with the provisions thereof the appellants would be entitled to liquidated damages "of not less than Rs. 6,000" per month for the **unexpired portion of the agreement**. The respondent wrongfully terminated the agreement before the expiry of the stipulated period. The appellants filed a suit for recovery of damages for breach of contract **on the basis of 10% of the gross profits of the respondents**. The **trial judge granted a decree for Rs. 2,34,000** calculating the amount at Rs. 6,000 per month. On appeal by the appellants the **High Court affirmed** the decree. The appellants, therefore, moved this Court under **Art. 136** of the Constitution for grant of special leave.

**IMPORTANT PROVISIONS:**

**The Indian Constitution:**



- Article 133(1): An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134A

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court

- Article 136: Special leave to appeal by the Supreme Court

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

### **ISSUES:**

1. Whether the appellant was entitled to a **special leave certificate** to appeal to the Supreme Court?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner contended that, the lower Courts **erroneously granted a sum of 2,34,000** as damages while the actual damage suffered amounts to **26 lakhs**. Thus, misinterpretation by the lower Courts has denied the appellant a huge sum which he was supposed to receive as per the agreement. Therefore, they requested a special leave to appeal to the SC. They further contended that, the HC has dismissed their request following the Bombay HC's decision in **Kaikhushroo Pirojsha Ghaira v. C. P. Syndicate Ltd.** which runs contrary to the Privy Council's decision in **Raghunath Prasad Singh v. Deputy Commissioner of Partabgarh**, therefore a this confusion needs to be addressed by this Hon'ble Court in the present case by which further confusions do not arise in the future.

The respondents contended that, interpretation of the agreement involved in the present case is **only a question of law and not a substantial question** of law and therefore the special leave certificate is denied.

The Court upon hearing the parties held that, that the case involved a substantial question of law and the appellants were entitled to the certificate as of right. A substantial question of law is one which is of **general public importance or which directly and substantially affects the rights of the parties** and which have not been finally settled by the Supreme



Court the Privy Council or the Federal Court or which is not free from difficulty or which calls for discussion of alternative views.

However, with regard to the agreement and damages claim the Court held that, the **lower Courts were right in interpreting** the agreement and the appellants were entitled only for Rs. 2,34,000 as damages. Accordingly the petition was dismissed.

### **9. D.S. Nakara & Others v. Union of India**

**DATE OF JUDGMENT:** 17/12/1982

**COURT:** Supreme Court of India

**JUDGES:** Chandrachud, D.Y. ((Cj)), Tulzapurkar, V.D., Desai, D.A., Reddy, O. Chinnappa (J), Islam, Baharul (J)

**REFERENCE:** 1983 AIR 130

#### **PARTIES**

**Petitioner:** D.S. Nakara & Others

**Respondent:** Union of India

**SUBJECT:** The judgment revolves around the question of whether **date of retirement** can be a valid ground to decide the amount of pension?

**FACTS:** The petitioner in the instant case challenged the validity of **Central Civil Services (Pension) Rules, 1972 and Regulations** governing pension for armed forces personnel under Article 32 of the Constitution. The said rules distinguish the pensioners into two categories as those retiring **before 31.3.1979** and those retiring **after 31.03.1979**. The classification brought about a difference in the **amount of pension** paid to the armed forces personnel's who did the same work.

#### **IMPORTANT PROVISIONS**

##### **The Indian Constitution**

- **Article 14:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.





- Article 32: Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

### ISSUES:

1. Whether the said **classification is valid** under Article 14 of the Constitution?

### ANALYSIS OF THE JUDGEMENT:

The petitioners in the instant case contended that,

- All the pensioners irrespective of their retirement date **performed same work** and belong to the **same class**.
- A classification made on the basis of retirement date **does not constitute a valid intelligible differentia** under Article 14 of the Constitution.

However, the respondents contended that,

- The date mentioned in the rules stands valid as it is specified to **liberalise the pension scheme**.
- Further removal of the date by applying the doctrine of severability is **beyond the powers of the Court**. Removal of the date by the judiciary will change the entire purpose of the legislation for which it was enacted. It will also amount to intrusion into the **independency of the legislature**.

Upon hearing the parties to the case, the Court held that, a classification made under Article 14 must **withstand the test of reasonability**. It must have the presence of intelligible differentia which has a **rational nexus** with the object sought to be achieved by the legislation in question. In the present case the classification found on the basis of retirement date is **manifestly arbitrary** as all the pensioners together constitute a class in which a further classification is not possible. Therefore, all the pensioners **are entitled to receive same amount** of pension without any discrimination. Hence the Rule stands unconstitutional and is liable to be **struck down**.



**CONCLUSION:** Article 14 of the Indian Constitution guarantees equality among equals. Classifying a group of pensioners who did the same work on basis of retirement date is pure discrimination under Article 14. Hence the Rules were rightly struck down in the present case.

## **10. Dhirendra Pandua vs State of Orissa & Ors**

**DATE OF JUDGMENT:** 19/09/2008

**COURT:** Supreme Court of India

**JUDGES:** Justice C.K. Thakker and Justice D.K. Jain

**REFERENCE:** AIR 2009 SC 163

### **PARTIES**

**Appellant:** Dhirendra Pandua

**Respondent:** State of Orissa & Ors

**SUBJECT:** The judgment revolves around the validity of removal of office of a Councillor after the election results were announced.

**FACTS:** The appellant and one of the respondents in the instant case were elected as the Councillors of two different municipal wards. The appellant was further elected as the Chairperson of the Municipal Council. The respondent confronted with this election filed a petition in the Election tribunal challenging its validity contending that the appellant was a leprosy patient and hence was barred to contest elections under section 16(1)(iv) and 17(1)(b) of the Orissa Municipal Act. The tribunal decided in favour of the respondent and disqualified the appellant from assuming the office. The appellant appealed before the High Court challenging the tribunal's decision, but the petition was dismissed therefore as a last resort he filled a Special Leave Petition (SLP) under Article 136 of the Indian Constitution before the SC.

### **IMPORTANT PROVISIONS:**

**The Indian Constitution:**



- Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

#### The Orissa Municipal Act:

- Section 16(iv): No person shall be qualified for election as a Councillor of a Municipality if such person has been adjudged by a competent Court to be of unsound mind or is a leprosy or a tuberculosis patient
- Section 17(b): Subject to the provisions of Section 38, a Councillor shall cease to hold his office, if he becomes of unsound mind, a leprosy or a tuberculosis patient.
- Section 19(1): The petition shall be presented before the District Judge, together with a deposit of two hundred rupees as security for cost within fifteen days, after the day on which the result of the election was announced and shall specify the ground or grounds on which the election of the opposite party is questioned and shall contain a summary of the circumstances alleged to justify the election being questioned on such grounds.
- Section 38: (1) Whenever it is alleged that any person, who has been elected as Councillor is disqualified under Section 16 or 17 and such person does not admit the allegation or whenever any Councillor himself is in doubt, whether or not he has become qualified for office under Section 16 or 17, such Councillor or any other Councillor may, and the Chairperson at request of the Municipality shall apply to District Judge of the district in which the Municipal area is situated.

#### ISSUES:

1. Whether sections 16 and 17 of the Orissa Municipal Act were constitutionally valid?
2. Whether the removal of office of the appellant was valid?
3. Whether the petition of the respondent before the district judge was barred by limitation?

#### ANALYSIS OF THE JUDGEMENT:

The appellant in the present case was a leprosy patient however he produced documents before the Court to prove that he was completely cured from the disease and hence was fully qualified to contest and be elected as a representative. Elaborating his stand, he submitted that,

- As per section 19 of the Orissa Municipal Act a petition for challenging the election has to be submitted within 15 days from the declaration of results. However, the



respondent has failed to comply with this condition and hence his petition is barred by limitation.

- The medical reports submitted before the Court itself clearly shows that the appellant has completely recovered from the disease.
- Also, disqualifying a person from contesting elections on the basis of a disease was violative of Article 14 of the Indian Constitution.

Rebutting these contentions, the respondents submitted that,

- The petition was not filled under section 19 but under section 38 which prescribes no time period for a co-contestant to challenge the election process and therefore the petition was not barred by limitation.
- The medical experts based on their research has concluded that, leprosy is an incurable and communicable disease.
- The provisions which bared the appellant from contesting were constitutionally valid as it amounts to reasonable restrictions in the interest of larger public.

Upon hearing the parties, the Court held that, the petition filed by the respondent was valid as per section 38 of the Act. Further, the medical examinations and expert opinions in the instant case clearly shows that leprosy is incurable and communicable via droplets from nose and mouth of the infected person through close and frequent contacts. Therefore, the appellant was incapable of contesting elections and hence the decision of the HC and the tribunal was justified.

**CONCLUSION:** Being affected by a disease is no sin or crime. However, adding on to the misery if that disease is communicable the patient will have to distant himself from the fellow beings. This not just affects his mental health but also leaves a traumatic impact on his recovery process especially when it is incurable as in the present case. However, the Court considering larger public interest upheld the validity of the provisions under the Act calling it to be reasonable restrictions in the interest of public health.



### 11. E.P. Royappa v State of Tamil Nadu

Bench: Chief Justice A.N. Ray, Justice D.G. Palekar, Justice V.Y. Chandrachud, Justice P.N. Bhagwati and Justice V.R. Krishnaiyer

Petitioner: E.P. Royappa

Respondent: State of Tamil Nadu and Another

*Citation:* 1974 AIR 555, 1974 SCR (2) 348

*Issue:*

- Whether the transfer of petitioner to subsequent posts was in contradiction to the proviso of Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954, and Rule 9[sub-r.(1)] of the Indian Administrative (Pay) Rules, 1954?
- Whether the transfer was violative of Article 14 and Article 16 of the Constitution of India?
- Whether the act of respondent to transfer the petitioner was mala fide or not?

*Facts:*

- The petitioner was a member of the Indian Administrative Service in Tamil Nadu. Temporarily a post of Additional Chief Secretary was created in the grade of Chief Secretary for one year. Later on, the petitioner was posted as Additional Chief Secretary. After some time the post of Chief Secretary was vacant and the petitioner was appointed.
- The State Government recommended that the posts of Chief Secretary and the post of First Member of the Board of Revenue **shall be considered to be in the same category and should be interchangeable selection posts the Central Government** and provided that the pay of First Member and the Board of Revenue shall be same as that of the Chief Secretary. Then, the post of First Member of the Board of Revenue was equated in rank and status to that of the Chief Secretary.



- The Government of India after some time raised the pay, rank, and status of the Post of Chief Secretary in respect of the Secretary to the Government of India and was raised above any other post in the State counting the post of First Member, Board of Revenue.
- The State Government granted sanction for the creation of a temporary post of Deputy Chairman in the State Planning Commission for one year and the petitioner was appointed under that post provided that he gets the same rank and pay as that of Chief Secretary. The petitioner did not accept the post and took a leave.
- On the petitioner's return, the post of Deputy Chairman was created for one year and the petitioner was appointed under that post. The petitioner made a representation that the post of Deputy Chairman can not continue for more than one year as it is invalid under Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954.
- The State Government created a temporary post for restructuring and explaining the Sales Tax Act, and the petitioner was appointed under this post. The petitioner again did not join his post and got a leave. After petitioners transfer the State Government abolished the post of Deputy Chairman and created a new post of Deputy Chairman in the Grade of First Member of Board of Revenue on a pay of Rs. 3000 monthly and appointed a First Member of the Board of Revenue for the post. A person who was admittedly junior to the petitioner was promoted as Chief Secretary and was confirmed in that post.
- A petition under Art. 32 was filed by petitioner challenging the constitutional validity of his transfer first to the post of Deputy Chairman State Planning Commission and later to the post of Officer on Special Duty.

*The Argument raised by Petitioner:*

- It was argued that the act of respondent was in contradiction to the proviso of Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954, and Rule 9 of the Indian Administrative Service (Pay) Rules 1954.
- The petitioner contended that the action of the state violated Arts. 14 and 16 of the Constitution as the posts the petitioner was transferred to were inferior.
- The act of state was with malafide intention and was over their power.
- It was argued that the reason behind the transfer of the petitioner was due to the ill motives of CM of Tamil Nadu.

*The argument raised by Respondent:*



- The respondent argued that the petitioner was appointed in an overseeing capacity to the post of Chief Secretary and they relied upon Fundamental Rule 9(19). According to this rule, a Government servant oversees a post when he performs the duties of a post on which another person holds a lien or the Government thinks of appointing a person in a vacant seat.
- It was argued that the transfer of the petitioner was due to the ill motives of CM of Tamil Nadu was baseless.

*Judgment:*

**The court held that the promotion of petitioner as Chief Secretary was only in an acting or officiating capacity and not in a substantive capacity.** It was held that the addition of the post in the Indian Administrative Service Cadre of Tamil Nadu State is not permissible as it will result in altering the strength and composition of the Cadre. The State has no such power under rule 4(2) of the Cadre Rules. **The court said that the post of Deputy Chairman cannot be declared equivalent in status and responsibility to the post of Chief Secretary at one time and the post of First Member Board of Revenue later on.** But the petitioner cannot be permitted to challenge the validity of the appointment as he accepted the appointment without protest. The court concluded that Rule 9 and Sub Rule (1) was not complied with. But the petitioner cannot get relief in a petition under Article 32 because violation of Rule 9 Sub Rule one does not infringe any fundamental right.

It was held that for establishing mala fide the burden lies upon the one who alleges it and the petitioner has failed establishing so against the respondent.

The petition was rejected.



12. **Jolly George Verghese & Anr vs The Bank Of Cochin**

Bench: Justice V.R. Krishnaiyer and Justice R.S. Pathak

Appellant: Jolly George Verghese & Anr.

Respondent: The Bank of Cochin

Citation: 1980 AIR 470, 1980 SCR (2) 913

Subject: Can a person be imprisoned on the ground that he did not discharge his contractual liability?

*Issue:*

- The first issue that was raised was from the purview of international law and the question raised was whether it is justified to enforce a contractual liability by imprisoning a debtor in the light of Art. 11 of the International Covenant on Civil and Political Rights?
- Another issue raised was whether is it fair to deprive a person of his personal liberty on the ground that he did not discharge his contractual liability or not? Also, keeping in mind that Article 21 of the constitution gives protection of the right to life and liberty as quoted by court in Maneka Gandhi's case.

*Facts:*

- A judgment against the appellant for a money decree of Rs. 2.5 lakhs were issued and the respondent was the decree-holder. There were two other money decrees against the appellants and the total sum payable was over Rs. 7 lakhs.
- While executing the decree a warrant for arrest and detention in the civil prison was issued against the appellants vide Section 51 and Order 21 Rule 37 of the Civil Procedure Code. A similar warrant for arrest in execution of the same decree was earlier issued against the appellants.
- Except for the arrest warrant the decree-holders proceeded against the properties of the appellants and as a result, all the immovable properties of the appellant were attached for sale in the discharge of the decree debts.





- A receiver was appointed by the execution court for the management of the attached property. The right of the appellant to alienate the properties was taken away by the court.
- However, the court issued an arrest warrant as on an earlier occasion, a similar warrant was issued.
- The High Court dismissed the revision filed by the appellant against the order of arrest.
- The appellant filed a special appeal against the decision of the High Court.

#### *Analysis:*

The appellant argued that the International Covenant on Civil and Political Rights became a part of the law of land as the State was a signatory and the state must respect the International Covenant in lower courts. The appellant insisted that a debtor who is unable to pay should not be detained in prison as it violates the right to life and personal liberty of the appellants. ***The appellant stated that as the court in the Maneka Gandhi v. Union of India<sup>4</sup> observed that the fundamental rights should be interpreted in such a manner to expand its reach and ambit rather than to concentrate its meaning and content by judicial construction.***

The appellant argued that Article 21 provides ***that no person shall be deprived of his life or personal liberty*** except under procedure established by law. The statement does not mean that any temporary or arbitrary procedure will justify it, a procedure i.e. based on the principle of natural justice and it should be fair and reasonable shall only justify the statement.

It was contended by the defendant that International law does not apply upon Municipal courts. It shall apply to them when it is converted into legislation.

#### *Judgment:*

The Court held that the International Law that the remedy for breach of International Law can't be found in Municipal Courts. The reason behind this is that for enforceability of international law it must first take the form of Municipal Law. It was held that international law must first take the form of municipal law it shall not constitute a part of the corpus juris of the State.

The Court held that the arrest and detention violated the appellant's right to life and liberty. The court referred many judgments like ***Sunil Batra v. Delhi Administration and Sita Ram and Ors. v. The state of the U.P.***

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<sup>4</sup> 1978 2 SCR 621



It was held that the language of Section 51 was stating that if at a later stage the respondent fails to discharge the decree he shall be arrested. This is not in line with Article 11 (of the Covenant) and Article 21 (of the Constitution). The mere default to discharge is not enough to arrest a person, there should be malice present in the appellants' act.

The Court directed the executing court to re-adjudicate on how the appellant wants to pay in the pressure of debt and if they could pay but were postponing the payment or committed an act of bad faith. The pressure shall be put on the property of the appellant as per the Section 51s provision.

### **13. Khoday Distilleries Ltd v. State of Karnataka**

**DATE OF JUDGMENT:** 19/10/1994

**COURT:** Supreme Court of India

**JUDGES:** Venkatachalliah M.N Verma, Jagdish Saran Sawant, P.B. Ramaswamy, K., Jeevan Reddy B.P

**REFERENCE:** 1995 SCC (1) 574

#### **PARTIES**

**Petitioner:** Khoday Distilleries Ltd

**Respondent:** State of Karnataka

**SUBJECT:** The judgment revolves around the question of whether citizens enjoy a fundamental right to **trade or carry on business in liquor** under Article 19(1)(g) of the Constitution?

**FACTS:** The petitioners in the present case fall under **3 categories**, whose right to carry on trade and business in liquor was restricted either by judicial pronouncement or by legislation.

1. Those who filed an SLP after being aggrieved by the decision of the HC where the validity of the following legislations was challenged:

- (i) Karnataka Excise (Distillery and Warehouse) (Amendment) Rules, 1989,
- (ii) Karnataka Excise (Manufacture of Wine from Grapes) (Amendment) Rules, 1989,
- (iii) Karnataka Excise (Brewery) (Amendment) Rules, 1989,
- (iv) Karnataka Excise (Sale of Indian and Foreign Liquors) (Amendment) Rules, 1989



(v) Karnataka Excise (Bottling of Liquor) (Amendment) Rules, 1989

2. The second category are those who were aggrieved by the decision of the Kerala HC, where the Court upheld the validity of the State government's order to cancel all foreign liquor licences issued under Rule 13(3) of the Kerala Foreign Liquor Rules, 1974 to Hotels, Restaurants and Tourist Homes.
3. The third category involves the petitions that were dismissed by the Andhra Pradesh HC upon holding the validity of the following legislations:
  - a. Andhra Pradesh Foreign Liquor and Indian Liquor Rules, 1970
  - b. A.P (Regulation of Wholesale Trade, Distribution and Retail Trade in Indian Liquor and Foreign Liquor, Wine and Beer) Act, 1993

### **IMPORTANT PROVISIONS:**

#### **The Indian Constitution:**

- Article 136(1): Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India
- Article 19(1)(g): to practise any profession, or to carry on any occupation, trade or business
- Article 47: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health

### **ISSUES:**

1. Whether citizens enjoy a fundamental right to **trade or carry on business in liquor** under Article 19(1)(g) of the Constitution?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioners contended that,



- If the law on the subject is considered to be law under Article 19(6), it has to be on the basis that a citizen had got a fundamental right to trade in liquor. If the law is that a citizen has no fundamental right, then Article 19(6) cannot be applied because the said **Article applies only to those rights which a citizen possesses**. What a citizen cannot do under Article 19(1), the State cannot do under Article 19(6).
- A State cannot do an activity which is **forbidden by the Directive Principles of State Policy** which in the present case is Article 47.
- **Entry 51 of List II** under 7<sup>th</sup> Schedule states that, “Duty of Excise on intoxicating liquor for human consumption” which means that, unless a complete exclusion is brought under Article 47, right to carry on trade, business in liquor is guaranteed.
- Substances like **tobacco** which are more harmful to health than alcohol and they are being **sold freely** while the restrictions apply only for liquor sale.

The respondents cited the following judgments and presented their justification.

- In **State of Bombay v. EN. Balsara** wherein the Court held that, total prohibition on potable liquor would be reasonable.
- In **Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner** it was held that, it cannot also be denied that the State has the power to prohibit trades which are **illegal or immoral or injurious to the health** and welfare of the public. Laws prohibiting trades in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation. The nature of the business is, therefore, an important element in deciding the reasonableness of the restrictions.
- In **State of Assam v. A.N. Kidwai, Commissioner of Hills Division** the Court held that, no person had any absolute right to sell liquor, and the purpose of the Act and the Rules was to control and restrict the consumption of intoxicating liquors, such control and restriction being obviously necessary for the preservation of public health and morals, and to raise revenue.

Upon hearing the parties to the case, the Court held that, Article 19(1)(g) does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are **obnoxious and injurious to health**, safety and welfare of the general public. In other words, all those which fall within the category of res commercium are reasonable restrictions under Article 19(1)(g). These restrictions are issued by the State



**in pursuance of its obligation under Article 47** and hence cannot be called in question before the Court. Therefore, the Court clarified that, right to carry on trade or business under Article 19(1)(g) is not an absolute right and hence the **citizens cannot enjoy right to trade in liquor.**

### **14. Mithu v. State of Punjab**

**DATE OF JUDGMENT:** 07/04/1983

**COURT:** Supreme Court of India

**JUDGES:** Chandrachud, Y.D., Fazalali Syed Murtaza, Tulzapurkar V.D., Reddy, O. Chinnappa, Varadarajan A.

**REFERENCE:** 1983 AIR 473

#### **PARTIES**

**Petitioner:** Mithu

**Respondent:** State of Punjab

**SUBJECT:** The judgment revolves around the question of whether **section 303** of the Indian Penal Code is constitutionally valid?

**FACTS:** The petitioners in the instant case challenged the validity of Section 303 of IPC stating that it violated **right to equality** under the Constitution.

#### **IMPORTANT PROVISIONS:**

**The Indian Constitution:**

- **Article 14:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

**The Indian Penal Code:**

- **Section 303:** Whoever, being under sentence of 1[imprisonment for life], commits murder, shall be punished with death.

#### **ISSUES:**

1. Whether section 303 of the Indian Penal Code is constitutionally valid?

#### **ANALYSIS OF THE JUDGEMENT:**



The petitioners contended that, as per section 302 IPC if a person commits murder, he is either given life imprisonment or death sentence depending upon the **gravity of the offence** but for a **similar offence** committed by a life convict **under section 303** IPC the Court is not given an option but to **award death sentence alone**. Therefore, section 303 IPC makes an unreasonable classification among persons who commit murder without considering the gravity of the offence. Further the provision has **no rational nexus** with the object sought to be achieved by the legislation in question.

The respondents contended that, the validity of **death sentence** is upheld by the SC in the case of **Bachan Singh v. State of Punjab**, therefore the punishment prescribed is valid.

Upon hearing the parties, the Court held that, section 303 IPC makes an unreasonable classification of persons who commit murder **when under** life sentence and persons who commit murder **when not under** life sentence as the **resultant act is the same** in both categories. **Motive** behind the offence might vary from convict to convict but does not depend on the fact if he is awarded with life imprisonment or not. A mandatory award of death sentence under section 303 IPC disregarding the gravity of the offence committed has no rational nexus with the object sought to be achieved by the legislation therefore Court declared section 303 IPC as **unconstitutional**.

### **15.N. Adithayan v. The Travancore Devaswom Board**

**DATE OF JUDGMENT:** 3/10/2002

**COURT:** Supreme Court of India

**JUDGES:** S. Rajendra Babu and Duraiswamy Raju.

**REFERENCE:** Appeal (civil) 6965 of 1996

#### **PARTIES**

**Petitioner:** N. Adithayan

**Respondent:** The Travancore Devaswom Board

**SUBJECT:** The judgment revolves around the question of whether a person who is **not a Malayali Brahmin** may be appointed as a temple priest in a Siva temple in Kerala?



**FACTS:** In order to fill the vacancy of a priest in Kongorpilly Neerikode Siva Temple at Alangad Village in Ernakulam District, Kerala the respondent appointed a person who was a non-brahmin but graduated from Thanthra Vedantha School at Tiruvalla, which was exclusively run by the respondent board to teach the students of the school to become a responsible and dutiful priest. However, the petitioner who refused to accept the appointment of a non-brahmin approached the Court as it violated the **age-old custom** of only Malayala Brahmins serving the god at temple.

### **IMPORTANT PROVISIONS:**

#### **The Indian Constitution:**

- **Article 15(1):** The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
- **Article 14:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India
- **Article 25(1):** Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

### **ISSUES:**

1. Whether a person who is not a Malayali Brahmin may be appointed as a temple priest in a Siva temple in Kerala?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner contended that,

- Only Malayali Brahmin should be appointed as a priest because it has been an **age-old practice** which has been followed since ages hence it is protected under **Article 25**.
- Only people who belong to that community have the knowledge of how a priest has to discharge his duties.

The respondents contended that,

- As per Article 13 of the Constitution even **a custom is law**, therefore it may be declared as invalid. Just because an act is followed since time immemorial does not make it a valid custom.



- The school run by the board gives the **graduates sufficient knowledge** as to how to discharge their duties as a priest.
- Further any practice to seek protection under Article 25 must satisfy the **essentiality test** .ie, it should be the **core believes** upon which the religion is founded without which the religion will be no religion. But in the present case appointment of only Malayali Brahmins as temple priests is not an essential practice of the religion. Therefore, **cannot be brought under Article 25.**

Upon hearing the parties to the case, the Court held that, any person who has **vivid knowledge about the vedas and all other sacred documents and sufficient experience can become a priest.** Further caste/community cannot be a criterion to decide his eligibility.

### **16.A. Periakaruppan v. State of Tamil Nadu**

**DATE OF JUDGMENT:** 23/09/1970

**COURT:** Supreme Court of India

**JUDGES:** K Hegde

**REFERENCE:** 1971 AIR 2303

#### **PARTIES**

**Petitioner:** A. Periakaruppan

**Respondent:** State of Tamil Nadu

**SUBJECT:** The petitioner challenged the validity of reservation made on the basis of **backward and more backward classes** for admissions to medical colleges in Tamil Nadu.

**FACTS:** The petitioners in present case are medical college students who were unsuccessful in getting admission into the colleges they desired for, **despite of them being academically qualified for the same.** The availability of medical seats in Tamil Nadu are as follows:

- Madras- 500
- Madurai- 200
- Chengalpat- 50
- Coimbatore- 100
- Thanjavur - 200





- Tirunelveli- 75

Which amounts to a total of 1125 seats out of which few were reserved for certain backward class students which are not disputed in the present case. However, **another 41 seats were reserved for another category of backward class which amounts to discrimination.**

About 7,000 students applied for these limited seats. The admission process happens to be on **State wise** allocation. However, in 1967-68 the admission was made **district wise**. As such practices promoted discrimination on the basis of **place of origin** it was declared unconstitutional by the SC in the case of **Minor P. Rajendran v. State of Madras and another**. Thereafter the selection was made on the basis of “**unit wise**” allocation, wherein all colleges in Madras constituted a single unit while each college in mofussil constitute distinct units. A separate committee was formed for each and every unit to interview the students. All students were advised to apply to **only one committee** even if they applied to more than one committee the government will forward the application only to one committee. They were further advised to apply to those colleges which was **nearer to their place of residence**. But due the unreasonable classification of backward class and more backward class many students who had **remarkable academic records were denied admission** to reputed medical colleges. Hence, they filed a petition under Article 32 challenging the validity of unit wise admission.

### **IMPORTANT PROVISIONS:**

#### **The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- **Article 14:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India
- **Article 15(1):** The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them



(4) Nothing in this article shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

### **ISSUES:**

1. Whether classification on the basis of backward class and more backward class is violative of Article 14 and 15 of the Constitution?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner contended that,

- The interview conducted by the committee is only **for 3 minutes which is insufficient to assess a candidate**. Further the Committees did not follow any uniform criteria of selection.
- The unit wise scheme of allocation is similar to that of district wise allocation, the name change was **a tool to get rid of the SC's judgment** in Minor P. Rajendran v. State of Madras and another
- Further the sub classification of backward class as more backward class was merely made on the basis of **caste which does not conform with Article 15(4)** of the Constitution and impermissible in law. Further it does not have any nexus with the object sought to be achieved by the legislation.
- The committee made **unreasonable delay** in issuing the consolidated list of selected candidates.

The respondents contended that,

- The unit wise classification was made for **administrative convenience**.
- The sub classification of backward and more backward class was to enable the socially disadvantaged class to **access dignified life and equality** in the society.
- The Committee does follow a patten of selection which includes marks in optional subjects such as Physics, Chemistry, Biology and the following:

(1) Sports or National Cadet Corps activities

(2) Extra Curricular special services.

(3) General physical condition and endurance



(4) General ability

(5) Aptitude.

Upon hearing the parties to the case, the Court held that, it is an accepted fact that, Article 15(1) prohibits discrimination on the basis of caste alone. But when a classification is made for the welfare of socially and economically backward class the classification **becomes valid under Article 15(4)**. However, a particular caste should not be declared socially backward at all times, if considered it would **defeat the purpose of providing reservation**. Hence the list is to be **reviewed constantly and those who have benefited from the reservation policy have to be removed from time to time**. The Court further held that, since the selected students have started attending their classes the selection process cannot be nullified. However, 24 seats were still vacant and those 80 students who were put in waiting list by the Committee may alone be assessed by a fresh committee appointed by this Court for admission.

## **17. PEOPLE'S UNION OF CIVIL LIBERTIES V. UNION OF INDIA**

**CITATION:** AIR 1997 SC 568

**COURT:** SUPREME COURT OF INDIA

**BENCH:** K Singh, S S Ahmad

### **FACTS:**

- In 1990, Chandra Shekhar (Eighth Prime Minister of India) publicly put forward an allegation against the government led by V.P Singh that it was illegally tapping the telephones of 27 politicians, including his own
- The Writ petition under Article 32 was filed in the wake of reports by the Central Bureau of Investigation on “Tapping of phones of the politicians”
- Through the investigations, it was found out that MTNL had been authorized by various agencies to intercept certain phone numbers however the files about to such interceptions were not maintained properly

### **ISSUE:**

- Whether Section 5(2) of the Indian Telegraph Act 1885 could be held unconstitutional



- Whether telephone tapping infringed the Fundamental Right to Privacy

#### **PETITIONER's CONTENTIONS:**

- That the right to privacy has been guaranteed under Article 19 and Article 21 of the Constitution
- That Section 5(2) of the Act must have procedural backing so that the exercise of power is fair and reasonable.

#### **RESPONDENT's CONTENTIONS:**

- That tapping of the telephone can be done only by the order of the Central/State Government under conditions of National emergency, public safety, etc
- That the striking down the provision Sections 5(2) of the Indian Telegraph Act will jeopardize public interest and security of the State.

#### **JUDGEMENT:**

The Supreme Court while affirming the infringement of Right to Privacy via phone tapping laid down several guidelines for the exercise of the Executive's surveillance. It was laid down that the home secretary of the Union government or the State government can issue an order for phone tapping. The order has to be directed on the basis of strong reasons. Such an order will be valid for up to 2 months. Further, the Home Ministry does not have absolute powers and that the order shall be subject to review by the Cabinet, law and telecommunication secretary. The Writ petition was disposed of without costs



## **18.SELVI MURUGESHAN V. STATE OF MAHARASHTRA**

**Appellants:** Selvi and Ors.

**Respondent:** State of Karnataka

**Court:** High Court Of Karnataka

**Bench:** Justice B.V.Nagarathna & H.T.Narendra Prasad

**Facts:**

The Complainant Kavita Murugeshan, wife of Shiv Kumar and daughter of Selvi Murugeshan, lodged an FIR that her parents and others have murdered of her husband. The complainant contends that she married her husband Shiv Kumar(Victim) against her parents' wishes and had charged her parents for the murder of her husband. The victim was kidnapped while he was walking with his wife (the complainant) and next day he was found dead wherein his head was smashed with an object and he was identified by his driving license. Therefore the investigating agency made demand from the court for conducting Forensic Test to support the complainant's case with strong evidence, although collection of evidence is permitted under the law by the police officer, conducting the forensic test on the accused in order to extract evidence is also part of collecting the evidence.

**Issues**

1. The question before the court was that whether conducting Narco-Analysis test on the accused person will be a violation of Article 20(3) of Indian Constitution?
2. Whether the involuntary administration of the Forensic techniques violates the right to privacy and personal liberty as given under article 21 of the Indian Constitution?
3. Whether the Forensic Techniques used to extricate Evidence are against Human Rights?

**Application:**

**Issue 1:**

According to Article 20(3) of the Constitution of India compelling an accused to be a witness against himself is considered to be unconstitutional. The Court regards that when we talk about Forensic techniques in order to extricate evidence it is meant that the accused is deemed to be under influence of certain Narcotics compounds because of which he is



confessing relevant details and would not be able to lie. Further the Court opines that as there is no consent involved in this procedure of extracting evidence from the accused is against the right to self-incrimination as Article 20(3) aims to prevent the forcible 'conveyance of personal knowledge that is relevant to the facts in issue'.

**Issue 2:**

According to article 21 of the Constitution of India no person shall be deprived of his life and personal liberty. In the present case it was absorbed that no individual should be forcefully subjected to any of the techniques in question against his will at the time of conducting the test as it amounts to an unwarranted intrusion into personal liberty of that person. The use of Narcotics substances in the impugned tests were criticized by the Bench as it infringes a person's mental privacy.

**Issue 3:**

The court also held certain guidelines laid by the National Human Rights Commission for administration of Forensic tests as other methods used in this process sought to be painful and against basic human rights.

**Findings:**

Number of Judgments have been cited and discussed in the present case. It was held by the court that Forensic test should be performed in the presence of expert team of doctors. In this case, court permitted the authority for conducting the Narco-Analysis test. The Narco-Analysis test showed the involvement of Selvi Murugeshan and her husband but they were let off due to the lack of other evidence.



## **19.Shreya Singhal v. UOI**

**Bench:** Justice Chelameswar, R.F. Nariman

**Appellant :** Shreya Singhal

**Respondent :** UOI

**Citation :** Writ petition (Criminal) No. 167 of 2012

**Issue :**

- Constitutionality of Section 66A

**Facts:**

- A girl posted a Facebook status in Palghar, Maharashtra, insinuating that Mumbai had shut down in fear, rather than out of respect for the funeral procession of a certain political leader.
- The girl and another girl along who had “liked” the post, were arrested under the Indian Penal Code Section 295A and the notorious Section 66A of the Information Technology Act, 2000.
- The arrested girls were released later and it was decided that the criminal cases against them would be dropped, yet their arrests pulled in protest across the country.
- It was assumed that the police abused their authority by invoking Section 66A at the same time as it constitutes a violation of the fundamental right of speech and expression.
- A petition was filed by the applicant in public interest, pursuant to Article 32 of the Constitution of India, seeking to make Section 66A, 69A and Section 79 unconstitutional on the basis that the phraseology used in Section 66A, 69A and Section 79 of the IT Act, 2000 is so broad and vague and, at the same time, unable to be evaluated on objective standards that it is susceptible to abuse.

**Appellant’s contentions:**

- Petitioners argued that s.66A was unconstitutional because its intended protection against annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, or ill-will falls outside the purview of Article 19(2), which is a proviso clause to Article 19(1)(a).



- They argued that the law was unconstitutionally vague as it failed to specifically define its prohibitions.
- It was also contended that the law had a “chilling effect” on the right to freedom of expression.

**Respondent’s contentions :**

- The defendants argued that the legislature is in the best position to fulfill the needs of people and courts may interfere with legislative process only when “a statute is clearly violative of the rights conferred on the citizen under Part-III of the Constitution.”
- The government contended that mere presence of abuse of a provision may not be a ground to declare the provision as unconstitutional.
- According to the defendants, vagueness could not be a ground to declare a statute unconstitutional “if statute is otherwise legislatively competent and non-arbitrary”.

**Final Decision:**

The Court invalidated Section 66A of IT Act in its entirety as it violated the right to freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India.

It held that s.66A is capable of imposing chilling effect on right to freedom of expression because the provision fails to define terms, such as inconvenience or annoyance.

Court followed the U.S. judicial precedent which holds that where no reasonable standards are laid down to define guilt in a Section, that Section must be struck down as being arbitrary and unreasonable.

**20. Church of God (Full Gospel) In India v. K.K.R. Majestic Colony Welfare**

**DATE OF JUDGMENT:**30/08/2000

**COURT:** Supreme Court of India

**JUDGES:** M B Shah, J., S.N. Phukan, J.

**REFERENCE:** AIR 2000 SC 2773

**PARTIES**

**Petitioner:** Church of God (Full Gospel) In India





Respondent: K.K.R. Majestic

**SUBJECT:** The judgment revolves around the question of whether a particular community or sect of that community can claim right to add to noise pollution on the ground of religion?

**FACTS:** The appellants in the present case run a Church in a residential area. Due to the noise pollution created by the appellants a petition was filed before the HC for an order of injunction by the respondents. The HC granted the order and stated that, reciting prayers would be an essential part of the religion but using loudspeakers to recite is not necessary.

**IMPORTANT PROVISIONS:**

The Indian Constitution:

Article 25:

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

**ISSUES:**

1. whether a particular community or sect of that community can claim right to add to noise pollution on the ground of religion?

**ANALYSIS OF THE JUDGEMENT:**

The petitioners contended that,

- The loudspeakers which are run in high decibels affect the right to pollution free environment of the residents in that area
- The Church is deliberately applying a religious colour to the case.
- The HC order should be upheld

The respondents contended that,



- The Church has the independence to practice its religious believes in the way it desired. Any intrusion into such matters would amount violation of religious freedom under Articles 25 and 26.

Upon hearing the parties, the Court upheld the HC's decision and stated that, reciting prayers would be an essential part of the religion but using loudspeakers to recite is not necessary

### **21.A. K. Roy, Etc v. Union of India**

**Bench:** Chandrachud, Y.V. ((Cj)), Bhagwati, P.N., Gupta, A.C., Tulzapurkar, V.D., Desai, D.A.

**Citation:** 1982 AIR 710

**Facts:**

Numerous writ petitions were filed which challenged the constitutional validity of the National Security Ordinance, 2 of 1980 and certain provisions of the National Security Act, 65 of 1980 which replaced the Ordinance.

A.K. Roy who was The Petitioner was a Marxist member of the Parliament. He was detained under the Ordinance by an order passed by the District Magistrate of Dhanbad claiming that he was indulging in activities which were prejudicial to the public order.

Some Members of the parliament applied to intervene in the Writ Petition claiming that since the Ordinance making power of the President is destructive of the system of democracy, it is necessary to define the scope of that power which is held in the hands of the president.

The National Security Ordinance was applicable to the whole of India except the State of Jammu & Kashmir and was passed in order "to provide for preventive detention in certain cases end for matters connected therewith." It

The Parliament was not in session when the Ordinance was enacted, and it was being issued by the President because the President was satisfied that circumstances existed which rendered it necessary for him to take immediate action.

**Issue:**

- 1) Whether the National Security Ordinance is Constitutional or not?



- 2) Whether preventive detention is a valid measure for regulating the liberties of the subject?
- 3) Whether the provisions of S.3(1) and S.3(2) of the National Security Act are so vague in their content and their extent, that just by their application, the Central Govt or State govt. can easily deprive a person of his liberty for any reason which may appeal to them?
- 4) Whether the right of cross- examination is an integral and indispensable part of the Principles of Natural Justice?
- 5) The denial of the right of legal representation to the detenu in the proceedings before the Advisory Board is an unreasonable restriction, within the meaning of Article 19(1), on the rights conferred by that article.
- 6) Whether there was a sufficient cause for detention of the person concerned and whether there was a need to keep the person in detention any longer after the date of its report?

### **Judgement:**

**Issue 1** - Article 123 and 213 of the Constitution confer on the President and Governor respectively an ordinance making power and nothing in the Constitution poses a restriction on this power to be confined to areas which have not been covered by any other Law passed by the Legislature. The Court said there is no reason to impose a restriction like this because an ordinance like any other law which has been made by the legislature, must comply with what is mentioned in Article 13(2).

The Petitioner's contended that due to the ordinance, Articles 14, 19 and 21 would become ineffectual. To this contention, the Court said that they were unable to see how the ordinance would render these Articles ineffectual because it was subject to the same constraints that a law made by the legislature would be and if in practical operation a law wouldn't be violative of these articles, then the ordinance should not be too.

The National Security Ordinance was passed by the President by exercising the ordinance making power conferred on him under Article 123 and as per the reasoning above, it is Constitutional.

**Issue 2** - The Court said that it could not invalidate a law of Preventive Detention on the general ground that it will interfere with the liberties of the people and as long as the law did not violate



the conditions or restrictions mentioned in the entries in the Union and the Concurrent List which gave it power.

The Court looked at the history by looking at the Constituent Assembly Debates and the way the Constitution was originally created and enacted and concluded that it recognised Preventive Detention as a valid means of curtailing the people's liberties, but it would also be subject to the limitations imposed by Part III of the Constitution.

Hence, the Court rejected the contention of the petitioner that Preventive Detention was impermissible by the Indian Constitution.

**Issue 3** - The Court held that such expressions are difficult to define and hence they cannot be struck down on the ground of being vague or uncertain. Courts must in practice, strive to give these expressions a narrower construction than take the literal meaning and while construing laws of Preventive Detention like the National Security Act, care must be taken that its application is restricted to as few situations as possible.

This does not apply to S.3(2) as the expressions "acting in any prejudicial to the maintenance of supplies and services essential to the community" can be easily defined by the legislature.

This section gives freedom to the detaining authority to extend the application of S.3(2) to any commodities/ services the maintenance of which is essential according to him and which has not been defined.

Thus, this provision is violative of Article 21 on the grounds of vagueness and uncertainty, but the Court does not strike it down as it gives power to detain persons on grounds that they are acting in prejudicial manner.

**Issue 4** - In this case, the detente cannot claim the right of cross-examination before the Advisory Board as the question in consideration before them is that of whether there is sufficient cause for the detenu to be detained, not whether he is guilty or not. Hence, the procedure before the Advisory board is different from that of a judicial or quasi-judicial body.

**Issue 5** - But, the Court said if the detaining authority or the Government takes the aid of a legal practitioner or a legal adviser before the Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner. Since, denying the detenu such a right, in such a case would be a breach of Article 14



Since the Constitution allowed it in the original form, it cannot be said to be unfair or unjust or unreasonable since the standards for fairness are provided under Articles 19 and 21 under the Constitution itself.

Under Article 22 (5), a detenu has a right to be informed of the grounds on which he is detained and get the earliest opportunity to be represented by a legal practitioner before the Advisory Board, but the written representation of the detenu does not have to be expatiated.

**Issue 6** - Section 11 (2) of the Act says that report will be an opinion of the Board as to whether there was a sufficient cause to detain the concerned person. The duty of the Board is to determine whether there was a sufficient cause for detention of the person on the date on which the order of detention was passed and whether or not there is a sufficient cause for the detention of that person on the date of its report.

Board cannot determine the question as to whether the detention should continue after the date of its report, that is to be answered by the detaining authority.

People held under preventive detention laws are to be kept separately from the regular convicts considering the evils of custodial perversity. It must be ensured that the detainee is not subjected to any sort of indignity.

## **22.A.K. Gopalan vs The State of Madras**

**Bench:** Kania, Hiralal J. (Cj)

**Citation:** 1950 AIR 27

### **Facts:**

Mr. Gopalan was detained by the Madras Government in Madras jail. While in detention the Madras Government served him with Section 3(1) of Preventive Detention Act (P.D.A.). No reasons were accorded for the detention. He challenged the order in the court under a writ of habeas corpus under Article 32 stating that the detention order was violative of Article 14,19,13,14 and 21. His lawyer demanded that the word that the words ‘procedure established by law’ should be read in the same as the American Due Process Clause has been interpreted.



**Issue:**

Could Article 19 of the constitution be read together with Article 21?

**Judgement:**

The Supreme Court said that Article 21 could be invoked only upon a complete deprivation and not upon restriction of movement. The SC said that word 'law' in Article 21 could not mean rules of natural justice. These rules were vague and ambiguous and such laws cannot be read in the light of the Constitution. The word 'law' was used in context of state-made laws and not 'natural justice'.

Could Article 19 and Article 21 be read together in Article 21?

The Supreme Court held that Article 19 and Article 21 cannot be read together and emancipated the Doctrine of Exclusivity. Personal liberty in Article 21 in itself has a comprehensive context. It would also include various provisions under Article 19. However, Article 19 deals with very few specific provisions and does not mention freedom from detention.

The court said that Personal liberty does not only mean liberty of a person, but also, liberty or rights attached to that person. Article 19 does not mention life and personal liberty and including these terms would strain the context in which Article 19 exists. Therefore, it cannot be read in accordance with Article 21.

What is 'Procedure Established by law'?

The Supreme Court held that under Article 21 the term 'procedure established by law' meant that the procedure as laid down in the law and enacted by the legislature and nothing more. A person could be deprived of his life and personal liberty by procedure laid down in a given law. Law is not general law, but law established by the state.

The Supreme Court said that the procedure was just, fair or reasonable or according to natural justice was not the concern of Article 21. The legislature can pass any law they feel is right. It is not necessary that the law or the procedure established by it should be in conformity with theory of natural justice and reasonableness. The Due Process Clause of United States Constitution has been interpreted by the U.S. Supreme Court as that the law or the process laid down must be just, fair and reasonable. The SC of India rejected this stance by stating that it would give a very wide scope to Article 21 which indeed was not the vision of the Legislature.



Therefore, the court laid down a 3-prong test stating that a person can be deprived of his personal liberty –

- A) There must be a law.
- B) It should lay down a procedure to implement the law.
- C) The executive should follow the procedure while depriving life and personal liberty in accordance with the procedure.

### **23.ADM Jabalpur v. S.S. Shukla**

Bench: Chief Justice A.N. Ray, Justice H.R. Khanna, Justice M. Hameedullah Beg, Justice Y.V. Chandrachud and Justice P.N. Bhagwati

Appellant: Additional District Magistrate, Jabalpur

Respondent: S.S. Shukla

Citation: 1976 AIR 1207, 1976 SCR 172

Issue:

Can a High Court entertain a writ of Habeas Corpus filed by a person challenging the ground for his detention during an emergency?

Facts:

- In June of 1975, the President, using his powers under Article 352(2) declared an emergency as the security of India was threatened due to some internal problems. Later on, exercising his powers given under Article 359(1), the President it was enforced on the people of India and the foreigners, that the right to approach the court to enforce their rights under Article 14, 21 and 22 and the proceeding related to these Articles shall be suspended for the period of Emergency.
- The President made several changes in the Domestic Security Maintenance Act, 1975, and Maintenance of Homeland Security Act via amendments, and all these amendments had a retrospective effect to validate all the previous laws.
- Anybody who was considered a political threat or who raised his political opinion was arrested without trial under Prevention Detention Laws. It resulted in the arrest of many



leaders of opposition Atal Bihari Vajpayee, Morarji Desai, and others under MISA, as they were a threat to the Indira Gandhi, led government.

- The new law was challenged in many superior courts stating that it was unconstitutional. In several cases, the validity of the amendments was contested before the court of law. The main objection that was raised was the maintainability for the fact that the request for release, a writ of Habeas corpus. It was contended that the accused were deprived of their right to personal liberty.
- Several petitions were filed in various High courts all over the country contesting the unlawful detention. Mostly court passed judgments in favor of the petitions and it forced the Indira Gandhi Government to approach SC and that led to the **Additional District Magistrate Jabalpur V. Shivkant Shukla** case which is known as the Habeas Corpus Case.

#### Argument raised by Appellant:

- The appellant contended that the purpose of the emergency in the Constitution is that it gives power to the Executive to have control over the implementation of law applicable to the citizens of the country. The aim was that during an emergency the considerations of the state assume supreme importance.
- The state does not release a detainee despite even on the recommendation of the advisory board and keeps him in detention without any reason is a slight violation of rights under Article 22 and therefore, there shall be no petition of habeas corpus that will be maintainable. The right under Article 19 was suspended by the order of president vide Article 359(1).
- The appellant contended that suspending the right of a person to file a petition in a court for the enforcement of rights under Article 21 is well within the power of President given by the constitution and it does not mean that there is an absence of rule of law.
- They contended the legitimacy of a Presidential Order cannot be challenged on the ground of violating fundamental rights.

#### Argument raised by Respondent:

- The respondents contended that the aim of Article 359(1) is to remove the limitations imposed on the legislature while making law so that during an emergency, the legislature is free to violate the fundamental rights outlined in the presidential order.





- It was argued that there is already a mechanism to govern pre-trial detention (Maintenance of Internal Security Act of 1971). Each arrest issued by the executive must comply with the conditions laid down under this law.
- It was contended that Article 21 is not the only article that gives the right to life and personal liberty.
- The respondent said that non-fundamental rights under Articles 256, 265, and 361(3), neither the natural or contractual rights nor the legal rights to personal liberty are not affected by the presidential orders.
- According to the respondent, legal rights can only be removed via law.
- The preamble of the Constitution states that India is a sovereign, democratic and republic state, therefore, the senior executives cannot make a law that will result in the loss of citizens' rights, subject to the extent permitted by applicable law.

**Judgment:**

The court by a majority of 4 to 1 held that in light of the presidential, no person has the right to make an application under Article 226 of the constitution in superior court for habeas corpus or any other order that contest the lawfulness of an arrest warrant and imply that said order is not following the law and is unlawful or any other ground. But Justice Khanna had a different opinion and he favored the freedom of the detenu from unlawful arrest.

**24. Air India v. Nergesh Meerza & Ors.**

**DATE OF JUDGMENT:** 28/08/1981

**COURT:** Supreme Court of India

**JUDGES:** Justice Fazalali and Justice Syed Murtaza

**REFERENCE:** 1981 AIR 1829

**PARTIES**

**Petitioner:** Air India.

**Respondent:** Nergesh Meerza & Ors.

**SUBJECT:** The judgment revolves around gender justice and discrimination on the basis of biological features of women.



**FACTS:** Many petitions were filed before the Bombay HC questioning the validity of regulations 46 and 47 of Air-India Employee's Service Regulations and regulation number 12 of the Indian Airlines (Flying Crew) Service Regulations, stating it to be ultra vires of Articles 14, 15, 16 and 21 of the Indian Constitution. Therefore, Air India appealed to the SC to decide all the petitions by one common judgment as they all raise the same question of law. Therefore, the Supreme Court under Article 139 A of the Indian Constitution transferred all the petitions in Bombay HC to the SC for a joint hearing.

### **IMPORTANT PROVISIONS:**

#### The Indian Constitution

- Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- Article 15(1): The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- Article 16: Equality of opportunity in matters of public employment:

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State

- Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.
- Article 139 A: Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or an application made by the Attorney General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself: Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.



### Air-India Employee's Service Regulations

- Regulation 46(c): An Air Hostess, upon attaining the age of 35 years or on marriage if it takes place within four years of service or on first pregnancy, whichever occurs earlier.
- Regulation 47: Notwithstanding anything contained in Regulation 46, the services of any employee, may, at the option of the Managing Director but on the employee being found medically fit, be extended by one year at a time beyond the age of retirement for an aggregate period not exceeding two years, except in the case of Air Hostesses and Receptionists where the period will be ten years and five years respectively."

### Indian Airlines (Flying Crew) Service Regulations

- Regulation 12: Flying Crew shall be retained in the service of the Corporation only for so long as they remain medically fit for flying duties. Further, an Air hostess shall retire from the service of Corporation on her attaining the age of 30 years or when she gets married whichever is earlier. An unmarried Air Hostess may, however, in the interest of the Corporation be retained in the service of the Corporation upto the age of 35 years with the approval of the General Manager.

### ISSUES:

1. Whether regulations 46 and 47 of Air-India Employee's Service Regulations and regulation number 12 of the Indian Airlines (Flying Crew) Service Regulations are constitutionally valid?

### ANALYSIS OF THE JUDGEMENT:

Air India contends that,

- The recruitment of the Air Hostesses is **sex-based recruitment** made not merely on the ground of sex alone but swayed by a lot of other considerations, hence Article 15 (2) of the Constitution was not attracted.
- Having regard to the **nature of work, selection process, promotional avenues, and the circumstances under which Air Hostesses work they themselves form a separate class from the rest of the members**, and therefore Article 14 is not attracted



in the present case. As Article 14 only prohibits discrimination among equals and not unequal's.

- In pursuance of the previous argument the Corporation also contended that, the **job functions performed Air Hostesses are entirely different** from the other crew members.
- Having regard to the prevailing hindrances a woman may face post marriage and during pregnancy the bar in the regulations is to be considered as a **reasonable restriction**.
- They also submitted that, **if the regulations are removed the Corporation might have to face a lot of working irregularities** such as looking for substitute Air Hostesses when the already appointed ones avail long term leaves for their pregnancy and other domestic needs.

Rebutting the contentions raised by Air India the respondents submitted that,

- The Air Hostesses along with other male members belong to the **same class** of the Flying crew and hence Article 14 is rightfully applied.
- Even if they are treated as a separate class, there is an inter se discrimination between the Air Hostesses posted in the United Kingdom and those serving in the other Air India flights.
- Further **marriage, procreation are all matters of personal liberty** under Article 21 and hence cannot be viewed as a reasonable restriction.
- The contention that a woman in view of strenuous work that she is called upon to perform, becomes tired or **incapable of doing the work** is based on pure speculation and being against the well-established facts and norms set up by the Geneva Convention is clearly **inconsistent with the concept of emancipation of women**. No material has been placed before the Court to prove that the efficiency of the Air Hostesses is in any way impaired at the age of 40 or 45 years so as to make a gross discrimination between the male pursers and Air Hostesses.
- Also, regulation 12 gives **arbitrary and unreasonable powers** in the hands of **General Manager** who alone can decide at his own whims and fancies if an Air Hostess can continue her work even beyond the age mentioned for retirement.
- Apart from the discrimination regarding the age of retirement, the Air Hostesses have been completely **deprived of promotional opportunities** available to the male members of the cabin crew.



Upon hearing the parties, the Court in order to judge whether the Air Hostesses formed a separate class out of the crew applied the following guidelines:

- the nature, the mode and the manner of recruitment of from the very start
- the terms and conditions of service of the members of the category,
- the nature and character of the posts and promotional avenues,
- the special attributes that the particular category possess which are not to be found in other classes, and the like.

By applying the above guidelines the Court was satisfied that the **Air Hostesses formed a separate class**, however it still **denied** the Corporation's contention that they performed an **entirely different job** from the rest as the work put in by the members of different category has to go hand in hand to complete a successful flight travel. Further the Court struck down the provisions **to the extent that it prohibited the Air Hostesses to get married or become pregnant** as it was an inherent right that every woman possesses.

**CONCLUSION:** Even before the foundation for fundamental rights were laid down in the Indian Constitution, every individual possessed certain natural rights by virtue of being born in this world. To get married or become pregnant are such inherent rights which can never be forfeited or regulated by an external authority. Therefore, judicial pronouncements as in the present case uphold the value of such inherent rights.

## **25. Ajay Hasia v. Khalid Mujib**

**Citation:** 1981 AIR 487

**Bench:** Chandrachud, Y.V. ((Cj)), Bhagwati, P.N., Krishnaiyer, V.R., Fazalali, Syed Murtaza, Koshal, A.D.

### **Issue:**

Whether the Regional Engineering College of Srinagar is "State" within the meaning of Article 12 of the Constitution?

### **Facts and Analysis:**



The term State under Article 12 includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India

Marks secured by them at qualifying examination were much less than marks obtained by Petitioners. However, successful candidates succeeded in obtaining admission to college by virtue of very high marks obtained at viva examination. It was clear from chart submitted on behalf of Petitioners that marks awarded at interview was in inverse proportion to marks obtained by other candidates and also not commensurate with marks obtained in written test. This created a strong suspicion that Committee deliberately manipulated marks at viva examination with a view to favoring other candidates.

The respondents claim that the college is not an 'authority' within the scope of Article 12 of the Constitution. Hence the writ petition that the college acted arbitrarily in the matter of granting admissions and violated the equality clause of the Constitution cannot be maintained against it.

In the case of R.D Shetty vs. International Airport Authority of India and Ors. (1979) the Court pointed out that so far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated 6th April, 1948 where it was stated inter alia that "management of State enterprises will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this."

**Conclusion:**

The court dismissed the Petition and held that a person shall be entitled for an admission as per qualification in each and every test held by authority in institute.

**26. Animal Welfare Board of India v. A. Nagaraja**

**DATE OF JUDGMENT:** 07/05/2014

**COURT:** Supreme Court of India

**JUDGES:** K.S. Radhakrishnan, Pinaki Chandra Ghose

**REFERENCE:** CIVIL APPEAL NO. 5387 OF 2014



## **PARTIES**

Petitioner: Animal Welfare Board of India

Respondent: A. Nagaraja

**SUBJECT:** The judgment brings out the rights of animals under the Constitution.

**FACTS:** The petitioners in the instant case challenged the validity of a **government notification dated 11.7.2011** which prohibited “**Jallikattu**” a sport that involve bulls which is conducted in **Alanganallur Tamil Nadu** and **Bullock-cart races** which are conducted in **Maharashtra** stating that it contravened various provisions of **Prevention of Cruelty to Animals Act, 1960**.

## **IMPORTANT PROVISIONS:**

The Indian Constitution:

- Article 136: Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India

The Prevention of Cruelty to Animals Act:

- Section 3: It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.
- Section 11: Treating animals cruelly

(1)(a) beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animals to be so treated

## **ISSUES:**

1. Whether the notification dated 11.7.2011 is constitutionally valid?

## **ANALYSIS OF THE JUDGEMENT:**

The petitioners contended that,



- Animal Welfare Board of India is a **statutory body** enacted under the Prevention of Cruelty to Animals Act(PCA). Sports like Jallikattu and Bullock-cart races **traumatise the lives of Bulls both physically and mentally.**
- **Pictures submitted** by the petitioners clearly indicate that, animal badly tortured for human pleasures and enjoyment.
- The animal welfare legislations like PCA **outweigh customs** even it is followed for ages now.

However, the respondents contended that,

- Jallikattu take place at the end of harvest season (January and February) and sometimes during temple festivals which is traditionally and closely associated with village life, especially in the Southern Districts of the State of Tamil Nadu. Similarly the organizers of Bullock-cart races in the State of Maharashtra also took the stand that the same is going on for the last more than three hundred years by way of custom and tradition and that extreme care and protection are being taken not to cause any injury or pain to the bullocks which participate in the event.
- The sports **generate revenue** for the State
- The District Collector, Police Officials etc. are always on duty to prevent cruelty on animals whenever such events happen.
- As per Tamil Nadu Regulation of Jallikattu Act, 2009 the State can **only regulate** the event and cannot completely prohibit it.
- The bulls taking part in the Jallikattu, Bullock-cart Race etc. **are specifically identified, trained, nourished for the purpose of the said sport** event and owners of Bulls spend considerable money for training, maintenance and upkeep of the bulls.

Upon hearing the parties to the case, the Court held that, the Board was right in its stand as Jallikattu and Bullock-cart race **violates the provisions of PCA** and causes grave cruelty to bulls. The Court directed Parliament to make necessary amendments in PCA and **declared the Tamil Nadu Regulation of Jallikattu Act, 2009 as void**, thereby **upholding the validity of the government notification issued on 11.7.2011.**





**27.Chief Secretary to the Govt., Chennai Tamilnadu & Others v/s Animal Welfare Board & Another**

**DATE OF JUDGMENT:** 16 November 2016

**COURT:** Supreme Court of India

**JUDGES:** Rohinton F.Nariman, Deepak Misra

**REFERENCE:**

**PARTIES**

**Petitioner:** Chief Secretary to the Govt., Chennai Tamilnadu

**Respondent:** Animal Welfare Board & Another

**SUBJECT:** The judgment deals with animal welfare and rights.

**FACTS:** The ministry of Environment and Forests issued a notification under s.22 of the Prevention of Cruelty to Animals Act, 1960

**(PCA Act).** The said Notification stated “the Central Government, hereby specifies that the following animals shall not be exhibited or trained as performing animals, with effect from the date of publication of this notification, namely:-

1. Bears
2. Monkeys
3. Tigers
4. Panthers
5. Lions
6. Bulls" .

This notice was challenged in the Bombay HC, which upheld it. Further, The Tamil Nadu



regulation of **Jalikattu Act 2009 (Act 2009)** was challenged in the Madras HC, which was also upheld.

The Supreme court dealt with these two cases in common, combining a writ petition filed by PETA, under article 32.

### **IMPORTANT PROVISIONS:**

#### **The Indian Constitution**

- **Article 51-A-clause g:** to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- **Article 51- clause h:** to develop the scientific temper, humanism and the spirit of inquiry and reform.
- **Entry 14, list II:** Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
- **Entry 15, List II:** Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice
- **Entry 17, list III:** 17. Prevention of cruelty to animals.
- **Article 245, clause 1:** Extent of laws made by Parliament and by the Legislatures of States

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State

#### **PCA ACT:**

- **Section 3 :** 3. Duties of persons having charge of animals.—It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.
- **Section 11:** Treating animals cruelly.
- **Section 11(1)(m)(ii):** solely with a view to providing entertainment—(ii) incites any animal to fight or bait any other animal



**Section 11(3):** (3) Nothing in this section shall apply to—

- (a) the dehorning of cattle, or the castration or branding or nose-roping of any animal, in the prescribed]; or
- (c) the extermination or destruction of any animal under the authority of any law for the time being in force; or
- (d) any matter dealt with in Chapter IV; or
- (e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering.

- **Section 21 and 22:** “Exhibit” and “train” defined.—In this Chapter, “exhibit” means exhibit at any entertainment to which the public are admitted through sale of tickets and “train” means train for the purpose of any such exhibition, and the expressions “exhibitor” and “trainer” have respectively the corresponding meanings.

22. Restriction on exhibition and training of performing animals.—No person shall exhibit or train—

- (i) any performing animal unless he is registered in accordance with the provisions of this Chapter;
- (ii) as a performing animal, any animal which the Central Government may, by notification in the Official Gazette, specify as an animal which shall not be exhibited or trained as a performing animal.

**2009 Act**

- **section 3:** Section 3 of the 2009 Act treats conducting of Jallikattu as an "event".
- **Section 4:** Section 4 casts responsibility of the organizer who organises the event.
- **section 5:** Section 5 requires the Collector of the district to make arrangements.

**ISSUE:**



1. Whether the The PCA Act and the 2009 Tamil Nadu Act 2009 are repugnant to each other or not?

**ANALYSIS OF THE JUDGEMENT:**

**Petitioner contention:**

- The two acts are not repugnant to each other as the 2009 Act does not indictate cruelty against the bull.
- The law of **repugnancy** as mentioned in article 245(1) of the Indian constitution has been erroneously applied.
- Jallikattu is an event associated with religion and culture and thus gets the protection under article 25.
- Lastly, Jalikattu would fall within the ambit of entry 14 and 15 of list II of schedule 7, making it a state subject.
- Requested the court to grant relief through the doctrine of pith and substance.

**Respondant's contention:**

- The two Acts are repugnant to each other. One deals with the protection of animals and protecting their life. Whereas the 2009 Act clearly gives the impression that it talks about using animals for human pleasure.
- Both the Acts come under **entry 17 of list III**, concurrent list.
- The preamble to the PCA Act lays the postulate that the purpose of the Act is to prevent the **infliction of unnecessary pain** or suffering on animals and hence, the necessity was felt to amend the law relating to the prevention of cruelty to animals
- 

**The court's view:**

- Taming of bulls cause considerable pain, stress and strain on the bulls. Thus, the court on evidence rejected the contention that bulls don't suffer any cruelty at the hands of humans
- There is a clear **inconsistency** between the two Acts. Moreover, both Acts are governed by the concurrent list and the argument of Act of 2009 falling under state list fails.
- With respect to the petitioner's argument regarding following Upanishad, the



court quoting Isha-Upanishad stated, "'The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."

- Therefore, an irreconcilable distance exists between the two acts, making the 2009 Act repugnant.

**CONCLUSION:** Therefore, the court as upheld the right to life of an animal, on moral, ethical, biological and religious grounds. The court was of the view that animals cannot be tortured on the grounds of human pleasure.

## **28. Aruna Ramchandra Shanbaug v. Union of India & Ors**

**DATE OF JUDGMENT:** 07/03/2011

**COURT:** Supreme Court of India

**JUDGES:** Justice Markandey Katju and Justice Gyan Sudha Misra

**REFERENCE:** AIR 2011 SC 1290

**PARTIES:**

Petitioner: Ms. Pinki Virani on behalf of Aruna Ramchandra Shaunbaugh

Respondent: Union of India

**SUBJECT:** The judgment revolves around a substantive question of law, as to whether the term right to life under Article 21 of the Indian Constitution includes right to die which is more of a negative aspect. Further, it also raises a question of whether the decisional autonomy of an individual to decide his personal matters can be interpreted to an extent that the individual has the right to end his life at his discretion.

**FACTS:** Aruna Ramachandra Shaunbaugh was a staff Nurse working at Kind Edward Memorial hospital, Parel, Mumbai. At the workplace, a sweeper tried to rape her and when he found that she was on her menstrual cycle he sodomised and left her strangulated. The next day she was hospitalised by a staff who found her lying on the floor with blood all over in an unconscious state. The incident dates back to 27<sup>th</sup> November 1973 but when the case was brought before the SC in 2011 around 37 years passed away leaving her in a pitiable health condition. Though she was abandoned by her family members the nurses of KEM



hospital took good care of her. Later, Ms. Pinki Virani who claimed to be the next friend of Aruna Ramachandra Shaunbaugh filed a writ of mandamus in the SC under Article 32 of the Indian Constitution to direct the respondents to stop feeding Aruna, and let her die peacefully.

### **IMPORTANT PROVISIONS:**

#### **The Indian Constitution.**

- Article 21: No person shall be deprived of his life and personal liberty except according to the due procedure established by law.
- Article 32: Remedies for enforcement of rights conferred by Part III
- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

#### **The Indian Penal Code.**

- Section 309: Attempt to commit suicide.—Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year [or with fine, or with both]
- Section 306: Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **ISSUES:**

1. Whether right to life guaranteed under Article 21 of the Indian Constitution includes right to die?
2. Whether section 306 and 309 of IPC Constitutionally valid?

### **ANALYSIS OF THE JUDGEMENT:**

The Court in the preliminary stage of the case contended upon the maintainability of the petition under Article 32 as the petitioner did not establish any fundamental right violation. However, considering that there was a substantial question of law whether right to life under Article 21 includes right to die, the Court allowed the petition.



The respondents placed reliance on *Gian Kaur v. State of Punjab*<sup>5</sup>, wherein the SC upheld the validity of Section 309 and 306 and held that, right to life being a positive aspect does not include right to die. They further contended as follows:

- Aruna Ramchandra Shanbaug has the right to live in her present state.
- Withdrawing/withholding of hydration/food/medical support to a patient is unknown to Indian law and is contrary to law.
- In any event, these acts/omissions cannot be permitted at the instance of Ms. Pinky Virani who desires to be the next friend of Aruna Ramchandra Shanbaug without any locus standi.

However, the petitioners in the instant case placed reliance on *Vikram Deo Singh Tomar v. State of Bihar*<sup>6</sup> wherein the Court held that, “every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen”. Also, in the case of *P. Rathinam v. Union of India*<sup>7</sup>, the Court concluded that every positive aspect of a right will also include a negative aspect just the same way in which right to freedom of speech and expression includes right to silence.

The petitioner further contended that, right to live includes right not to live a forced life. Every person should be guaranteed the right to die with dignity and to refuse prolonged medical treatments which artificially holds the life of the person. Further there are two types of euthanasia which are:

- Active euthanasia: Injecting lethal drugs to kill a terminally ill person.
- Passive euthanasia: withdrawing the life supports given to the patient and leaving them to die in a natural way.

Passive euthanasia is recognised in countries like Netherlands and Belgium. However, the Dutch legislations do not recognise euthanasia for minors.

Having heard both the parties to the case the Court in its judgment held that, Section 309 and 306 are constitutionally valid. However, it also held that passive euthanasia may be

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<sup>5</sup> 1996(2) SCC 648.

<sup>6</sup> 1988 (Supp) SCC 734.

<sup>7</sup> (1994) 3 SCC 394.



permitted under certain circumstances and laid down certain guidelines for its execution until a domestic law governing euthanasia is passed by the Parliament.

- The patient must be in Permanent Vegetative State (PVS)
- The decision for withdrawal must be taken by close relatives, in case of absence of any such person any other person or body of persons may act as a next friend.
- In order to avoid misuse, the Court by invoking the doctrine of Parens Patriae will be the sole decision making authority in case of an incompetent person and hence a decision of withdrawal of life support taken by the relatives or next friend should be approved by the HC.
- When such an application is filed the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of a committee of three reputed doctors to be nominated by the Bench.
- Based on the reports submitted by the committee of doctors a final conclusion may be taken by the HC.

However, the Court refused to grant euthanasia to Aruna Ramachandra Shaunbaugh stating that:

- She was not under PVS.
- She was able to breath without any support
- She responds via gestures to her surrounding
- Her brain was functioning without any support.

Later Aruna died of Pneumonia on 18<sup>th</sup> May 2015.

**CONCLUSION:** It is a judicially accepted fact that, the term life under Article 21 does not mean mere animal existence but includes all those means which are essential for a dignified life of an individual. Hence, right to dignified life would be meaning less without a right to dignified death. A peaceful and dignified death would be much better than to live artificially on life prolonging machines.





## **29. Bachan Singh v. State of Punjab**

**DATE OF JUDGEMENT** – 16<sup>th</sup> August 1982

**COURT** – Supreme Court of India

**JUDGES** – Justice Y.V. Chandrachud, Justice A. Gupta, Justice N. Untwalia, Justice P.N. Bhagwati, Justice R Sarkaria and Justice A.C. Gupta

**CITATION** – AIR 1980 AC 898

**Subject:** The validity of death penalty in murder cases as violative of Articles 19 and 21

**PARTIES** – Bachan Singh (Petitioner)

State of Punjab (Respondent)

**FACTS** – The appellant/Petitioner in the case was convicted for three murders and was therefore was given a punishment to death penalty under Section 302 of the Indian Penal Code. The High Court upon appeal confirmed the same and dismissed his appeal. The Appellant therefore by way of a SLP (Special Leave Petition) approached the court, to question the ‘special reasons’ for him being awarded death penalty and the validity of the same as under Section 354 (3) CrPC as well as the Indian Constitution.

Whether Section 302 of the Indian Penal Code providing death penalty in certain cases is unconstitutional as well as validity of Section 354(3) CrPC based on the arbitrary powers given to the Court?

**CONTENTIONS** –

**Petitioner** – The Petitioner provided the simple argument of death penalty in murder cases as a concept is flawed with reference to the application of the same due to the rights provided under Article 19 of the Constitution. It was further submitted that the right to live so as to enjoy certain basic enjoyments as guaranteed under Article 19 clauses (a) to (e) as well as (g) was being curtailed by the provisions in question. It was also argued that the penalty serves no inherent social purpose and is therefore not within the ambit of being a “reasonable restriction” under Article 19(2) of the Constitution. Finally, it was also argued that the dignity of an individual is bestowed upon in the very Preamble of the Constitution as well as the six



rights under Article 19 and the right to life under Article 21 without any reasonable restrictions, which in this case were the penalties for the charge of murder.

**Defendant** – The contentions made by the respondents were based on the principle of *sic uteri tou ut alienum non laedas* which means that a person may use the property in such a way that it does not injure someone else's rights. The arguments were that the six rights as provided for under Article 19 upon which the unconstitutionality of the Section were mainly surrounded are not absolute rights but are subject to certain reasonable restrictions so as to not injure the rights of another. Since the restrictions levied upon Article 19 are with reference to the heinous crime of murder under Section 302 which affects the civil well-being of the society, the same is necessary and hence the procedural law which are therefore not ultra-vires to the Constitution.

**JUDGEMENT** – Dismissing the appeal and the SLP, the Court held that the fundamental rights provided under the Constitution are not absolute and hence the Section 302 and its related procedural laws are within the purview of rights as provided under Article 19 and the reasonable restrictions envisaged for the same under Article 19 (2). For the people convicted for the offense of murder, life imprisonment was made a rule and death sentence an exception. With the majority of 4:1, the Court struck down Section 302 of the Indian Penal Code as unconstitutional and void.

Regarding the second issue, the Court decided in a majority view that Section 354(3) directs the courts to punish a person for the offense of murder with death penalty or imprisonment for life only when they have "special reasons" for the same. In exceptionally grave circumstances the death penalty or an alternative imprisonment for life is awarded. Sufficient weightage was given to aggravating and mitigating factors while giving the judgment. Since such reasons have been well identified by various cases, there is no arbitrariness in the same.



### **30. Bandhua Mukti Morcha v. Union of India & Others**

**DATE OF JUDGMENT:** 16/12/1983

**COURT:** Supreme Court of India

**JUDGES:** Justice P.N. Bhagwati

**REFERENCE:** 1984 AIR 802

#### **PARTIES**

**Petitioner:** Bandhua Mukti Morcha

**Respondent:** Union of India & Others

**SUBJECT:** The judgment revolves around the **bonded labour system** which finds its roots from inhuman terms of employment and how such **conditional agreements** made the poor labourers **waive** their inherent natural **right** to a dignified life.

**FACTS:** A **letter was addressed** to Justice P.N. Baghawati by the petitioners stating the inhumane working conditions of the bonded labourers who belonged to various States of this country in the stone quarries in Faridabad, Haryana.

#### **IMPORTANT PROVISIONS:**

##### **The Indian Constitution**

- **Article 14:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- **Article 21:** No person shall be deprived of his life or personal liberty except according to procedure established by law.
- **Article 23(1):** Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law
- **Article 32(1):** The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III is guaranteed  
(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto



and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III.

### **ISSUES:**

1. Whether a letter addressed to a Judge be treated as a writ petition?
2. Whether bonded labour system is violative of Articles 14, 21, 23 of the Indian Constitution?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioners addressing a letter to Justice P.N. Bhagwati stated that,

- There were a large number of bonded labourers from different parts of the country who were working in some of the stone quarries situated in the district of Faridabad in Haryana under **inhuman and intolerable** conditions.
- Various labour welfare **legislation's were never implemented** with regard to these labourers working in the mines of the State.
- The **pitiable condition of the mines** in which these labourers were forced to work with non-availability of clean drinking water, food, shelter and all other basic amenities denied their access to a dignified life.
- **No compensation** was awarded to the labourers who were injured due to the accidents that happened in the course of employment.

In their prayer, the petitioners requested the court to treat the **letter as a writ petition** and direct the respondents to implement all labour welfare legislations effectively without any prejudices. Also, **to constitute a commission** to enquire about the above-stated difficulties faced by the bonded labourers.

Rebutting these contentions, the respondents submitted that,

- A mere **letter** addressed to a judge **cannot be treated as a writ petition** and therefore it is liable to be dismissed at the first instance.
- Even if the letter is treated as a writ petition, it fails on merits as no fundamental **rights of the petitioners** is infringed in the present case.
- The **Court is not empowered** to constitute a commission.
- Even if such a commission is constituted the **findings** and conclusions arrived at by them will **not be admissible** as it would be a mere ex-parte statement and lack cross-examination.



- There might be bonded labourers in the State of Haryana but, they are not covered by the **definition** under the Bonded labour System (Abolition) Act, 1976.

The Court allowing the letter to be treated as a writ petition held that **access to justice** is a basic right which should never be denied to any citizen of this Country. Therefore, filing Public Interest Litigations or addressing a letter to a judge of a Court due to **financial hindrances** must be entertained to widen the scope of access to justice. Widening the scope of such applications the Court also asked High Courts in the country to adopt such measures.

Moving on to the merits of the case the Court held that since the writ petition is filled to address the concerns of the larger public the usual practice of admitting **petitions only from aggrieved parties was relaxed**. Hence the contention of respondents that the rights of the petitioners were not violated was outrightly rejected.

The Court further clarified that, it has all authority to do **complete justice** in any matter pending before it and therefore **reserved all authority to appoint a commission** to enquire upon the matter. Also, the findings and conclusions arrived at by the Commission was admissible as **cross-examination was not required** for a writ petition filed under article 32 of the Indian Constitution.

The Court while addressing the inefficiency of the State in implementing the welfare legislations held that, owing to the Directive Principles of State Policy contained in Articles 39, 41 and 42 the **State has a never-ending obligation** to safeguard the rights and provide the labourers with all basic necessities. The fulfilment of such obligations may not be pleaded before a Court of law however, the State has to fulfil it by virtue of enacting legislation's and **implementing them without any biases**.

**CONCLUSION:** The term life under Article 21 does not mean **mere animal existence** but includes all those which are essential for an individual to lead a dignified life. A legislation will remain a **dead letter if the State fails to implement** it effectively. It is to be remembered that, unfair practices like bonded labour system not just affects a labour working in such hazardous circumstances but also the pride the countrymen hold as a nation.



**31. Basheshar Nath v. The Commissioner Of Income-Tax, Delhi & Rajasthan & Another.**

**Bench:** Justice Sudhi Ranjan Das, Justice Natwarlal H. Bhagwati, Justice S.K. Das, Justice J.L. Kapur and Justice K. Subbarao

**Appellant:** Basheshar Nath

**Respondent:** The Commissioner Of Income-Tax, Delhi & Rajasthan & Another.

**Citation:** 1959 AIR 149, 1959 SCR Supl. (1) 528

**Issue:**

- The appeal was filed to question the validity of settlement under Section 8A of Taxation on Income (Investigation Commission) Act, 1947.
- Can the appellant waive the breach of the fundamental right?
- Is it possible according to the facts of the case to do so?

**Facts:**

- A Special Leave Petition was filed by the appellant for questioning the settlement made by him under Section 8A of Taxation on Income (Investigation Commission) Act, 1947 and its validity.
- The ground for questioning the validity of settlement was that the Supreme Court in another case namely *Suraj Mall Mohta and Co. v. A. V. Visvanatha Sastri*<sup>8</sup>, held that the act was in violation of fundamental rights under Article 14 of the Constitution.
- Regardless of the court's decision in the above stated judgment, the appellant agreed to the settlement but after some time he evaded the payment and his properties were attached.
- Then, the appellant wrote to the authorities that the SC declared the said act ultra vires of Article 14 of the Constitution and thus the settlement declared earlier does not apply upon him. Therefore, his properties should be freed.

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<sup>8</sup> [1955] 1 S.C.R. 448



- The Commissioner of Income Tax (CIT) conveyed to the appellant that the settlement is valid and binding on him and asked him to pay the instalments against the arrears which he has defaulted in paying or the recovery proceedings would be followed.
- Hence the present appeal was filed before the SC against the decision of CIT.

*Argument raised by Appellant:*

- The appellant contended that there was a breach of fundamental right by subjecting him to a discriminatory procedure as laid down in the Act.
- The fact that appellant voluntarily entered into a settlement does not mean he waived his fundamental rights and that he cannot be permitted to set up his fundamental right.

*Argument raised by Respondent:*

- The respondent contended that the Investigation Act prescribed two procedures i.e. one is for investigation and the other is for settlement and it was the investigation that affected by the decisions of this Court.
- It was contended that the Act is a pre-Constitutional Act and that when the act was passed there were no Constitution or fundamental right. Therefore, this act can't be questioned even if the procedure may have been discriminatory. It was contended that after that passing of Constitution the assessee was not faced to the procedure forcefully but voluntarily offered settlement.
- It was contended that if the appellants fundamental rights were breached by exposing him to a discriminatory procedure under the Investigation Act, the appellant by voluntarily entering into a settlement has waived fundamental right.
- It was contended that the appellant waived off his fundamental right and is therefore not entitled to challenge the settlement.

*Judgment:*

Justice Sudhi Ranjan Das observed that the language of Article 14 is a command issued by the Constitution, rather than a right, to the State to implement its objective by safeguarding the equality that every welfare State, such as India, is supposed to do and that no person can stop the State from fulfilling its obligation. A person or a citizen could or could not waive off his fundamental right and he cannot waive a breach of the fundamental right that is indirectly envisaged upon him by the State as a duty under constitution.



Justice N.H. Bhagwati, who wrote a separate judgment stated that no fundamental right can be waived off and that are holy and cannot be waived because SC of USA decision said so. The Constitution of India has its separate mechanism under Article 13 to struck down the unconstitutional law.

Justice Subba Rao, also agreed with other judges and said that fundamental rights can't be waived off, but Justice SK Das dissented the view and held that waiver of fundamental rights can be done. According to him the fundamental rights shall be tested first so as to ascertain for whose benefit the right is decided is it for the benefit of the general public or for the individuals.

### **32. Centre for Enquiry Into Health And Allied Themes (CEHAT) & Others v. Union of India & Others**

**DATE OF JUDGEMENT:** 10/09/2003

**COURT:** Supreme Court of India

**JUDGES:** M.B. SHAH & ASHOK BHAN.

**REFERENCE:** Writ Petition (civil) 301 of 2000

**PARTIES:**

**Petitioner:** Centre for Enquiry Into Health And Allied Themes (CEHAT) & Others

**Respondents:** Union of India & Others

**SUBJECT:**

The CEHAT case is a 2003 landmark judgment that condemns the act of sex-determination at a pre-birth stage itself so as to annihilate female child infanticide. It is a significant judgment that centers around how the minor institution of law isn't the arrangement, and the judgment features how usage and execution are similarly significant.

**FACTS:** In 1996, the govt. of India had passed the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1995 (the "PNDT Act") which was aimed toward preventing the misuse of sex determination technology to abort girl children before birth.

Female feticide had become an increasingly frequent practice in India despite the implementations of reforms that attempted to make awareness on the difficulty and restrict this practice. Petitioner NGOs and experts brought suit, claiming that the Central Government





and therefore the State Governments had not been effectively implementing the provisions of the PNDT Act. Petitioners requested that the Court direct the Central and State Governments to actualize the PNDT Act by designating appropriate specialists, guaranteeing that the Central Supervisory Board meet at regular intervals and restricting all commercials for pre-natal sex determination procedures.

### **IMPORTANT PROVISIONS:**

**Article 32 of the Constitution:** Remedies for enforcement of rights conferred by this Part

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part
- (3) Without prejudice to the powers conferred on the Supreme Court by clause ( 1 ) and ( 2 ), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause ( 2 )
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

### **Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994 and**

### **THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) AMENDMENT ACT, 2002**

### **ISSUES:**

- 1) The main petition raised by CEHAT was to get the abuse of the technology checked and additionally bring notice to the court where all the technology was practised in all the clinics all around the nation.
- 2) The subsequent petition was recorded to bring into notice of the court that the said amendment was not appropriately known by individuals given that the past orders were additionally not compiled as well.



### **ANALYSIS OF THE JUDGEMENT:**

The population census of 2001 expressed that the sex proportion of the nation has been gravely affected in certain states when compared with others and the sole explanation behind this was the pre-natal determination method which the Parliament had prohibited before. Centre for inquiry into health and allied themes which worked in the direction of improvement of individuals filed a petition in respect for the execution of such act. Supreme Court in its order dated 04.05.2001 expressed that tragically female infanticide still prevails in our nation. Consequently the SC gave directions for the following affect:

#### **Directions to the Central Government**

- to make public aware regarding pre-natal diagnostic and female infanticide.
- Advisory committee should converge regularly.

#### **Orders for Central Supervisory Board (CSB)**

- Guarantee meetings are conducted once in 6 months.
- make sure the reviewing and monitoring of the act's implementation takes place
- Report shall be furnished by the acceptable authorities.

#### **Order to State authorities**

- Proper authorities at state and district level.
- To institute consultative committee and correct campaigning in such effect.
- To aware individuals about the bad effects of such mal practices.

#### **Orders to the acceptable authority**

- to require action against any person who violates section 22 of the act.
- To furnish report with reference of CSB.

The act was amended in 2003 keeping in mind the directions issued by the SC.

#### **Contentions raised by the petitioner:**



1. The main contention raised by the Petitioner was that Pre-natal analysis was done at several centers regardless of the way that the said practice was made punishable by the court in prior orders.
2. The subsequent dispute raised was that there was no legitimate instruction and awareness among people and the general population with respect to the new laws and orders.
3. The Petitioner asked the court to investigate the issue and stop the equivalent mal practices.

**Contentions raised by the respondents:**

1. Respondent contented that appropriate actions were undertaken with respect to the same.
2. District, state and central level advisory board was set up.
3. Proper campaigning and awareness to the people in general was made through electronic media.

**Decision and Reasoning**

The SC directed the Central Government and State Government to document their separate responses in respect of the rules that were laid. However, the court was not happy with the responses that were filed. Because of this the SC gave new directions in assistance of the order that was recently given.

The Court noticed a few areas of carelessness and repeated that its past orders must be consented to. The Court additionally gave certain directions with regards to different educational and appointment obligations of the Central Government, the Central Supervisory Board, and State Governments.

The present judgment directs the govt. to accommodate the Act in every manner and with immediate result. It emphasises on efforts that has to be taken by the govt. . to unfold awareness concerning the follow in conjunction with correct functioning of the system concerned. Quarterly reports and records of meetings were mandated to be created public. It additionally directed the continuation of the National observance and Implementation Committee, until the Act was properly enforced throughout the territory.



## **CONCLUSION:**

The judgment presents a rather harsh reality of the Indian Society. The court saw that different states like Gujarat and Maharashtra, in spite of doing great financially, were positioned among all time low under sex-ratio.

It is unfortunate that it took a proper judgement to safeguard somebody's right so fundamental to society, which also portrays an abysmal condition of varied practices against females. The Court wasn't ignorant in acknowledging the graveness of the practice and also the real picture it painted of the condition of female justice. It is, in any case, commendable that after the petition was closed, dynamic endeavors were taken by the govt to spread awareness about the training and to test the usage of the Act.

### **33.The Chairman, Railway Board & Ors vs Mrs. Chandrima Das & Ors**

Bench: Justice R.P. Sethi and Justice S. Saghir Ahmad

Petitioner: The Chairman, Railway Board & Ors

Respondent: Mrs. Chandrima Das & Ors

Citation: AIR 2000 Sc 988: (2000) 2 SCC 465

Issue:

- The issue raised was whether the Railways would be liable to pay compensation to Smt. Hanuffa Khatoun or not, who was a foreigner and was not an Indian national.

Facts:

- Chandrima Das was claiming compensation for Hanufa and filed a petition under Article 226 of the Constitution against the appellant.
- The appellant stated in the High Court that the accused are employees of railway and if the petitioner is able to prove the charges against them, they shall be considered as committers gang rape on Hanufa Khatun.
- Hanufa was a Bangladeshi citizen.
- She had a wait listed ticket and so for confirmation of her ticket she approached a train ticket examiner who asked her to wait in the Ladies Waiting room. She then went to the ladies waiting room and waited there.



- After some time Ashoke Singh and Siya Ram Singh came; they took her ticket and returned it after confirming reservation.
- About a few hours later Siya Ram Singh came with a boy named Kashi and told her to take that boy with her if she wishes to have dinner.
- Soon after that she left with Kashi to have dinner. After having the dinner she vomitted and came back to the Ladies Waiting room.
- After that Ashoke Singh along with Rafi Ahmed came to the Ladies Niwas. She had some doubt initially about them, but the lady attendants certified their credentials and then she accompanied them to Yatri Niwas.
- Sitaram Singh, joined them on their way and then they took her to room No.102 of Yatri Niwas. The room was already booked in the name of Ashoke Singh.
- In room one Lalan Singh and one Awadesh Singh were waiting for others to come. Hanufa Khatun suspected something and denied to enter the room but Ashok forced her in. After that Awadesh Singh closed the door and stood on guard outside the room.
- The remaining four persons i.e. Ashoke, Lalan, Rafi and Sitaram forced Hanufa to consume alcohol. All the persons in the room gang raped, Hanufa Khatun.
- After some time when Hanufa gained conscious she managed to escape from the room and met Siya Ram Singh but he was talking to Ashoke Singh. Siya Ram Singh pretended to save her and slapped Ashoke Singh. Since Jodhpur Express had already left, Siya Ram offered Hanufa Khatun to his residence where she could rest with his wife and children and assured her safety. He made false assurance to help her get the Poorva Express next day.
- Then Siyaram with Ram Samiram Sharma, took her to the rented flat of Ram Samiram Sharma. There Siyaram raped Hanufa and when she protested Siyaram and Ram Samiran Sharma covered her mouth and nose with the intention to kill her.
- On hearing cry of Hanufa, the landlord informed the police and Hanufa was saved by police.
- The High Court awarded a sum of Rs.10 lacs as compensation for Smt. Hanuffa Khatun, the HC was of the opinion that the rape was committed at the building belonging to the Railways and was perpetrated by the Railway employees.



*Argument raised by Petitioner:*

- It was contended that commission of the offence by the employee of railway would not make the Railway or the Union of India liable to pay compensation to the victim of the offence.
- It was contended that since it was an individual act of those persons, only they will be prosecuted and liable to pay fine or compensation, but according to the facts railways or Union of India can't be held vicariously liable.
- It was also contended that for claiming damages the remedy available to Smt. Hanuffa Khatoon was in private law and not in public law as there was no violation of fundamental right (as she is a foreign national she does can't enjoy the fundamental rights) and, therefore, no compensation could be legally awarded by the High Court under Article 226 and the respondent too being an independent lawyer has no right to ask for compensation on behalf of Hanuffa.
- It was contended that the Railways would not be liable to pay compensation to Smt. Hanuffa Khatoon, who was a Bangladeshi citizen. It was argued that the Fundamental Rights in Part III are available only to citizens of this country and Hanuffa Khatoon was a Bangladeshi national, she cannot file a suit for violation of Fundamental Rights and she cannot be granted any relief.
- It was also contended that the rape was not committed during the official course of duty. So, no liability arises under the law of torts.

*Argument raised by Respondent:*

- The contention of petitioner that Hunaffa should have approached private court and not public court is denied. Since, public functionaries are involved and the matter is of violation of Fundamental Rights the remedy is available under the Public Law. The court in **Bodhisatwa vs. Ms. Subdhra Chakroborty (1996) 1 SCC 490** has held **“rape” as an offense which is violation of the Fundamental Right of a person guaranteed under Article 21 of the Constitution.**
- The court has in many cases stated that some fundamental rights are even available to no citizens.
- India being a signatory to the International Covenants and Declarations of UN and it shall be interpreted as it will help in implementation of those Rights. Article 1, 2, 3, 5,



7, 9 states that The Fundamental Rights are available to all the “citizens” of the country but a few of them are also available to “persons”. While Article 14, guarantess protection of persons meaning citizens and non-citizens both can enjoy this right.

- So, those who are non-citizens and come to India as tourists or for any other purpose will be entitled to the protection of their lives in accordance with the Constitutional provisions.
- Hanuffa had the right to live with dignity under Article 21 of the Constitution. Since, she was national of another country does not mean she has no right and she can be raped so brutally by the employees of railway, her fundamental right under Article 21 is violate.
- Thus, the government was liable to pay her compensation.
- In State of Rajasthan vs. Mst. Vidhyawati, the court held that the government is vicariously liable for the acts of its employee.

*Judgment:*

The court held that; railway is a commercial activity and by establishing Yatri Niwas to provide housing and living facilities to passengers on charges is a part of the commercial activity of the Union of India and it can't be equated with Sovereign power of state. The employees of the Union of India who are employed to run the Railways and its management, that includes Railway Stations and Yatri Niwas, works as essential parts to run the commercial machinery of Government. If in the course of their employment they commit any tort against any person the government will be held vicariously liable in damages to the person to whom the wrong has been done by employees of Union of India.

The court was of the view that only because Hanuffa was a foreign national does not mean she has no right. Article 14 of the constitution uses word person, which means the article covers both citizens and non-citizens under its purview.

The leave was denied.



### **34.Charu Khurana and Others v. Union of India and Others**

**DATE OF JUDGMENT:** 20/04/2015

**COURT:** Supreme Court of India

**JUDGES:** Dipak Misra and Profulla C. Pant

**REFERENCE:** (2015) 13 SCC 44

#### **PARTIES**

**Petitioner:** Charu Khurana

**Respondent:** Union of India

**SUBJECT:** The revolves around the concept of **gender equality at workplace**.

**FACTS:** The Cine Costume Make-up Artists and Hairdressers Association of Mumbai was registered as a trade union under the Trade Unions Act, 1926. The Association's **by-laws prohibited women make-up artists** from becoming members of the Association. The petitioner who is a makeup artist applied to the association for membership, however her **application was rejected** as she was a woman makeup artist. Challenging the Association's by-laws, the petitioner filed a writ petition under Article 32 of the Constitution stating that her **right to livelihood** under Article 21 and **right to equality** under Article 14 are grossly violated by the respondents.

#### **IMPORTANT PROVISIONS:**

**The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- **Article 21:** No person shall be deprived of his life or personal liberty except according to the procedure established by law.





### **ISSUES:**

1. Whether the by-laws of the Cine Costume Make-up Artists and Hairdressers Association of Mumbai are constitutionally valid?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner contended that, the by-laws of the Association are **gender bias** and against the principle of equality enshrined under Articles **14 and 15** of the Constitution. Also, the rejection of the membership application by the respondent Association violates right to **livelihood** of the petitioner.

The respondents contended that, the Cine Costume Make-up Artists and Hairdressers Association of Mumbai is a **private Association** which do not come within the ambit of State under Article 12. Since fundamental rights are **enforceable only against the “State”** and not against private entities the present petition is **liable to be dismissed**.

Upon hearing the parties the Court held that, it is an accepted judicial principle that, fundamental rights are enforceable only against the State but in the present case the respondent Association is registered under the Trade Unions Act, 1926 and their **by-laws are accepted by the Registrar of Trade Unions which is a State authority under the 1926 Act**. Therefore, the by-laws were declared unconstitutional and the petitioner was said to be eligible for membership.

### **35. Common Cause (A Regd. Society) v. Union of India**

**DATE OF JUDGMENT:** 09/03/2018

**COURT:** Supreme Court of India

**JUDGES:** A Bhushan and A Sikri

**REFERENCE:** WRIT PETITION (CIVIL) NO. 215 OF 2005

### **PARTIES**

**Petitioner:** Common Cause (A Regd. Society)

**Respondent:** Union of India



**SUBJECT:** The judgment revolves around the question of whether **right to die with dignity** is a part of Article 21 of the Constitution? The Court further moves on to discuss the validity of execution of living will.

**FACTS:** The petitioner in the instant case is a registered society who has filed the petition seeking the Court to declare that, right to die with dignity is a part of right to live with dignity under Article 21 of the Constitution. Further to direct the respondents to take appropriate measures in consultation with the State governments to help people **who are terminally ill to execute Living Will and Attorney authorisation** for the same. So that, if the person is admitted in a hospital in the future the Will executed by him can be used to help the doctor decide the kind of treatment that he should undertake to treat the patient.

### **IMPORTANT PROVISIONS:**

#### **The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- **Article 21:** No person shall be deprived of his life or personal liberty except according to the procedure established by law.

#### **The Indian Penal Code:**

- **Section 309:** Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year [or with fine, or with both].
- **Section 306:** If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **ISSUES:**

1. Whether right to die with dignity is a part of Article 21 of the Constitution?
2. Whether sections 306 and 309 IPC are constitutionally valid?

### **ANALYSIS OF THE JUDGEMENT:**



The petitioner in their argument submitted that,

- Right to die is an inextricable facet of Article 21, as the term life under the Article does not mean mere animal existence but includes all those means which are essential for the dignified life of the individual. Quality of life that a person leads is all that matters.
- Mental diseases and imbalances, unbearable physical ailments, affliction by socially-dreaded diseases, decrepit physical condition disabling the person from taking normal care of his body and performing the normal chores, the loss of all senses or of desire for the pleasures of any of the senses, extremely cruel or unbearable **conditions of life** making it painful to live are the main reasons why people commit suicide or request euthanasia.

The petitioners further placed reliance in the case of **Maruti Shripati Dubal v. State of Maharashtra and P.Rathinam v. Union of India**, wherein the Court held that, every right involves within its ambit a negative right therefore right die is a part of right to life under Article 21 and hence section 309 IPC is unconstitutional.

- Furthermore, they submitted that, the execution of Living Will a document in which a person states his desire to have or not to have extraordinary life prolonging measures used when recovery is not possible from his terminal condition, has become necessary in order to help the doctors to determine if they have to prolong the treatment when there are no chances of recovery.

The respondents rebutting the arguments of the petitioner submitted that,

- The Hippocratic oath taken by the doctors at the time of joining the profession stands against the concept of euthanasia
- Technological advancements always leave a chance of recovery to the ill patient
- A wish of a person to die is temporary and not permanent
- Wish of euthanasia by a mentally ill patient/in depression may be treatable by good psychiatric care.
- Performance of euthanasia might leave a psychological trauma in minds of the doctors who perform it.
- Euthanasia is against the religious principles therefore if legalised would affect the rights under Article 25.



Upon hearing the parties to the case, the Court held that right to die is a part of right to life and issued the following guidelines:

- In case of a competent person his right to refuse medical treatment flows from his right to life under Article 21.
- But in case of an incompetent person the decision has to be taken by the Court by applying the principle of parens patriae which means “parent of the nation” in the best interest of the patient.
- High Courts under Article 226 will be permitted to entertain a plea seeking euthanasia along with the suggestions from a panel of doctors.
- Right to die being a decision pertaining to the physical and mental wellbeing of an individual does not affect the rights under Article 25.

With regard to execution of Living Will the Court issued the following guidelines:

- Every person who is not a minor may execute his Living Will.
- A Living Will executed by the individual can be cancelled by him at anytime after execution at his own discretion.
- Any advance directive made contrary to any law for the time being in force shall be void.
- The Will executed by a person can be used only when he loses his mental capacity to take decisions in his best interest.

The Court finally declared that sections 309 and 306 stands valid with regard to persons who are not terminally ill.

### **36.Consumer Education and Research Center and Others Vs. Union of India & Others.**

**DATE OF JUDGMENT:** 27/01/1995

**COURT:** Supreme Court of India

**JUDGES:** B Ramaswamy, K. Ahmadi A.M. (CJ), Punchhi, M.M.

**REFERENCE:** 1995 AIR 922

#### **PARTIES**

**Petitioner:** Consumer Education and Research Center and Others



Respondent: Union of India & Others.

**SUBJECT:** In this 1995 judgment the Court thought about the laborers' **entitlement to health and medical aid (while in service or post retirement)** to be a basic part of the right to life cherished in **Article 21 of the Indian Constitution**.

**FACTS:**

- The Consumer Education and Research Center, a NGO working in the territories of consumer's rights, recorded a few writ petitions against the Government of India under Article 32 of the Indian Constitution in regards to the **insurance of laborers against the work related health hazards and diseases related with asbestos exposure**.
- The applicant applied for **remedial measures to fill in legislative holes**, to require obligatory pay for work related perils and diseases or death to workers who didn't meet all requirements for such inclusion under the current labour legislation, to give sufficient components to diagnosing and controlling asbestosis, (for example, obligatory mechanism to check levels of asbestos in work environments combined with expert boards to establish admissible degrees of asbestos), to set up a committee to suggest whether the dry procedure can be totally supplanted by the wet, **to keep health records of every worker for essential minimum periods**, to give mandatory medical coverage to workers, lastly to grant compensation to those experiencing asbestos.

**IMPORTANT PROVISIONS:**

The Indian Constitution:

- Article 32: Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 21: No person shall be deprived of his life or personal liberty except according to the procedure established by law.



## **ISSUES:**

Whether the **workers' right to health and medical aid** a **fundamental right** guaranteed under **Article 21 of the Constitution**?

## **ANALYSIS OF THE JUDGEMENT:**

- The Court examined the **Convention 162 of the International Labor Conference** that provides arrangements for the betterment of workers. The Court requested that the "**All Safety in the Use of Asbestos**" guidelines and rules distributed by the **International Labor Organization** be obligatory on all businesses, that businesses will undoubtedly remunerate workers for health risks they had endured because of exposure to asbestos, that there be maintenance of health records by factories of each employees for the base timeframe, the required adoption by all enterprises of the "**Membrane Filter test**" to detect asbestos, that enterprises give obligatory medical insurance to all workers whether or not they are secured by the current plans and enactments, and the inspection of laborers who might be suffering with asbestos-related risks to decide whether they ought to be compensated.
- In its discourse of the worker's right to health and a sound and secure work environment, the Court cited **Article 1 of the Universal Declaration of Human Rights (human sensitivity and ethical duty of States)**, **Article 7 of the International Covenant on Economic, Social, and Cultural Rights (right of everybody to enjoy just and favorable conditions of work)**, and a few articles from the **Indian Constitution** counting **Articles 38 (advancement of welfare of the individuals)**, **39(e) (measures to guarantee the health and quality of the laborers)**, **42 (secure fair and humane conditions of work)**, **43 (secure to all laborers a conventional standard of life)**, and **46 (security of the poor from social injustice and all types of exploitation)**.
- Citing Apex Court case points of reference counting that of **Olga Tellis v. Bombay Municipal Corporation** [Air 1986 SC 180] that lays out statute on the right to life and points of reference where courts have issued directions for the welfare of laborers, the Court considered the **workers' right to wellbeing and restorative help** (while in service or post retirement) **to be an indispensably part of the right to life revered in Article 21 of the Indian Constitution**.



### **37. Frances Coralie Mullin vs W. C. Khambra and Others**

**Bench:** Justice P.N. Bhagwati and Justice Syed Murtaza Fazalali

**Appellant:** Frances Coralie Mullin

**Respondent:** W. C. Khambra and Others

**Citation:** 1981 AIR 746, 1981 SCR (2) 516

**Issue:**

Constitutionality of Clause (i) and (iii) of Clause 3b of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act and the conditions of detention were challenged.

**Facts:**

- A British National Mrs. Frances Coralie Mullin was detained under Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act.
- A petition of writ of habeas corpus was filed by her contesting her detention under the act but was dismissed.
- While she was under detention, she had a lot of difficulty in meeting her lawyer and family members. She was not allowed to meet her daughter 5-year-old and her sister who was taking care of her child only once a month.
- A criminal proceeding was pending against her an attempt to smuggle hashish out of India and so she needed to meet her lawyer often to prepare a defence. But the lawyer even found it difficult as he had to first obtain appointment from District Magistrate and after that another condition that interview shall take place in presence of Customs Officer nominated by the Collector of Customs.
- It caused a lot of hardship to the petitioner and sometimes the scheduled meeting was cancelled because the Customs Officer nominated by the Collector of Customs was absent.
- So, she was denied the facility of interview with her lawyer and even her daughter could not meet more than once in a month.

*Argument raised by Appellant:*



- The constitutional validity of sub-clauses (i) and (ii) of clause 3(b) was contested on the ground that they are violative of Articles 14 and 21 of the Constitution as they are illogical and irrational.
- It was contended that meeting members of family only once a month is discriminatory and unreasonable as undertrials are allowed to meet with relatives at least twice in a week under Rule 559A and whereas convicted prisoners are permitted to have interview with their relatives and friends once in a week under Rule 550 of the Rules under the Manual for the Superintendence and Management of Jails in the Punjab.
- It was contended that a detenu has a right under Article 22 to be defended by a legal practitioner of his choice so restriction imposed to get a prior appointment for interview and presence of a Customs or Excise Officer at the interview was illogical and irrational and it violates rights under Articles 14 and 21.

*Argument raised by Respondent:*

- It was contended that sub-clauses (i) and (ii) of clause 3(b) are not in violation of Articles 14 and 21 as the restrictions levied under them were reasonable, fair and just.
- They even agreed to give the facility of interview with her daughter and sister twice in a week and where the interview with the lawyer is in question, the presence of a customs or excise officer at the interview is not necessary.

*Judgment:*

- The Court held Section 3(b) (i) is unconstitutional as it violates Article 14 and 21 of the Constitution. The Court stated that it is necessary for detenu to have interview with his legal adviser at any reasonable time after taking an appointment from the Superintendent of the Jail.
- The Court held that it is not necessary that interview is taken in presence of a nominated officer of any Customs department or any jail official and if it is needed the interview must be overseen but not within hearable limit.
- The Court held Section 3(b) (ii) as invalid as according to it the detenu can meet his relatives only once a month whereas undertrials can meet their relatives twice every week.
- The writ petition was allowed and the relief was granted.

*Difference Between punitive and preventive detention:*





Punitive detention is projected to inflict punishment who is found guilty of an offence whereas, preventive detention is not to inflict punishment but to stop the person from cossetting in any act injurious to the society. Preventive detention is considered as a necessary evil and is used to protect security of the State and maintenance of public order. It is harsh power to detain a person without any proceeding and many nations do not use this power except in certain cases like war. The Constitution of India recognises this power, but there are various safeguards set out in Articles 21 and 22.

Article 22 deals with preventive detention and all laws passed under it or any action taken must be in conformity to the article. Article 21 also lays down restrictions on the power of preventive detention. The Supreme Court in *Maneka Gandhi. v. Union of India*, gave a very slim and restrained meaning to the rights guaranteed under Article 21 and it was understood that it only states rule of law that means nobody shall be deprived of his right to life and personal liberty. It was a guarantee against an executive action uncorroborated by law. So, if any law restricting or endangering the liberty of a person was passed all the conditions under Article 21 must be taken into consideration. **In Maneka Gandhi's case, the Court for the first time opened-up a new dimension of Art. 21 and laid down that Art. 21 is not only a guarantee against executive action unsupported by law, but is also a restriction on law making.** But it is not enough to secure amenability with Article 21 there should be a law defining a procedure for depriving a person of his life or personal liberty, but the procedure must be reasonable, fair and just and if not it will violate liberty under Article 21. The Court widened the scope of Art. 21 and scattered the seeds for future development. This decision in Maneka Gandhi's case led to the evolution of this Article and rights under it, the decisions in *M. O. Hoscot v. State of Maharashtra*, *Hussainara Khatoon's case*, the first *Sunil Batra's case* and the second *Sunil Batra's case* are prrof of it.



### **38. Gian Kaur v. State of Punjab**

**Bench:** J.S. Verma, G.N. Ray, N.P. Singh, Faizan Uddin, and G.T. Nanavati JJ.

**Appellant :** Gian Kaur

**Respondent :** State of Punjab

**Citation :** 1996 AIR 946, 1996 SCC (2) 648

**Issue :**

- Whether Section 306 of the Indian Penal Code, 1860 is constitutionally valid?

**Facts:**

- Gian Kaur and her husband Harbansh Singh, being the appellants had committed the offence of abetment to suicide of their daughter-in-law, Kulwant Kaur.
- The Trial Court convicted them both under Section 306 of The Indian Penal Code.
- The appellants made an appeal at the High Court, who reiterated the Lower Court's decision making the conviction of the appellants right. Sentence was reduced from 6 years to 3 years of rigorous imprisonment.
- The Appellants have approached the Supreme Court against their conviction sentence under Section 306 of IPC.

**Appellant's contentions:**

- The petitioners contended that Section 306 of IPC must be held constitutionally invalid with reference to the case of P. Rathinam v. Union of India[1], which declared Section 309 of Indian Penal Code, 1860 as unconstitutional as it is violative of Article 21 of the Indian Constitution.
- It was held in P. Rathinam case that 'right to die' falls within the ambit of Article 21 of the Constitution, and any person assisting the enforcement of the 'right to die' is merely assisting the enforcement of Article 21, which is the fundamental right under Article 21 and it cannot be penal.



- Section 309 of IPC is unconstitutional since it is violative of Article 14 of the Constitution on the grounds that the provision is “*discriminative, arbitrary, barbaric and monstrous*”.

#### **Respondent's contentions :**

- The Respondents contended that Section 306 of The Indian Penal Code, 1860 which talks about the abetment of attempt to suicide is an independent provision, hence it does not rely on Section 309 of the same act.
- Respondents wanted the ruling of the case P. Rathinam v. Union of India to be struck down since Section 309 of IPC is also constitutionally valid.
- ‘Right to life’ is inherently inconsistent with the ‘right to die’ and the right to die cannot fall within the ambit of Article 21.

#### **Final Decision:**

The five-judge Constitutional Bench had held that “Right to Life” under Article 21 of Indian Constitution does not include the “Right to Die” or “right to be killed”.

### **39.Hussainara Khatoun & Ors v. Home Secretary, State of Bihar**

**DATE OF JUDGMENT** 09/03/1979

**COURT:** Supreme Court of India

**JUDGES:** Bhagwati, P.N, Desai D.A

**REFERENCE:** 1979 AIR 1369

#### **PARTIES**

**Petitioner:** Hussainara Khatoun & Ors

**Respondent:** Home Secretary, State of Bihar

**SUBJECT:** The judgment revolves around the question of whether **speedy trial** is a part of Article 21 of the Indian Constitution?

**FACTS:** Due to the **massive number of under-trial prisoners** in Bihar jails, Ms.Kapila Hingorani filed a **Public Interest Litigation** before the Hon’ble SC under Article 32 of the Constitution requesting for their speedy trial.

#### **IMPORTANT PROVISIONS**



## The Indian Constitution

- Article 32: Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 21: No person shall be deprived of his life or personal liberty except according to the procedure established by law.

### ISSUES:

1. Whether the PIL filed by Ms. Kapila Hingorani **is maintainable**?
2. Whether speedy trial **forms a part of Article 21** of the Constitution?

### ANALYSIS OF THE JUDGEMENT:

The respondents to the present case **objected the locus standi** of the petitioner as she was not the **aggrieved party** in the present case. They further contended that a **prerequisite** to file a petition under Article 32 or 226 is fundamental right **violation of the petitioner**.

However, the petitioner contended that, though she is not the aggrieved party in the current case she has filed the petition in the **interest of the under-trial prisoners** who were denied speedy trial. She further pleaded that; due to the **pitiable economical** condition of the prisoners the petition may be permitted.

Upon hearing the parties, the Court held that, PIL's under Articles 32 and 226 may be **permitted on valid grounds** in order to encourage **easy access** of justice to the citizens. However, the Court clarified that, PIL's may be admitted only on valid grounds and **no frivolous petitions may be entertained**. The petitioner should **not have any personal interest** or gains from the petition.

Therefore, the Court allowed the petition and declared that, **speedy trial is a part of Article 21** of the Constitution and directed the lower courts to **immediately** conduct the cases and **dispose off** the matter. Due to this landmark decision of this Hon'ble Court around 40,000 under trial prisoners were released from Bihar jails.



**CONCLUSION:** Being accused of an offence just because of suspicion or due to false claims and being **denied access to speedy justice undermines** the existence of an individual. Hence the Court considering the fact that, **justice delayed is justice denied** made speedy trial as a part of Article 21 of the Constitution.

#### **40.Independent Thought v Union of India and Ors**

**Court:** The Supreme Court of India

**Bench:** Madan B. Lokur and Deepak Gupta, JJ.

##### **Facts**

The Petitioner, a registered society, working in the area of child rights, filed a petition under Article 32 of the Constitution, in public interest with a view to draw attention to the violation of the rights of married girls, between the ages of 15 and 18 years.

The Petitioner contends that almost every statute in India recognizes a girl below 18 years of age as a child and thus the law penalizes sexual intercourse with a girl below 18 years of age. Consequently, Section 375 of the Indian Penal Code, 1860 (IPC) prescribes the age of consent for sexual intercourse as 18 years. Therefore, having sexual intercourse with a girl child below 18 years of age would be statutory rape, even if the sexual activity was with her consent- as willingness or consent of a woman below the age of 18 years for having sexual intercourse is irrelevant as she is considered incapable of giving consent. However, by virtue of Exception 2 to Section 375 of the IPC, if a girl child between 15 and 18 years of age is married, her husband can have non-consensual sexual intercourse with her, without being penalized under the IPC, for the sole reason that she is married to him. Hence, the present petition.

##### **Issues**

Whether Exception 2 to Section 375 of the IPC, in so far as it relates to girls aged 15 to 18 years, was unconstitutional under Articles 14, 15 and 21 of the Constitution of India and liable to be struck down.

##### **Application:**

Article 21 of the Constitution gives the fundamental right to a girl child to live a life of dignity. Child marriage in a sense takes away from this and subjects the girl child to sexual abuse. The right to maintain her bodily integrity is compromised under Exception 2 of Section 375 of the



IPC- effectively giving the husband full control over her body by giving him the power to subject her to sexual intercourse without her consent or without her willingness since such an activity would not be rape.

Exception 2 to Section 375 Indian Penal Code is held to be discriminatory and violative of Article 14 of the Constitution of India, in so far as it deals with the girl child. The said law discriminates between a girl child aged less than 18 years, who may be educated and has sexual intercourse with her consent and a girl child who may be married even before the age of 15 years, but her marriage has been consummated after 15 years even against her consent. This artificial distinction is contrary to the philosophy and ethos of Articles 15(3) and 21 of the Constitution, is inconsistent with other statutes and also goes against India's commitments in international conventions.

### **Conclusion**

In its judgement, the Supreme Court held that the Exception 2 to Section 375 of the IPC (in so far as it relates to a girl child below 18 years) was liable to be struck down as it was violative of Article 14, 15 and 21 of the Constitution of India as it was arbitrary and not fair, just and reasonable towards the rights of the girl child;

## **41. Joseph Shine v. Union of India**

**DATE OF JUDGMENT:** 27/09/2018

**COURT:** Supreme Court of India

**JUDGES:** Deepak Misra, A.M. Khanwilkar, D.Y Chandrachud, Indu Malhotra, and R.F. Nariman.

**REFERENCE:** WRIT PETITION (CRIMINAL) NO. 194 OF 2017

### **PARTIES**

**Petitioner:** Joseph Shine

**Respondent:** Union of India

**SUBJECT:** The judgment revolves around the question of whether **section 497 of IPC and section 198 of CrPC** stands constitutionally valid?

**FACTS:** The petitioner filed a writ petition under Article 32 of the Constitution questioning the validity of section 497 IPC.



## **IMPORTANT PROVISIONS:**

### **The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- **Article 21:** No person shall be denied of his life and personal liberty except according to the procedure established by law.
- **Article 14:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India
- **Article 15:** Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

### **The Indian Penal Code:**

- **Section 497:** Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

### **The Code of Criminal Procedure:**

- **Section 198(1):** No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence.

(2) For the purposes of sub- section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code: Provided that in the absence of the husband, some person who had care of the



woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

### ISSUES:

1. Whether sections **497 IPC and 198 CrPC** are constitutionally valid?

### ANALYSIS OF THE JUDGEMENT:

The petitioner contends that,

- Under the present scheme of section 497 IPC a **woman can neither sue nor be sued**. Only the aggrieved husband has an authority to file a complaint against the adulterer, but the **aggrieved woman cannot file a complaint** against her disloyal husband, which is manifestly arbitrary under **Article 14** of the Constitution.
- If the act happens **with the consent of the woman's husband**, then it will not amount to be an offence under section 497. Therefore, women **are treated as an object** in the hands of their husbands. This clearly violates her right to dignified life under **Article 21**.
- Both the adulterer and the adulterous has **equal contribution** in the commission of the offence, but only men are punished under section 497 and women are pardoned. This violates **Article 14 and 15** which prohibits discrimination on the basis of sex.

The respondents contended that,

- The exclusion of women under section 497 from being punished is protected under Article 15(3) in the name of **protective discrimination**.
- Despite of declaring the entire provision as unconstitutional the Court may **include women as an equal abettor** in the offence.

Upon hearing the parties to the case, the Court held that, **a prima facie sex based discrimination** is made out under section 497 IPC therefore it is **liable to be struck down** as unconstitutional. Further, the Court clarified that, inclusion of woman as an equal abettor would become a **policy decision** which is beyond the powers of judiciary. However, section 198 CrPC will be unconstitutional **to the extent** it deals with section 497 IPC.





## **42. Kharak Singh v. The State of U. P. & Ors**

**DATE OF JUDGMENT:** 18/12/1962

**COURT:** Supreme Court of India

**JUDGES:** Justice Ayyangar N. Rajagopala, Justice Sinha Buvaneshwar P, Justice Immam Syed Jaffer, Justice K. Subba Rao, Justice Sha J.C, Justice Mudholkar J.C

**REFERENCE:** 1963 AIR 1295

**PARTIES:**

Petitioner: Kharak Singh

Respondent: The State of U. P. & Ors

**SUBJECT:** The judgment revolves around certain aspects of individual privacy way back in **1962 when right to privacy was not a fundamental right** under Article 21.

**FACTS:** The petitioner was accused of dacoity but was later released as there were no sufficient evidence against him. But the police created a history sheet and he was put under surveillance. Under regulation **236 of U.P. Police regulation surveillance involves** secret picketing of the house or approaches to the houses of the suspects, **domiciliary visits at night**, periodical enquiries by officers not below the rank of Sub-Inspector into repute, habits, association, income, expenses and occupation, the reporting by constables and chaukidars of movements and absences from home, the verification of movements and absences by means of inquiry slips and the collection and record on a history sheet of all information bearing on conduct. The petitioner frustrated with continuous police surveillance challenged the validity of the U.P. Police Regulations under Article 32 of the Constitution.

**IMPORTANT PROVISIONS:**

The Indian Constitution:

- Article 21: No person shall be deprived of his life or personal liberty except according to the procedure established by law.



### **ISSUES:**

1. Whether the U.P. Police **Regulation violated personal liberty** of an individual guaranteed under Article 21 of the Indian Constitution?
2. Whether **right to privacy is a fundamental right** under Article 21 of the Constitution?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner contends that,

- Surveillance as mentioned under regulation 236 **grossly infringes the personal liberty** of an individual guaranteed under the Constitution.
- Without any justification the petitioner **was asked to visit the police station at mid nights** to answer few questions.
- **Harsh knocks at the house door at mid nights** by the police just to check if he was there at home or not.
- Even if he wanted to leave the town, he had to **inform the Chaukidhar** or the village head who were nowhere related to him.

Rebutting these contentions, the respondent contends that,

- Such regulations were enacted in **public interest to prevent the future happening of any crime.**
- Right to **privacy not being a fundamental right** the regulation stands valid from the view of larger public interest and there is no fundamental right violation hence the petition is liable to be dismissed.
- The provision is well within the ambit of **“procedure established by law”** under Article 21 of the Constitution and hence not violative.

Upon hearing the parties to the case, the Court concluded that, the regulation 236 **to the extent it permits domiciliary visits will be unconstitutional** as it is a clear violation of personal liberty under Article 21. However, the rest of the provision stands valid in the lights of public interest.

**CONCLUSION:** Though privacy was not recognised as a fundamental right back then, the Court prevented State’s invasion into personal matters of an individual by rightfully interpreting the term **“personal liberty”**. Also, any **procedure established by law** must be **just fair and reasonable** if not when subjected to judicial scrutiny it will be declared void.



### **43. Justice K.S. Puttaswamy (Retd.) v. Union Of India**

**Bench:** CJI Khehar, Justices J. Chelameshwar, S.A. Bobde, D.Y. Chandrachud, Abdul Nazeer, R.F. Nariman, R.K. Agarwal, Abhay Manohar Sapre and Sanjay Kishan Kaul

**Appellant :** Justice K.S Puttaswamy (Retd.)

**Respondent :** UOI

**Citation :** (2017) 10 SCC 1

**Issue :**

- Constitutional validity of the Aadhaar scheme introduced under the UPA government.

**Facts:**

- In 2012, Justice K S Puttaswamy, a retired judge of the High Court, filed a writ petition in the Supreme Court challenging the constitutional validity of the Aadhaar scheme introduced by the UPA Government.
- On 11th August 2015, a Bench of three judges comprising Justices Chelameswar, Bobde, and C. Nagappan passed an order that a Bench of appropriate strength must examine the correctness of the decisions in *M P Sharma v Satish Chandra, District Magistrate, Delhi, 1954* (8 Judge Bench) and *Kharak Singh v State of Uttar Pradesh, 1964* (6 Judge Bench). In particular it ordered that the Court must decide whether we have a fundamental right to privacy.
- In a historic decision delivered on 24th August 2017, the Bench unanimously recognised a fundamental right to privacy of every individual guaranteed by the Constitution, within Article 21 in particular and Part III on the whole. The decisions in *M.P. Sharma* and *Kharak Singh* were overruled.

***Appellant's contentions:***

- Right of privacy was an independent right, guaranteed by the right to life with dignity under Article 21 of the Constitution.

**Respondent's contentions :**



- The Respondent submitted that the Constitution only recognized personal liberties which may incorporate the right to privacy to a limited extent.

Final Decision:

The nine-judge bench of the Supreme Court unanimously recognized that the Constitution guaranteed the right to privacy as an intrinsic part of the right to life and personal liberty under Article 21. The Court overruled *M.P. Sharma*, and *Kharak Singh* in so far as the latter did not expressly recognize the right to privacy.

#### **44.M.C. Mehta v. State of Tamil Nadu**

**DATE OF JUDGMENT:** 10/12/1996

**COURT:** Supreme Court of India

**JUDGES:** Kuldeep Singh, B.L. Hansaria, S.B. Majumdar

**REFERENCE:** [1996] RD-SC 1576

#### **PARTIES**

Petitioner: M.C. Mehta

Respondent: State of Tamil Nadu

**SUBJECT:** The judgment revolves around **abolition of Child labour** in the Country.

**FACTS:** Due to massive number of child labourers in **Sivakasi firework industries**, the petitioner filed a PIL under Article 32 of the Constitution.

#### **IMPORTANT PROVISIONS:**

The Indian Constitution:

- Article 32: Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 24: No child below the age of **fourteen years** shall be employed to work in any factory or mine or engaged in any other hazardous employment.



### **ISSUES:**

1. Whether there is a need to consider **settled law and guidelines** with regard to child labour in India?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner filed a writ of mandamus before the hon'ble SC to direct the State government of TN to immediately take measures to relieve the child labourers involved in the firework industries. The petitioner has filed the petition as the respondents in the present case **failed to** comply with the directions given by this Court in a **suo moto petition to eradicate child labour**. He also submitted the **reports of a Committee** which was formed under the directions of the SC to probe into the matter of child labour. Few of the notable recommendations of the Committee include:

- State of Tamil Nadu should be directed to ensure that children are not employed in fireworks factories
- Employers should not be permitted to take work from the children for more than **six hours** a day.
- Facilities for recreation, socialisation and education should be provided either in the factory or close to the factory.
- Piece-rate wages should be abolished, and payment should be made on monthly basis. **Wages should be equal to the work done** by the children.
- Compulsory **insurance** coverage for all labourers.

The petitioner has further submitted his contentions in the following grounds:

- Since India has accepted the **Convention on Rights of Child** disregarding social evils like child labour will hamper the development of the Country.
- Such exploitations violated the fundamental rights of children guaranteed under **Articles 21,14,19 and 24** of the Constitution.
- The State failed to implement various legislations enacted by the parliament in this regard such as **Child Labour (Prohibition and Regulation) Act, 1986**.
- Further the State has miserably failed to fulfil its duties under the Directive Principles of State Policy.

The Court upon hearing the pleadings gave the following guidelines:



- A survey was asked to be conducted in Sivakasi within six months
- The works in which the children were involved were asked to be ranked from most hazardous to less harmful.
- The State was asked to **provide jobs to the parents** of the children. If the State is unable to provide a job a sum of Rs.85,000 has to be paid to each child, provided the **parents sent their child to educational institutions.**
- The State was asked to make sure that all children went to schools to pursue education.
- The **Executive head of the district** was asked to monitor the efficient functioning of the above stated guidelines
- The **Secretary to the Ministry of Labour**, Government of India was asked to submit reports after one year to ensure due compliance of the guidelines.

#### **45.Maneka Gandhi v. Union of India**

**Bench:** Beg, M. Hameedullah (Cj), Chandrachud, Y.V., Bhagwati, P.N., Krishnaiyer, V.R. & Untwalia, N.L., Fazalali, S.M. & Kailasam, P.S.

**Citation:** 1978 AIR 597

**Facts:**

Maneka Gandhi's passport was impounded by the Central Government under section 10(3)(c) of the Passport Act in public interest, within 7 days from the date of receipt of the letter issued by the regional passport officer, New Delhi. When she asked the reason for such an order Ministry of External Affairs refused to produce any such reason in the interest of general public. She then moved to the Supreme Court filing a writ petition under Article 32 of the constitution stating that the Passport act did not establish a procedure which was reasonable in nature violating her fundamental rights guaranteed under Article 21 of the constitution.

**Issue:**

- a) Whether under Article 21 right to go abroad is a part of right to personal liberty?
- b) Whether the Passport Act prescribes a 'procedure' as required by Article 21 before depriving a person from the right guaranteed under the said Article?



- c) Whether section 10(3) (c) of the Passport Act is violative of Article 14, 19(1) (a) and 21 of the constitution.

**Judgement:**

The Supreme Court rejected the Doctrine of Exclusivity and set out the Golden Triangle Rule and established a relationship between Article 14, 19 and 21.

The court said that in order to prove violation of article 21, article 14 and 19 have to be violated. Article 19 in the context of personal liberty and Article 14 in the context of procedure established by law. Whenever 14 and 19 are violated 21 is also violated. But if individually 14 or 19 are violated, 21 isn't automatically violated.

The Court said that the validity of the procedure established has to be in consonance with Article 14 as laid down in Anwar Ali case as they thought that Article 21 required the legislature to make a procedure which is reasonable in nature to deprive a person of his personal liberty.

The Court referred to the Bachan Singh case and said that the test for the application of Article 19 is not whether a law is a penal law or not. Indeed, the test is whether the law penalises an activity protected by Article 19. If it does, its validity shall have to be tested under Article 19 though it may also be tested under article 21.

The court broadened the term liberty. The Court mentioned that Article 21 is given the widest amplitude protecting several new rights. Article 21 covers personal liberty, false imprisonment, wrongful confinement. It was interpreted to exclude rights under 19.

In this case, the court held that even if a right is not expressly mentioned in Art. 19(1) it could still be protected through necessary implication. This means that the said right should form an integral part of the protected rights.



## **46.M. Nagaraj & Others v. Union of India & Others**

**DATE OF JUDGMENT:** 19/10/2006

**COURT:** Supreme Court of India

**JUDGES:** Y.K.Sabharwal, K.G.Balakrishnan, S.H.Kapadia, C.K.Thakker,  
and P.K. Balasubramanyan

**REFERENCE:** Writ Petition (civil) 61 of 2002

### **PARTIES**

**Petitioner:** M. Nagaraj

**Respondent:** Union of India

**SUBJECT:** The judgment revolves around the question of whether **reservation for SC/ST in promotion** under Article 16 which gives equality of opportunity in Public employment is constitutionally valid?

**FACTS:** The petitioners in the present case under Article 32 challenged the Constitution **Seventy- Seventh Amendment Act, 1995 and Eighty-Fifth Amendment Act, 2001** which inserted the idea of consequential seniority for reservation in promotion for SC/ST under Article 16(4A) stating that it infringes the basic structure doctrine.

### **IMPORTANT PROVISIONS:**

**The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- **Article 16(4A):** Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the





services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State

- Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India
- Article 368:

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article

(3) Nothing in Article 13 shall apply to any amendment made under this article

### **ISSUES:**

1. Whether the Constitution Seventy- Seventh Amendment Act, 1995 and Eighty-Fifth Amendment Act, 2001 are constitutionally valid?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioners contended that,

- The parliament has **exceeded its power** under Article 368 by overturning the judgment of the SC in the case of **Indra Sawhney v. Union of India** wherein the 9 judges bench held that, reservation for OBC must be only 50% and excluded the people falling under creamy layer from opting for reservation.
- Article 14 is a basic structure of the Constitution therefore **Article 16 which is an integral part of Article 14** is also a part of the doctrine. By the introduction of reservation in promotion the Parliament has tried to amend the basic structure which is forbidden by law.
- By enacting the impugned legislations, the Parliament has **violated the limited amending power** of the parliament which is also a part of basic structure doctrine.

The respondents contended that,

- The amending power of Parliament under Article 368 is a “**constituent power and not “constituted power”**” therefore it can use its powers under Article 368 to repair the Constitution as and when necessity arises.
- The ruling in Indra Sawhney was with regard to reservation for **OBC category** however the amendments deal with **SC/ST category**.



- Only Articles 14 and 21 form a part of the basic structure doctrine and hence the impugned legislations **cannot be subjected to judicial review** under Article 13.
- The legislations have been enacted to promote the **Directive Principles of State Policy** and to promote **economic and social justice** in the Country hence they cannot be challenged on the touchstone of fundamental rights under Article 13.

Upon hearing the parties to the case, the Court held that, the amendments made under Article 16 do not affect the basic structure as it aims only in **upbringing of socially and economically backward classes of the society**. Further the provision is to be enforced only when there is an **inadequacy of representation** for those community and not otherwise. The State has to mandatorily show the **data which indicates inadequacy** of representation by SC/St's while invoking the power under Article 16(4A). Therefore, the amendments **stand constitutional** and the petition stands dismissed.

#### **47. Mithu v. State of Punjab**

**DATE OF JUDGMENT:** 07/04/1983

**COURT:** Supreme Court of India

**JUDGES:** Chandrachud, Y.D., Fazalali Syed Murtaza, Tulzapurkar V.D., Reddy, O. Chinnappa, Varadarajan A.

**REFERENCE:** 1983 AIR 473

#### **PARTIES**

**Petitioner:** Mithu

**Respondent:** State of Punjab

**SUBJECT:** The judgment revolves around the question of whether **section 303** of the Indian Penal Code is constitutionally valid?

**FACTS:** The petitioners in the instant case challenged the validity of Section 303 of IPC stating that it violated **right to equality** under the Constitution.

#### **IMPORTANT PROVISIONS:**

**The Indian Constitution:**



- Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

The Indian Penal Code:

- Section 303: Whoever, being under sentence of 1[imprisonment for life], commits murder, shall be punished with death.

ISSUES:

2. Whether section 303 of the Indian Penal Code is constitutionally valid?

ANALYSIS OF THE JUDGEMENT:

The petitioners contended that, as per section 302 IPC if a person commits murder, he is either given life imprisonment or death sentence depending upon the **gravity of the offence** but for a **similar offence** committed by a life convict **under section 303** IPC the Court is not given an option but to **award death sentence alone**. Therefore, section 303 IPC makes an unreasonable classification among persons who commit murder without considering the gravity of the offence. Further the provision has **no rational nexus** with the object sought to be achieved by the legislation in question.

The respondents contended that, the validity of **death sentence** is upheld by the SC in the case of **Bachan Singh v. State of Punjab**, therefore the punishment prescribed is valid.

Upon hearing the parties, the Court held that, section 303 IPC makes an unreasonable classification of persons who commit murder **when under** life sentence and persons who commit murder **when not under** life sentence as the **resultant act is the same** in both categories. **Motive** behind the offence might vary from convict to convict but does not depend on the fact if he is awarded with life imprisonment or not. A mandatory award of death sentence under section 303 IPC disregarding the gravity of the offence committed has no rational nexus with the object sought to be achieved by the legislation therefore Court declared section 303 IPC as **unconstitutional**.

**48.Mr. X v. Hospital Z**

**DATE OF JUDGEMENT:** 10/12/2002

**COURT:** Supreme Court of India



**JUDGES:** S. RAJENDRA BABU, P. VENKATARAMA REDDI & ARUN KUMAR.

**REFERENCE:** Appeal (civil) 4641 of 1998

**PARTIES:**

**Petitioner:** Mr. X

**Respondents:** Hospital Z

**SUBJECT:**

The judgment in the case has portrayed the differentiation between a moral obligation and a lawful code in a very effective manner. The court began with the source of the moral obligation of not uncovering the patient's classified data with how it has now been consolidated as a legal standard. Relying on Code of Medical Ethics as an exception to the rule of confidentiality, the court held that in certain cases where specific people can be endangered if the knowledge isn't disclosed, the doctor can disclose the knowledge.

**FACTS:**

The Appellants blood was to be transfused to another and in this regard a sample thereof was taken at the Respondents Hospital. The Appellant came out to be H.I.V. positive. By virtue of revelation of the fact that the Appellant was H.I.V. positive by the Hospital authorities without the express assent of the Appellant, the Appellants proposed wedding with Ms A which had before been acknowledged, was cancelled. In addition, the Appellant was seriously reprimanded and was additionally segregated by the community to such a degree, that he needed to leave his work environment and house and move to another city. The man argued that the respondent hospital and doctor had breached their obligations under medical ethics by revealing the data.

**IMPORTANT PROVISIONS:**

- Section 20A of Indian Medical Council Act, 1956
- Indian Medical Council (Amendment) Act, 1964
- Article 21 of Constitution of India which talks about Right to privacy as an extension to right to life.



- Sections 26, 269 and 270 of Indian Penal Code, 1860 which talks about unlawfully, negligently or maliciously spreading of a disease.
- Section 2 of the Consumer Protection Act, 1986 which talks of 'deficiency in service'.
- Section 9 of The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention And Control) Act, 2017 which lays down an exception to the concept of "informed consent" as mentioned under Section- 8(2)(d).
- Section- 8(2)(d): "Informed consent" as differentiated from consent means consent to a specific intervention which has been laid down in the guidelines without coercion, fraud, mistake or misrepresentation by the person himself and his representative.

### **ISSUES:**

- Whether the Respondents were liable for violating the Appellant's entitlement to privacy ensured under Article 21 of the constitution of India?
- Whether the respondents were liable of violating the obligation to maintain secrecy under Medical Ethics?
- Whether the appellant's case was qualified for compensation from the respondents?

### **ANALYSIS OF THE JUDGEMENT:**

The judgement of the Apex Court was as per following:

In deciding the primary issue, the Court held that in case of a conflict between the Appellants fundamental right to protection of his privacy and Ms As fundamental right to be educated about any danger to her life/wellbeing, in such an occasion the Latter's entitlement to be educated will abrogate the Appellants right to privacy. Consequently the Court held the Respondents not guilty on the principal issue. In deciding the subsequent issue, the Court held that the obligation to keep up secrecy in each Doctor-Patient relationship is not supreme and such obligation could be broken and consequently secrecy disclosed where compelling public interest so requires. Thus the Court held the Respondents not guilty on the subsequent count as well.

Having regard to the fact that the appealing party was seen as HIV positive, its divulgence would not be violative of either the rule of confidentiality or the litigant's Right of Privacy as Ms. A with whom the appealing party was probably going to be hitched was spared in time



by such revelation, or disaster would have been imminent, she also would have been tainted with the frightful infection if marriage had occurred and culminated.

Mental and physical wellbeing is of prime significance in a marriage, as one of the objects of the marriage is giving birth to similarly healthy children. That is the reason, in each arrangement of matrimonial law, it has been given that if an individual was seen as experiencing any, including venereal disease, in a transmittable structure, it will be available to the next accomplice in the union to look for divorce.

### **CONCLUSION:**

This present case's pertinence is clear from the way that its decision has been incorporated as a provision in the HIV and AIDS (Prevention and Control) Act, 2017. Further decisions of the current provisions would assist in tossing light on the various interpretations of the case and help unfurl the queries left unanswered.

### **49.National Legal Services Authority v. Union of India**

**DATE OF JUDGMENT:** 15/04/2014

**COURT:** Supreme Court of India

**JUDGES:** K.S. Radhakrishnan, A.K. Sikri

**REFERENCE:** WRIT PETITION (CIVIL) NO.400 OF 2012

### **PARTIES**

**Petitioner:** National Legal Services Authority

**Respondent:** Union of India

**SUBJECT:** The judgment revolves around the question of whether right to sexual orientation is a part of Article 21 of the Constitution.



**FACTS:** The petitioner a non-governmental organisation filled a writ petition under Article 32 of the Constitution before the SC for the recognition of third gender rights.

**IMPORTANT PROVISIONS:**

**THE INDIAN CONSTITUTION:**

Article 21: No person shall be deprived of his life or personal liberty except according to the procedure established by law.

Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

**ISSUES:**

1. Whether right to sexual orientation is a part of Article 21 of the Constitution?

**ANALYSIS OF THE JUDGEMENT:**

The petitioner contended that,

- Non-recognition of sexual orientation violated an individual's right to dignified life under Article 21
- Every person of the transgender community has a legal right to decide their sex orientation and to espouse and determine their identity.
- Transgender persons have to be declared as a socially and educationally backward classes of citizens and must be accorded all benefits available to that class of persons, which are being extended to male and female genders.

Respondents contended that, the issue raised by the petitioner is a serious issue for which the Ministry of Social Justice and Empowerment has formed a Committee, called "Expert Committee on Issues relating to Transgender", to conduct an in-depth study of the problems relating to transgender persons to make appropriate recommendations to the Ministry. Upon the recommendations being given a proper legislation would be enacted.

Upon hearing the parties, the Court held that, sexual orientation is inextricable facet of Article 21 and thus it cannot be violated. The Court also gave directions for the recognition of the



transgender community. Some of the notable directions include providing public toilets for the Community, reservation in educational institution.

### **50. Navtej Singh Johar v. Union of India**

**DATE OF JUDGMENT:** 06/09/2018

**COURT:** Supreme Court of India

**JUDGES:** Dipak Misra, CJI ; Rohinton Fali Nariman, J. ; A. M. Khanwilkar, J; D. Y. Chandrachud, J; and Indu Malhotra, J

**REFERENCE:** WRIT PETITION (CRIMINAL) NO. 76 OF 2016

#### **PARTIES**

**Petitioner:** Navtej Singh Johar

**Respondent:** Union of India

**SUBJECT:** The judgment clearly establishes the **difference between** constitutional morality and public morality.

**FACTS:** The petitioners in the present case challenged the **validity of section 377** of the Indian Penal Code.

#### **IMPORTANT PROVISIONS:**

- **Article 21:** No person shall be deprived of his life or personal liberty except according to the procedure established by law.





- Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India
- Section 377 of IPC: Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

### **ISSUES:**

1. Whether section 377 of the Indian Penal Code stands constitutionally valid?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner contended that,

- The natural identity of an individual should be treated to be absolutely essential to his being. Hence it is a matter of **right to privacy**.
- The SC in the case of National Legal Services Authority v. Union of India recognised **sexual orientation** as a part of Article 21, therefore the same is applicable for LGBT community members also.
- The judgment in **Naz foundation v. Government of NCT Delhi** should be upheld.
- Constitutional morality which lays down the condition of complete adherence to the principles of the Constitution should be given more importance than Public morality.

The respondents contended that,

- The judgment in **Suresh Kumar Koushal v. Union of India** which declared section 377 as constitutionally valid holds good.
- It cannot be disputed that; section 377 applies to **non-consensual sex**.
- If Section 377 is declared unconstitutional, then the family system which is the bulwark of social culture will be in shambles, the institution of marriage will be **detrimentally affected** and rampant homosexual activities for money would tempt and corrupt young Indians into this trade.



- Considering the multicultural and multi-linguistic features of the country decriminalisation of Section 377 will lead to **destruction of all such traditions and practices.**

Upon hearing the parties, the Court held that, section 377 grossly violated right to dignified life, privacy, equality and hence **unconstitutional.**

### **51.Smt. Nilabati Behera Alias Lalit Behera v. State of Orissa And Ors.**

**DATE OF JUDGMENT:** 24/03/1993

**COURT:** Supreme Court of India

**JUDGES:** Verma, Jagdish Saran, Anand AS, Venkatachala S

**REFERENCE:** 1993 AIR 1960

#### **PARTIES**

**Petitioner:** Smt. Nilabati Behera Alias Lalit Behera

**Respondent:** State of Orissa And Ors

**SUBJECT:** The judgment revolves around the question of whether **damages** should be paid to a victim for violation fundamental right under Article 21 of the Constitution?

**FACTS:** Petitioner's son, aged about 22 years was taken from his home in police custody at about 8 a.m. on 1.12.1987 by Assistant Sub-Inspector of Police of the Police Outpost in connection with the investigation of an offence of theft. He was detained at the Police outpost On 2.12.1987, at about 2 p.m. the petitioner came to know that the dead body of her



son was found on the railway track. There were multiple injuries on the body and his death was unnatural, caused by those injuries. The petitioner alleged in her **letter dated 14.9.1988, which was treated as a writ petition under Article 32** of the Constitution, that it was a case of **custodial death** since her son died as a result of the multiple injuries inflicted to him while he was in police custody and thereafter his dead body was **thrown on the railway track**.

### **IMPORTANT PROVISIONS:**

#### **The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- **Article 21:** No person shall be deprived of his life or personal liberty except according to the procedure established by law.

### **ISSUES:**

1. Whether the petitioner's son died in Police custody due to Police brutality?
2. Whether the petitioner is eligible for compensation?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner contended that, her son died due to Police brutality while in custody and thereafter was thrown on the railway track. Several **injuries in her son's body evidently proves the same**. She further prayed that; **due compensation** should be paid to her for the violation of fundamental right to life under Article 21 of the Constitution.

Rebutting the contentions of the petitioner the respondents contended that, the petitioner's **son escaped from Police custody** around 3 a.m. on 2.12.1987. Even after a deep search the **boy was found nowhere** but later came to know that he was found dead in the railway track. The moment the boy escaped from the Police custody the **Police authorities are no more responsible and liable to whatever happens to the boy**.



Upon hearing the parties, the Court directed the district judge to hold an inquiry. Later when the reports of the inquiry were submitted it was known that the injuries in the petitioner's son's body was due to **merciless beatings and was not caused by train hit**. Further there was **no evidence** to prove that the Police searched for the boy if at all he escaped from their custody. However, it was clear that, the Police arrived at the crime scene much **later**. There was **handcuff on the hands of the deceased** when his body was found on the railway track with rope around it. It is significant that the Report dated 11.3.1988 of the Regional Forensic Science Laboratory mentions that the two cut ends of the two pieces of rope which were sent for examination **do not match** with each other in respect of physical appearance. This finding about the rope negatives the respondents' suggestion that the petitioner's son managed to escape from police custody by **chewing off** the rope with which he was tied.

Finally holding the respondents responsible the State of Orissa was asked to pay a sum of **Rs.1,50,000** to the petitioner and a sum of **Rs.10,000 by way of costs** to the Supreme Court Legal Aid Committee.

### **52.Olga Tellis v. Bombay Municipal Corporation**

**Bench:** C.J., Y.V. Chandrachud, J., A.V. Varadarajan, J., O. Chinnappa Reddy, J., S. Murtaza Fazal Ali and J., V.D. Tulzapurkar.

**Appellant :** Olga Tellis

**Respondent :** Bombay Municipal Corporation

**Citation :** 1986 AIR 180, 1985 SCR Supl. (2) 51

**Issue :**

- The question estoppels against fundamental rights or waiver of fundamental rights?
- What comes under the scope of life as under Article 21?
- Whether the provisions of the Bombay Municipal Corporation Act, 1888 are constitutional or not?
- Whether pavement dwellers qualify as “trespasser” under the Indian Penal Code?

**Facts:**



- In 1981, Bombay Municipal Corporation, also known as the BMC, along with other functionaries of the Maharashtra government, decided to evict the pavement dwellers and those who were living in slums.
- By virtue of this decision, the then Chief Minister of Maharashtra Mr. A.R. Atulay ordered the eviction and removal of the slum and pavement dwellers out of Bombay and to their place of origin.
- Eviction was as per section 314 of the Bombay Municipal Corporation Act 1888.
- A writ petition was filed in Bombay HC for an order of injunction restraining the officers of the State Government and the Bombay Municipal Corporations from implementing the directive of the Chief Minister.
- The High Court of Bombay granted an ad interim injunction to be in force until July 21, 1981. Respondents agreed that the huts will not be demolished until October 15, 1981. Contrary to agreement, on July 23, 1981, petitioners were huddled into State Transport buses for being deported out of Bombay.
- The respondent's action was challenged by the petitioner on the grounds that it is violative of Articles 19 and 21 of the Constitution. They also asked for a declaration that Section 312, 313 and 314 of the Bombay Municipal Corporation Act 1888 is violative of Articles 14, 19 and 21 of the Constitution.

**Appellant's contentions:**

- "Right to life" as under Article 21 includes the right to a means of subsistence and that a person shouldn't be deprived of his/her livelihood.
- When a person is expelled from slums or sidewalks and have no where to go, it would amount to deprivation of his/her rights, and thus unconstitutional.
- The procedure under section 314 of the Act to eliminate intrusion on the sidewalk is arbitrary and unreasonable since it not only does not provide notification before the removal of the intrusion but also provides that the Municipal commissioner can make sure that the intrusion is eliminated "without notice."

**Respondent's contentions :**

- It was contended that the pavement dweller had themselves admitted to the High Court that they did not claim any basic right to install cabins on sidewalks or public roads and they would not prevent their demolition after the scheduled date.



### **Final Decision:**

The court observed that right to life also includes the right to livelihood. "The sweep of the right to life conferred by Art. 21 is wide and far-reaching... That, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life." But the court also observed that the Constitution does not put an absolute embargo on the deprivation of life or personal liberty. By Art. 21, such deprivation has to be according to procedure established by law. The court observed that, "In order to minimise the hardship involved in any eviction, we direct that the slums, wherever situated, will not be removed until one month after the end of the current monsoon season..."

### **53.Paramananda Katara v. Union of India**

**DATE OF JUDGMENT:** 28/08/1989

**COURT:** Supreme Court of India

**JUDGES:** Misra Rangnath

**REFERENCE:** 1989 AIR 2039

### **PARTIES**

**Petitioner:** Paramananda Katara

**Respondent:** Union of India

**SUBJECT:** The judgment revolves around the question of whether the State and Medical Practitioners have a legal **obligation to save lives** under Article 21 of the Constitution.

**FACTS:** The petitioner in the present case is a non-governmental organization who filed a writ petition under Article 32 of the Constitution in public interest upon seeing a **newspaper report where a person who was badly injured was refused medical care by doctors in few hospitals.**



### **IMPORTANT PROVISIONS:**

**Article 21:** No person shall be deprived of his life or personal liberty except according to the procedure established by law.

### **ISSUES:**

1. Whether the State and Medical Practitioners have a legal obligation to save lives under Article 21 of the Constitution?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioners contended that, Article 21 not only guarantees right to life to the citizens but also cast an obligation upon the State to protect the same. Further the **Code of medical ethics** also specifies the Practitioners to take all measures to save a life.

**Agreeing** to the petitioner's contention the respondents submitted that, there were no provisions under the Motor Vehicles Act or the Code of Criminal Procedure which prevented the doctors to **take immediate action** before the incident being brought to the notice of Police officials.

The Court on hearing the parties gave the following guidelines:

1. Article 21 casts an obligation upon the doctors and the State to protect life.
2. Emergency cases should be accepted and required medical assistance is to be granted
3. Sufficient awareness regarding the judgment is to be created.
4. The doctors should not delay the process due to any reason
5. The status of the injured should not prevent the doctors from providing medical assistance

### **54. Paschim Banga Khet Mazdoor samity and Ors. v. State of West Bengal & Anr**

**DATE OF JUDGMENT:** 06/05/1996

**COURT:** Supreme Court of India

**JUDGES:** Justice Agrawal S



**REFERENCE:** 1996 SCC (4) 37

**PARTIES**

**Petitioner:** Paschim Banga Khet Mazdoor samity and Ors.

**Respondent:** State of West Bengal & Anr

**SUBJECT:** The judgment revolves around right to health and right to health care which are two basic fundamental rights under Article 21 of the Indian Constitution.

**FACTS:** A member of the petitioner society fell off a train at Mathurapur Station in West Bengal due to which he was taken to a nearby State run primary health care centre. However, the doctor at the primary health centre referred him to be taken to some other State-run hospital as there were no sufficient equipment's in the primary centre. As per the medical officer's direction he was taken to several other State-run hospitals, but he was refused admission due to lack of bed, sufficient equipment's and doctors. Finally, when he was admitted in a hospital his condition worsened and had to incur a medical bill of rupees 17,000. Aggrieved by the carelessness of various authorities in several State-run hospitals the petitioner society filled a writ petition under Article 32 of the Indian Constitution.

**IMPORTANT PROVISIONS:**

**The Indian Constitution:**

- **Article 21:** No person shall be deprived of his life and personal liberty except according to the due procedure established by law.
- **Article 32:** Remedies for enforcement of rights conferred by Part III
- **(1)** The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- **(2)** The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

**ISSUES:**

1. Whether the State can use **lack of financial resources** as an excuse to avoid its Constitutional obligations?





2. Whether there is a need to consider settled laws and guidelines with regard to health care services in case of emergency situations?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner society contended that the State-run hospitals failed to fulfil their obligation to attend emergency cases and save life. Their carelessness traumatises the lives of poor people who may not be able to afford medical services in private hospitals. The fundamental right to health care of every individual casts an obligation on the State to safeguard the same.

Despite the member being injured heavily, the hospitals denied admission on frivolous grounds leaving his life at stake. This is a clear violation of Article 21 and hence the member of the society should be granted a hefty compensation.

The respondents did not dispute much with the facts of the case but contended that a primary health care centre is only to provide basic health care services and are not meant for performing complicated surgeries. However, other State-run hospitals where he was denied admission was due to overburdened medical requirements which are beyond satisfactory limits.

Upon hearing the parties to the case the court held that, the term “life” under Article 21 does not mean mere animal existence but all those means which are essential for a dignified life of the individual. In the instant case, the doctors and other authorities employed in various State-run hospitals failed to fulfil their professional obligation and must be held accountable for it. Therefore, the Court ordered a commission to be formed to probe in this matter.

Further the Court moves on to say that, it is an indestructible obligation of the State to provide health care services to the needy, which can never be waived due to lack of financial resources or any other reason for that matter. The Court clarified that whenever there has been a violation of fundamental right this Court has provided the victim with sufficient compensation and hence in the present case a sum of 25,000 rupees is to be awarded to the injured person.

Addressing larger public interest, the Court also framed certain guidelines with regard to hospitals handling emergency cases. Some of the notable guidelines include:

- Primary health care centres must attend all patients and provide them with first aid services.



- Hospitals must accept emergency cases and provide them with necessary care to save life.
- The patient if necessary, may be kept on trolley beds or floors temporarily.
- A Central Bed Bureau should be set up which should be equipped with wireless or other communication facilities to find out where a particular emergency patient can be accommodated when a particular hospital finds itself absolutely helpless to admit a patient because of physical limitations.
- Traumatology units should be set up at regional levels
- Sufficient medical equipment's should be provided to local Government hospitals so that the patients may be admitted locally.
- All the details regarding the patient must be clearly recorded.

Thus, the Court allowed the petition and heard it on merits.

**CONCLUSION:** The guidelines formulated in the present case are wide enough to address the issues arising due to right to health and health care, however the object of formulating such guidelines will be achieved only if they are implemented effectively. Therefore, it is the State who has to take cognizance of the matter and fulfil the obligations it owes towards the nation.

### **55.R. Rajagopal v. State Of T.N**

**DATE OF JUDGMENT:** 07/10/1994

**COURT:** Supreme Court of India

**JUDGES:** B Jeevan Reddy and Sen SC

**REFERENCE:** 1995 AIR 264

#### **PARTIES**

**Petitioner:** R. Rajagopal

**Respondent:** State Of T.N

**SUBJECT:** The judgment came back in 1994 **when right to privacy was not a fundamental right under Article 21**. The judgment discusses about **freedom of press** and its restrictions under Article 19(1)(a) of the Constitution



**FACTS:** The judgment is infamously known as the **Auto Shankar case**. Auto Shankar @ Gauri Shankar was awarded death sentence by the Chengalpet sessions Court for **6 murders** which was confirmed by the Madras HC and the SC. In the instant case the first petitioner is the **editor, printer** and publisher of a Tamil weekly magazine **Nakkheeran**, published from Madras. The second petitioner is the associate editor of the magazine. While the accused was in jail, he wrote his **autobiography**. He handed over the book to his advocate through his wife with the knowledge of the jail authorities to **be published** in the petitioner's magazine named "Nakkeeran". The petitioner's who accepted to publish his autobiography advertised in their magazines about the same. However, several Police officials, IAS and IPS officers who were his partners in crime **feared if their identity and reputation would be damaged** by the publication so they threatened the petitioner's not to publish the autobiography. Several orders restraining the petitioner's from publishing the autobiography was also issued. A **letter was also addressed** to the petitioner telling the autobiography was **not an original** work of Auto Shankar, it was someone else who forged his identity. It was also alleged that, while in jail Auto Shankar was treated with **third degree punishment** to write a letter to his advocate telling he never wrote such books. Hence the petitioners have approached the SC under Article 32 of the Constitution to issue appropriate directions to the Police officials not to restrain them from publishing the book.

### **IMPORTANT PROVISIONS:**

#### **The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

**Article 21:** No person shall be deprived of his life or personal liberty except according to the procedure established by law.

### **ISSUES:**

1. Whether Police officials have the authority to curb the rights of press under Article 19(1)(a) of the Constitution?



## 2. Whether publishing an autobiography amount to violation of privacy?

### ANALYSIS OF THE JUDGEMENT:

The petitioners contended that,

- Right to freedom of press flows from the right to freedom of speech and expression. Therefore, publishing the autobiography of a person with his consent is protected under Article 19(1)(a).
- Fear of officials that their identity and reputation in the society would be damaged **does not constitute a valid restriction**
- There were several instances when Police **officials destructed the office properties** and threatened the magazine authorities to not publish the autobiography
- They have also approached the Madras High Court for directions but couldn't receive any.

The respondents contended that,

- No autobiography was written by Auto Shankar. And if a person wants to publish the works of a prisoner, he need to posses a **Power of Attorney** executed in the **presence of prison officials** but in the present case no such PoA was executed. It was just a book written by some unknown person.
- The false allegations in the book **might affect** the reputation of officials who hold high post in the society.
- Also publishing a book in the name of autobiography **without the consent** of the concerned person is **violation of his privacy**.
- Further the petition is **not maintainable** under Article 32 as it does not address the concerns raised by the petitioners.

Upon hearing the parties, the Court held that, **mere fear** of officials cannot restrict the freedom of press under Article 19(1)(a) of the Constitution. If such false allegations were contained in the book let the book be published and then the **officials may prove their innocence in the Court by filling a defamation case**. The Court further stated that, since **accused has not authorised Police officials** to protect his privacy the same may not be bothered upon. Considering that, the petition was initially addressed to the Madras HC the Court **converted the petition to a Special leave petition** and thereby **allowed** the petitioners to publish the alleged autobiography. The Court concluded by saying that, publishing the



details of a person which is **available in public records** do not infringe privacy however, publishing the private details of a person **without his consent** is an infringement of individual privacy and the same is **prohibited in law**.

### **56.R.K. Garg And Others vs Union Of India And Others.**

**DATE OF JUDGMENT:** 13 November, 1981

**COURT:** Supreme Court of India

**JUDGES:** Y Chandrachud, A Gupta, A Sen, P Bhagwati, S M Ali

**REFERENCE:** 1982 133 ITR 239 SC

#### **PARTIES**

**Petitioner:** R.K. Garg And Others

**Respondent:** Union of India & Others.

**SUBJECT:** In this case, the question is raised with regards to the constitutional validity of the **Special Bearer Bonds Act (immunities and exceptions) 1981**. This case is an attempt to analyze the strengths of “**morality of law**” as the basis for determining the constitutional validity as gathered from the letter and spirit of the Constitution of India.

#### **FACTS:**

- In 1981, the Indian parliament passed special laws on bonds for the use of **unaccounted citizens' money for useful purposes**. In advancement of this, the Government, proposed to issue instruments called **Special Bearer Bonds and gave motivation to individuals to put their resources into them**.
- The questionable Provisions of this enactment were **section 3 and section 4**, which gave that, **any individual who buys in to these securities won't be required to unveil the source of cash for his Investment in such bonds and he won't be cross examined or exposed to any examination, or acceptable as evidence in any enquiries or procedures or exacted any punishment based on his speculation**.
- The Act was tested inter alia on the ground that it made an **unreasonable classification** between people who wrongfully sidestepped payment of taxes as against the individuals who submitted to the law. It was contended that such an



arrangement in the law was **against ethics or morality** as it afforded tax dodgers, immunities and exclusions, and put them at a profitable situation in contrast with the individuals who abided by the law.

### **IMPORTANT PROVISIONS:**

- **The constitution of India:**

- 1) Article 14: Equality before law
- 2) Article 109: Special procedure in respect of Money Bills
- 3) Article 110: Definition of Money Bill
- 4) Article 123: Power of President to promulgate Ordinances during recess of Parliament

- **The Special Bearer Bonds (Immunities and Exception) Act, 1981**

- 1) Section 3: provided for certain immunities to a person who had subscribed to or otherwise acquired Special Bearer Bonds.
- 2) Section 4: provided that without prejudice to the provisions of section 3 subscription to, or acquisition of Special Bearer Bonds by any person shall not be taken into account for the purpose of any proceedings under the Income- tax Act, 1961, the Wealth-tax Act 1957 or the Gift-tax Act, 1958

### **ISSUES:**

- 1) Whether the certain provisions of Special Bearer Bonds (Immunities and Exception) Act, 1981 violate the provisions of constitution of India?

### **ANALYSIS OF THE JUDGEMENT:**

- There is no truth in The argument that the President has no authority under Article 123 to issue an order amending or modifying the tax laws, and that the order was beyond the president's legislative power under that clause. **If Parliament has the power to pass legislation after or amend tax laws, the President may do so similarly by issuing an order under Article 123.**
- The validity of a classification must be judged with reference to the purpose of the legislation and, if that is done, there can be no doubt that the classification made by the Act is rational and intelligible, and that the operation of the provisions of the Act is rightly confined to persons with black money. **The preamble to the Act makes it clear that the object of the Act is to canalize black money for productive purposes which has become a serious threat to the national economy.**



- The court **dismissed the petitions** and held that none of the provisions of the 1981 Special Bearer Bonds (Immunities and Exemption) Act violated Article 14 and then had to **upheld its constitutional validity**.

### **57.P.Rathinam v. Union of India**

**DATE OF JUDGMENT:** 26/04/1994

**COURT:** Supreme Court of India

**JUDGES:** Hansaria B.L. and Sahai R.M

**REFERENCE:** 1994 AIR 1844

#### **PARTIES**

**Petitioner:** P.Rathinam

**Respondent:** Union of India

**SUBJECT:** The judgment revolves around the question of whether **right to die** is a part of Article 21 of the Indian Constitution?

**FACTS:** Due to the existence of **same question of law** the Court combined two petitions to decide the constitutional validity of section 309 IPC. The petition was preferred by the petitioner when one Mr. Nagbhushan was charged under section 309 IPC.

#### **IMPORTANT PROVISIONS:**

**The Indian Constitution:**

- **Article 21:** No person shall be deprived of his life or personal liberty except according to the procedure established by law.
- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

**The Indian Penal Code:**



- Section 309: Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year [or with fine, or with both].

### **ISSUES:**

1. Whether section 309 of the Indian Penal Code is **constitutionally valid**?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner contended that,

- Every right has a **positive as well as a negative** aspect in it. Right to freedom of speech also includes right not to speak or remain silent similarly right to live also includes right to die.
- Mental diseases and imbalances, unbearable physical ailments, affliction by socially-dreaded diseases, decrepit physical condition disabling the person from taking normal care of his body and performing the normal chores, the loss of all senses or of desire for the pleasures of any of the senses, extremely cruel or unbearable **conditions of life** making it painful to live are the main reasons why people commit suicide.
- The main essence of a crime being “**mens rea**” is absent in case of suicide which itself makes the act ineligible to be treated as an offence.
- Further **criminalising** such an act will only add more misery to their lives

The respondent contended that, suicide is against **public morality**. Permitting such act is against the principles of **sanctity of life**. Article 21 includes **only positive** aspects of life and does not include a negative aspect within its scope.

Upon hearing the parties, the Court held section 309 IPC to be **constitutionally invalid** in order to humanise the penal laws in our Country. The Court further stated that, such provisions are **cruel and irrational** provision, and it may result in **punishing a person again** who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. Suicide does not affect public morality or sanctity of life. It does not harm the society at large therefore the **interference of the State** in such matters **affects the personal liberty** of the individual under Article 21 and hence it stands **unconstitutional**.





## **58. Reliance Petrochemicals Ltd vs Proprietors Of Indian Express**

**DATE OF JUDGMENT:** 23/09/1988

**COURT:** Supreme Court of India

**JUDGES:** Mukharji, Sabyasachi (J)

**REFERENCE:** 1989 AIR 190, 1988 SCR Supl. (3) 212

### **PARTIES**

**Petitioner:** Reliance Petrochemicals Ltd

**Respondent:** Proprietors Of Indian Express

**SUBJECT:** The judgment Revolves around the freedom of Press in the light of reasonable restrictions.

**FACTS:** The petitioners in this case filed a petition seeking the Court's injunction against the Respondant's from publishing any article related to the issue of debentures.

Previously, on 26 August 1988, the court issued an injunction restraining 6 respondents from printing, or publishing any article in any of the issues of Indian Express.

Upon this injunction, the respondents asked for this injunction to be set aside, which the court did and hence, on 31 August 1988, the Respondants published the article.

The petitioners in the present case, reiterate their request for the injunction to continue as even though there was over- subscription of the debentures, the allotment day had not expired and the subscribers could still withdraw

### **IMPORTANT PROVISIONS:**

#### **The Indian Constitution**

**Article 19(1)(a):** Freedom of speech and expression

### **ISSUE:**

1. Whether the injunction should continue or not?

### **ANALYSIS OF THE JUDGEMENT:**

**Petitioner contention:**



- It was stated that the reliance public issue was the largest in India, and would greatly suffer if published.
- It would cause a lot of interference and injustice.
- The trials conducted by the newspapers, while the case is **sub-judice** is contempt of court.
- There should not be any obstacle related to the public issue.
- There is an imminent and present danger of the **prejudice** caused.
- The trials could effect the judgments being pronounced by the Court.

**Respondant's contention:**

- The injunction should be vacated.
- Stopping the expression of ideas and speech, was a clear violation of **freedom of press** under article 19.
- The issues are public and hence, public debate cannot be curbed.
- The judges cannot be influenced since they are sitting on the bench, professionally trained.

**The court's view:**

- There are no fixed standards to check **imminent danger**. That has to be seen from the facts and circumstances of the case.
- The test is seen on the basis of **Balance of Convenience**.
- In the present situation, the issue of debentures have been closed, and any prejudice leading to withdrawal by the general public does not arise. Hence, no imminent danger.
- And The balance of convenience lies in favour of the respondents.
- Any further issuance of injunction would violate the fundamental right enshrined in 19(1)(a).
- Also, the court states that the “**right to know**” is also a fundamental right that must be respected.

**CONCLUSION:** Finally, it was decided by the court that the fundamental right of press cannot be snatched, merely on the grounds of apprehension of danger. The court takes a narrow interpretation of the restrictions, in comparison to the freedoms enlisted in clause 1 of Article



19. Here, the court firmly determined that there was no real or substantial danger and that the public has the equal right to know.

### **59. Rudal Shah v State of Bihar and Another**

Bench: Chief Justice Y.V. Chandrachud, Justice Amarendra Nath Sen, Justice Rangnath Misra

Petitioner: Rudal Shah

Respondent: the State of Bihar and Another

Citation: 1983 AIR 1086, 1983 SCR (3) 508

Issue:

Can the petitioner pray before the court for compensation under Article 32 of the Indian Constitution?

Facts:

- The petitioner was detained illegally by the State Authorities in the jail even after he was acquitted.
- The Court of Sessions, Muzzaffarpur, Bihar acquitted the petitioner but he was released from the jail after 14 years he was acquitted.
- Then the petitioner filed a writ petition seeking his release and certain additional reliefs in the form of rehabilitation, reimbursement of expenses which he may incur for medical treatment, and compensation for the illegal incarceration.
- To be noted that the petitioner was already released from custody before the appeal came before the court.

Analysis:

The court issued a show-cause notice to the State Government asking for an explanation as to why the petitioner was not released for over 14 years since his acquittal. The Jailor's affidavit stated that the petitioner was not released on the ground that he was of unsound mind but the affidavit does not disclose anything about the measures taken to cure him and does not come up with an explanation as to what took 14 years for setting him right. The court said that the petitioner cannot be held liable for any crime under the Code of Criminal Procedure as insane



persons can't be held liable under the act and they have certain statutory rights regarding the procedure governing their trial.

The court questioned as to “*Why was the Law Department so insensitive to justice ?*”

The court concluded that, if the petitioner was insane at any point in time, the insanity must have appeared as a consequence of his unlawful detention in jail. A sense of helplessness and frustration can lead to the mental instability of the petitioner.

The court said that the Government of Bihar could have shown a little more courtesy to this Court by filing an affidavit through a senior officer to explain the insensitivity. But using the jailor as prey the higher-up officials have saved themselves. The court states that “*Perhaps, Hercules has to be found who will clean them by diverting two rivers through them, not the holy Ganga though.*” The SC said that the HC of Patna should take a step to examine the jails of Bihar and see that there is no other case.

The court stated that they have to face the question as to how the grave injustice that is done with the petitioner can be resolved, and it shall be well within our powers under Article 32.

The court said that, indeed, Article 32 does not deal with cases related to compensation, they should be presented before a civil court. **But the important question for our consideration is whether, in the exercise of its jurisdiction under article 32, this Court can pass an order for the payment of money if such an order is like compensation consequential upon the deprivation of a fundamental right.**

The court said that there is no doubt about the fact that the petitioner will get compensation if he will file a suit before a civil court and ask for relief, but we are not sure how much time will it take for the petitioner to get relief because of lack of evidence. So, the court can not refuse to pass an order of compensation in favor of the petitioner as it will be like giving mere support to his fundamental right to liberty. Article 21 guarantees the right to life and liberty and it will be stripped of its importance if the power of this Court were limited to passing an order for release.

Judgment:



The court after taking into consideration the harm caused to the petitioner by the Government of Bihar, as an interim measure, ordered the State to pay the petitioner Rs. 30,000. The court held that the petitioner has the right to move to court for recovering damages caused by the state. The compensation granted by the court was palliative. So, the petitioner can make the ends meet.

### **60.Revathi v. Union of India & Ors**

**DATE OF JUDGMENT:** 25/02/1988

**COURT:** Supreme Court of India

**JUDGES:** Thakkar, M.P. and Dutt M.M.

**REFERENCE:** 1988 AIR 835

#### **PARTIES**

**Petitioner:** V. Revathi

**Respondent:** Union of India

**SUBJECT:** The judgment revolves the question of whether **clauses 1 and 2 to section 198** of CrPC stands constitutionally valid?

**FACTS:** The petitioner challenged the validity of clauses 1 and 2 to section 198 CrPC as it permitted only the aggrieved husband to sue the adulterer. The aggrieved wife can neither sue her disloyal husband nor the adulteress. Neither can the aggrieved husband sue his disloyal wife. In simple words **woman can neither sue nor be sued in the offence of adultery**. The judgment came back in 1988 when adultery was a crime under section 497 IPC.

#### **IMPORTANT PROVISIONS:**

**The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed



(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

The Indian Penal Code:

- Section 497:

Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

ISSUES:

1. Whether clauses 1 and 2 to section 198 of CrPC **stands constitutionally valid?**

ANALYSIS OF THE JUDGEMENT:

The petitioner contended that, the provision was unconstitutional on the ground that it **manifestly discriminates on the basis of sex.**

However, the respondents contended that, as per section 497 IPC **only men can commit** the offence of adultery therefore punishment should also be granted only to men and not women.

Upon hearing the parties, the Court held that, the intent behind such provisions is only to promote “**social good**” in a matrimonial tie. Instead of suing each other on the grounds of adultery the couple can either **break the matrimonial tie forever or forget and forgive the act.** Further considering the **plight of children** born out of the wedlock adultery should remain the way as it is under section 497 IPC. If not the feeling that either of the parent being jailed by the other might leave a serious impact in the mental health of the children.

**61.Shakti Vahini v. Union of India**

**DATE OF JUDGMENT:** 27/03/2018



**COURT:** Supreme Court of India

**JUDGES:** Justice D. Misra

**REFERENCE:** WRIT PETITION (CIVIL) NO. 231 OF 2010

**PARTIES**

**Petitioner:** Shakti Vahini

**Respondent:** Union of India

**SUBJECT:** The judgment revolves around “**honour killing**” and the need to issue guidelines governing it.

**FACTS:** The petitioner organisation was appointed by the **National Commission for women** to research on Honour killing in Haryana and Uttar Pradesh. On concluding the research, the petitioner organisation filled a writ of mandamus before the SC to **direct** the Central and State governments to take **appropriate measures to prevent** “Honour killing”

**IMPORTANT PROVISIONS**

The Indian Constitution

- Article 32: Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 21: No person shall be deprived of his life or personal liberty except according to the procedure established by law.

**ISSUES:**



1. Whether the State and the Central government effectively prevents the practice of Honour Killing in the society?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner organisation upon completion of its research in Honour Killing found that such practices were prevalent in many States in the Country and was considered as a **proper punishment for those young couples who marry outside their caste**. Their reports concluded that, honour killing happens for various reasons which may include having sex before marriage, getting pregnant before marriage, refusing arranged marriage, marrying a person who belongs to lower caste, getting raped etc.

Therefore, the petitioner organisation prayed before the SC to **issue directions** to the Center and the State to immediately take cognisance of the matter.

However, the respondents contended that, implementation of measures to prevent honour killing is **undertaken efficiently** in district levels and filed reports for the same.

Upon hearing the parties to the case the Court held that, the present stage of implementation is **not sufficient** to prevent such cruel practices and hence issued guidelines to prevent the same, which may include:

- A list was asked to be prepared collecting the **list** of places where honour killing and assembly of Khap panchayats happened.
- The Secretary of Home Department was asked to immediately **activate police protection** in places where such incidents are suspected.
- Upon hearing that a **gathering of Khap Panchayats** is likely to happen by a police officers he should immediately inform his superior officer and also simultaneously intimate the jurisdictional Deputy Superintendent of Police and Superintendent of Police.
- Despite of all measures being adopted if the Khap Panchayat still gathers orders under Section **144 CrPC** can be made.
- Immediate measures should be undertaken to **protect the life of the couple**
- Details of the couple should be recorded
- Additional Superintendent of Police must deal the case with utmost **sensitivity** and conduct a preliminary inquiry





- Upon receipt of the enquiry the District Superintendent of Police may direct the Deputy Superintendent of Police in charge of the concerned sub-division to cause to register an F.I.R. against the persons threatening the couple and, if necessary, invoke Section 151 of Cr.P.C.
- Any failure by either the police or district officials to comply with the aforesaid directions shall be considered as an act of **deliberate negligence** and/or misconduct for which departmental action must be taken under the service rules.

**CONCLUSION:** Honour killing is a **social evil** which undermines the development of a society. Judicial pronouncements as in the present case and penal laws acts as a **tool to evict** such evils from the society.

## **62. Shantistar Builders v Narayan Khimalal Totame**

**DATE OF JUDGMENT:** 31/01/2001

**COURT:** Supreme Court of India

**JUDGES:** R Misra, P Sawant, K Ramaswamy

**REFERENCE:** AIR 1990 SC 630

### **PARTIES**

**Petitioner:** Shantistar Builders

**Respondent:** Narayan Khimalal Totame

**SUBJECT:** The judgment revolves around the question of **whether right to shelter is a fundamental right under Article 21** of the Constitution?

**FACTS:** Under Sections 20 and 21 of the *Urban Land Ceiling and Regulation Act, 1976*, the State Government **exempted certain excess land** from the provisions of the Act on the condition that the land be used by the builders for the purpose of providing housing for the '**weaker sections of society.**' Due to **ineffective implementation** of the Act a petition was filled before the **Bombay HC**, however when the petition was **pending certain amendments** were made to the Act which **affected the petitioner's contention**. Although it found that the applicant's writ petition had been rendered infructuous, the Bombay High Court gave some directions regarding future monitoring of the scheme sanctioned under Section 20. However, the petitioner approached the **SC seeking directions for effective implementation** of the Act.



## **IMPORTANT PROVISIONS:**

### **The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- **Article 21:** No person shall be deprived of his life or personal liberty except according to the procedure established by law.

## **ISSUES:**

1. Whether right to life under the Article 21 of the Constitution includes right to shelter?

## **ANALYSIS OF THE JUDGEMENT:**

- The three main basic requirements of man in any civilised society will include **food, clothing, and shelter**.
- Shelter for a human being must be a **suitable accommodation** which would allow him to grow and develop in every aspect - physical, mental and intellectual.
- A **reasonable residence** is an indispensable necessity for fulfilment of the constitutional goal in the matter of development of man and should be taken as included in 'life' in Article 21.

Considering the above principles the Court ordered that, **no allocation** under the Act is to be made **before** the needs of the persons who fall under the category of “**weaker sections of the society**” under Article 46 is fulfilled. The Court further held that, the State under Article 46 of the Constitution has an **indispensable obligation** to provide the weaker sections of the society with reasonable accommodation.

## **63.S. P. Gupta Vs. President Of India And Others.**

**DATE OF JUDGEMENT:** 30 December, 1981

**COURT:** Supreme Court of India



**JUDGES:** A Gupta, D Desai, E Venkataramiah, P Bhagawati, R Pathak, S M Ali, V Tulzapurkar, P.N. Bhagwati, J.

**REFERENCE:** AIR 1982 SC 149

**PARTIES:**

**Petitioner:** S.P. Gupta

**Respondents:** President Of India And Others.

**SUBJECT:** The Indian Apex Court rejected the union government's claim for security against disclosure and directed the Union of India to reveal the asked archives.

The Court contemplated that a specific report with respect to the affairs of the state is just safe from revelation when revelation is clearly contrary to public interest and for this case the appointment and transfer of judges is of immense public interest.

**FACTS:**

- The case dealt with various petitions involving significant constitutional inquiries with respect to the appointment and transfer of judges and the freedom of judiciary.
- One of the issues raised was with respect to the validity of Central Government orders on the non-appointment of two judges. To build up this case, the applicants looked for the disclosure of correspondence between the Law Minister, the Chief Justice of Delhi, and the Chief Justice of India.
- In any case, the state claimed benefit against revelation of these reports under article 74(2) of the Indian Constitution, which gives that the counsel offered by the Council of Ministers to the President cannot be asked into in any court, and section 123 of the Indian Evidence Act, which gives that evidence inferred from unpublished official records on state issues cannot be given without the authorization of the head of the concerned department.

**IMPORTANT PROVISIONS:**

- **The constitution of India:**
  - 1) Article 19(1)(a): All citizens shall have the right to freedom of speech and expression.
  - 2) Article 74(2): The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.
- **The Indian Evidence Act, 1872:**



- 1) Section 123: Evidence as to affairs of State.—No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.
- 2) Section 162: Production of documents.

**ISSUES:**

- 1) Whether the correspondence between the Law Minister, Chief Justice of Delhi and Chief Justice of India, and the relevant notes made by them in regard to the non-appointment of a judge for a further term and the transfer of a High Court Judge privileged from disclosure?

**ANALYSIS OF THE JUDGEMENT:**

- The Supreme Court of India rejected the government's claim for assurance against divulgence and ordered the Union of India to reveal the records containing the correspondence. An open and successful participatory majority rule government system requires responsibility and access to data by the public around the working of the government.
- Introduction to the public gaze in an open government will guarantee a clean and healthy administration and could be a effective check against persecution, corruption, and abuse or misuse of authority. The concept of an open government is the coordinate emanation from the right to know, which is understood within the right to freedom of speech and expression ensured under Article 19(1)(a) of the Indian Constitution.
- Hence, the revelation of data in respect to government working must be the rule and secrecy the special case, defended only where the strictest necessity of public interest demands it.
- With regard to the dispute including Article 74(2), the Court held that whereas the counsel by the Council of Ministers to the President would be secured against judicial investigation, the correspondence in this case between the Law Serve, the Chief Equity of Delhi, and the Chief Equity of India was not secured simply because it was referred to in the advice.

**CONCLUSION:** The concept of autonomy of the judiciary may be a respectable concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic nation. In case there's one guideline which runs through the whole



texture of the Structure, it is the guideline of the rule of law under the Constitution, it is the judiciary which is entrusted with the assignment of keeping each organ of the State within the limits of the law subsequently making the run the show of law meaningful and effective.

### **64.State of Haryana v. Balwant Singh**

**DATE OF JUDGEMENT:** 04/03/2003

**COURT:** Supreme Court of India

**JUDGES:** SHIVARAJ V. PATIL & ARIJIT PASAYAT, JJ

**REFERENCE:** Appeal (civil) 5124 of 2001

**PARTIES:**

**Petitioner:** State of Haryana

**Respondents:** Balwant Singh

**SUBJECT:**

The 2003 judgement deals with "Double Jeopardy" under article 20(2) of the Constitution. In this case, the question before the bench was whether Mr. Balwant Singh, the respondent was punished twice for the same offence by the Haryana Roadways Department.

**FACTS:**

The respondent was driving bus of the Haryana Roadways. A mishap was caused as a result of the rash and careless driving of the respondent. In the said mishap, one individual passed on and other individual endured wounds. In the case request recorded before the Motor Accidents Claims Tribunal, an order was passed which brought about the loss of Rs. 1,12,950/- to the Transport Department of the State. In the wake of this award of the Tribunal a punishment was forced on the respondent lessening the compensation to the minimum of timescale of Driver for a time of four years by the request dated 12.3.1990. Because of causing the same mishap, a criminal case was likewise enrolled against the respondent for the offences under Sections 279, 337, 338 and 304-A IPC. He was sentenced by the court after trial in the said criminal case. In view of this conviction, the General Manager of Haryana Roadways passed another order dated 17.9.1992 ending the service of



the respondent. After he was discharged from prison in January 1993, he presented a joining report in the Haryana Roadways. Rather than accepting the joining report, the termination letter was given over to him. He filed an case against the order for termination of his services on the ground that he was not liable to be tried twice for the same offense.

### **IMPORTANT PROVISIONS:**

#### **Constitution of India:**

- Article 20(2) No person shall be prosecuted and punished for the same offence more than once

#### **Indian Penal Code, 1860:**

- Section 304A: Causing death by negligence- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **Haryana Civil Services (Punishment and Appeal) Rules, 1987**

(Hereinafter Rules):

- Rule 7(1): No order of imposing a major penalty shall be passed against a person to whom these rules are applicable unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.
- Rule 7(2): Whenever the punishing authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government employee, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act. 1850, as the case may be, an authority to inquire into the truth thereof
- Rule 7(2)(b): The inquiry officer shall give clear findings on each of the charges so that the Government employee shall know from the findings on what ground he has been found guilty. Each finding shall be supported by evidence and reasons thereof. The findings are in the nature of a report to the competent authority to enable it to pass final orders. Such findings are to assist but do not bind him. He himself alone has to come to a final decision. Moreover, the inquiry officer shall not in any case recommend or propose any penalty.

#### **ISSUES:**



- 1) Whether the respondent suffered double jeopardy at the hands of the Haryana Roadways Department?

### **ANALYSIS OF THE JUDGEMENT:**

A crime may be a lawful wrong for which a wrongdoer is obligated to be prosecuted and punished but only once for such a wrongdoing. In other words, an guilty party cannot be punished twice for the same offense. This is often demand of justice and public policy supports it. This rule is epitomized within the well-known maxim *nemo debet bis vexari*, (*si constat curiae quod sit*) *master una et eadem causa* meaning no one need to be vexed twice in case it shows up to the court that it is for one and the same cause. Doctrine of double jeopardy could be a assurance against prosecution twice for the same offence. Offenses such as criminal breach of trust, misappropriation, cheating, criticism etc., may allow rise to prosecution on criminal side conjointly for activity in civil court/other forum for recovery of cash by way of damages etc., unless there's a bar made by law.

### **Contentions raised by the respondents:**

- 1) The most contention was recorded against the order of termination of his services on the ground that he ould not be tried twice for the same offence.
- 2) Subsequent dispute was that no appropriate opportunity was given to him and no enquiry was held but the termination order was passed as it were on the premise of the judgment passed by the learned Sessions Judge maintaining his conviction.

### **Contentions raised by the appellant:**

- 1) The appealing party contested that due to carelessness of the respondent, the appealing party endured misfortune of Rs.1,12,950/- as he was careless on his duty.
- 2) The arrange of termination of his services was appropriately passed and there was no need to conduct an enquiry under Rule 7(2) of the Rules when the said order was passed on the premise of the conviction and sentence passed against him.

### **Decision and Reasoning:**

Punishment was forced on him diminishing the pay to the least of time scale for a period of four years based on the Rule 7 of Haryana Civil Services (Discipline and Request) Rules,1987. The arrange of end comes from there on after the conviction of the respondent



under section 304A of the IPC. As per these circumstances, there was no question of the respondent enduring a double jeopardy. The help of Article 20(2) of the Constitution of India was wrongly taken. Article 20(2) of the Constitution of India does not get pulled in to the realities of the present case.

### **CONCLUSION:**

Double jeopardy is a procedural guard that anticipates a charged person from being tried once more on the same (or similar) charges and on the same facts, following a valid acquittal or conviction. Only certain sorts of criminal cases qualify for double jeopardy protection. In the event that a specific proceeding does not put a person in peril, then consequent proceedings against that person for the same conduct are not prohibited.

### **65.State of Madras v. Champakam Dorairajan**

Bench: Justice Sudhi Ranjan Das, Justice Hiralal J. Kania (CJ), Fazal Ali Saiyid, Justice M. Patanjali Sastri, Justice Mehr Chand Mahajan, Justice Vivian Bose and Justice B.K. Mukherjea

Appellant: State of Madras

Respondent: Srimathi Champakam Dorairajan and Others

Citation: 1951 AIR 226, 1951 SCR 525

Facts:

- The State of Madras had four Medical Colleges and 330 seats were available. 17 seats were reserved for students from outside the State and 12 seats for discretionary allotment by State and the remaining seats for four distinct groups of districts in the State.
- Similarly, the State of Madras had four Engineering Colleges and the total number of seats were 395. 21 seats were reserved for outside the State students, 12 seats were





reserved for discretionary allotment by the State and the remaining seats for the same four distinct groups of districts.

- Before the commencement of the Constitution, the seats in Medical and Engineering Colleges allocated amid the four distinct groups of districts were filled proportionally according to the Communal G. O. Every 14 seats by the selection committee were filled accordingly;

Non-Brahmin (Hindus) ..6

Backward Hindu ..2

Brahmins ..2

Harijans ..2

Anglo-Indians and Indian

Christians ..1

Muslims ..1

- Accordingly, the selection was used to be made among the applicants from a particular community from the districts used to be made on some principles that was based on academic qualifications and marks obtained by the candidates.
- Srimathi Champakam Dorairajan filed an application in the High Court at Madras under article 226 stating that her fundamental rights under Article 15 (1) and article 29 (2) have been violated and asked the court to quash the Communal G.O. by a writ of mandamus or other suitable means.
- Although Srimathi Champakan Dorairajan had not applied for admission in the medical college, the matter was not disputed but the court did highlight this point.
- The High Court by its judgment allowed the application of Srimathi Champakam Dorairajan.
- The State of Madras filed an appeal before the Supreme Court against the High Court of Madras decision.
- Sri Srinivasan who applied for admission in the Government Engineering College also filed a petition for a writ of mandamus to restrain the Communal G.O. on the ground that it violates her fundamental right under Article 15 (1) and Article 29 (2) of the Constitution.
- Sri Srinivasan had passed the Intermediate Examination and secured 369 marks out of a maximum of 450 marks. The High Court using the same judgment allowed her application and the State filed an appeal against the decision.



*Argument raised by Appellant:*

- The appellant contended that these two applicants would have been admitted to the educational institutions they intended to join and they would not have been denied admission if selections had been made on merits alone.
- It was contended that the provisions of Article 29 should be read with other articles in the Constitution. It was said that Article 46 puts on State the duty to promote educational and economic interests of weaker sections and in specific the SCs and STs, and protect them from social injustice and exploitation.
- It was also contended that provisions of Article 46, entitles the state to maintain the Communal G.O. by fixing proportionate seats for different communities and the order is valid in law and does not violate Constitution due to which the respondents failed to get admissions into the colleges, there is no infringement of their fundamental rights; meaning that the that the provisions of Article 46 override the provisions of article 29 (2).

*Argument raised by Respondent:*

It was contended that although Article 46 is placed in Part IV of the Constitution i.e. the directive principles of State policy and they are not enforceable in any Court but, still the provisions laid down in the DPSPs are nonetheless important for the governance of the nation and according to Article 37 it is obligatory on the part of the State to apply those principles while making laws.

*Judgment:*

It was held that classification in the Communal G.O. is on the ground of religion, race and caste. The classification in the Communal G.O. is in abuse of the Constitution and it is a clear violation of the fundamental rights under article 29(2). It was held that Article 37 clearly states that the directive principles are non-enforceable in any court of law but according to the Supreme Court the chapter on Fundamental rights in the constitution is sacrosanct and the directive principles have to conform to and run subsidiary to the chapter on Fundamental Rights. It implies that Fundamental Rights are superior to the DPSPs. The apex court ordered that educational institutions shall not discriminate students on any basis.



## **66. Suchita Srivastava & Anr v. Chandigarh Administration**

**DATE OF JUDGMENT:** 28/08/2009

**COURT:** Supreme Court of India

**JUDGES:** K.G. Balakrishnan, P. Sathasivam, B.S. Chauhan

**REFERENCE:** 9 SCC 1 (2009)

### **PARTIES**

**Petitioner:** Suchita Srivastava

**Respondent:** Chandigarh Administration

**SUBJECT:** The judgment revolves around the question of whether “**a mentally retarded person has sufficient mental capacity** to decide if she can carry forward her pregnancy?”

**FACTS:** The petitioner in the present case has requested the Court to **allow** a mentally retarded rape victim to continue her pregnancy as she **was willing to** do the same. The victim who was an orphan was brought up in Ashreya a State-run orphanage. Once when she was diagnosed for lower abdominal pain the doctors confirmed that, she was 8-10 weeks pregnant which was later found to be a **consequence of rape**. The respondents in the present case initially approached the HC to allow her to terminate the pregnancy. The HC formed a Medical board to probe into the matter. Further the Medical board confirmed that, though she was mentally retarded she showed her willingness to carry forward her pregnancy. But the Court not accepting the decision of the Medical board **ordered her to undergo termination**. Hence the present petition has been filed before the SC to allow her to have the child.

### **IMPORTANT PROVISIONS:**

**The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed



(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 21: No person shall be denied of his life or personal liberty except according to the procedure established by law.

### **ISSUES:**

1. Whether “a mentally retarded person has sufficient mental capacity to decide if she can carry forward her pregnancy?”

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner contended that,

- Reproductive rights form a part of **personal liberty under Article 21** of the Constitution.
- The victim has **only mild mental retardations** and was not suffering from **mental illness**.
- The Medical Termination of Pregnancy Act, 1971 **requires consent** of the pregnant woman. Therefore, claiming it to be an act in her “**best interest**” termination cannot be carried forward without her consent.
- Further the Medical Board has also submitted its report which states that, the victim may be permitted to have her child.

The respondents contended that,

- The victim herself is **dependent** on someone to help her survive on top of it she may not be able to take proper care of the child.
- Being a mentally retarded person, **she is incapable of taking valid decisions**.
- Since the victim is under the care of the State, it should be permitted to take decisions in the victim’s best interest.

Upon hearing the parties to the case, the Court held that, the victim’s pregnancy **may not be terminated without her consent** as it may not be in her best interest. However, considering her mental health which may be affected due to the biological changes in her body the Court directed the concerned authorities to **provide her with all medical needs** during pregnancy and childbirth. The **Chairperson** of the National Trust for Welfare of Persons with Autism,



Cerebral Palsy, Mental Retardation and Multiple Disabilities (constituted under the similarly named 1999 Act) was asked to **help the victim raise her child**.

### **67.Sunil Batra v. Delhi Administration**

**DATE OF JUDGEMENT** – 20<sup>th</sup> December 1979

**COURT** – Supreme Court of India

**JUDGES** – Justice V. R. Krishna Iyer

**CITATION** – 1980 AIR 1579

**PARTIES** – Sunil Batra (Petitioner)

Union of India (Respondent)

**Subject:** The validity of criminalizing suicide as being violative of Articles 14 and 21.

**FACTS** – The Petitioner Sunil Batra was found guilty of the offence of murder and was awarded capital punishment in the year 1977 as a class B prisoner eligible for certain amenities. After the death penalty was levied on him, he was locked up in a single cell without other human connections other than as necessary. He filed an appeal in the HC due to the same which was dismissed. The petitioner then wrote a letter to the SC stating the brutal treatment of the Police on another prisoner – Prem Chand. The Court took up the same as a PIL under Article 32 and concerned officials were served with a notice. Based on the findings of the Officials responsible to look into the conditions of Tihar Jail, issues were framed regarding the treatment of Prisoners in jail and their Fundamental Rights.

Whether Section 309 of the Indian Penal Code punishing the act of attempt to suicide is violative of Article 14, 21 of the Constitution?

**CONTENTIONS** –

**Petitioner** – The Petitioner did not seek the release of the prisoner but sought for a dynamic role of judicial remedies for a prisoner. The concept of solitary confinement (Section 30 Prisoners Act) and the arbitrary powers given to the police in handling the prisoners was



questioned with respect to their rights under Articles 14 and 21 of the Constitution. The usage of bar fetters (Section 59 Prisoners Act) on prisoners inside the jail was also being questioned as against the liberty of the prisoner.

**Defendant** – The defendants contended that the legislation – Prisoners Act, the sections of which were being questioned as being unconstitutional, were made for “Prisoners”, which is an essential institution in the enforcement of criminal law. The Sections as provided are in nature of promoting such a law where the usage of certain practices are necessary for the “safe custody of prisoners”. Since there are certain dangerous and unsafe prisoners who need to be treated in a harsher manner as compared to the Court sanctioned punishment in order to maintain peace and law, the same is necessary. Such determination of the prisoners is not arbitrary but is based on the individual behavior of the prisoner. the legislative policy is clear and definite, discretion vested in a body of administrators or officers to make selective application of the law does not infringe Article 14. Since there is always presumption as to constitutionality of statutes, the Act and its provisions have been argued as being intra-vires to the Constitution and in promotion of criminal justice and peace.

#### **JUDGEMENT –**

The Supreme Court explained the powers of the High court under article 226 and Supreme court under article 32 of the Constitution and observed that the courts have wide powers under these articles including powers to issue any of the writs. In this respect, the court referred its judgment and statutory law of other states also. The court further observed that it has the inherent power and responsibility to intervene and protect the prisoner against mayhem crude or subtle and may use Habeas Corpus for enforcing in-prison humanism and forbiddance of harsher restraints and heavier severities than the sentence carries. Court by referring to Prisons act and rules and Punjab prison manual observed that the court understands these provisions to cover the ground of reception of grievance from prisoners and issuance of orders thereon after prompt inquiry. The district magistrate said that in this capacity he is a judicial officer and not an executive head and must function independently of the prison executive. To make prisoner’s right in correctional institutions viable this Court directed the district magistrate concerned to inspect the jails in his district once every week, receive complaints from individual prisoners, and enquire into them immediately. Court, in conclusion, held that Prem Chand has been tortured illegally and the Superintendent cannot absolve himself from responsibility even though he may not directly be a party. The supreme



court directed the Superintendent to ensure that no corporal punishment or personal violence on Prem Chand shall be inflicted. No irons shall be forced on the person of Prem Chand in vindictive spirit. Some directions were also given to the state such as to prepare a Hindi prison's handbook etc. Thus, the petition was allowed and directed a writ to issue, including all mandates and further order that a copy of the judgment be sent for suitable action to the Ministry of Home Affairs and to all the state governments since prison justice has pervasive relevance.

**68. UNNI KRISHNAN, J.P. AND ORS. V. STATE OF ANDHRA  
PRADESH AND ORS.**

Bench: Chief Justice L.M. Sharma, Justice S.P. Bharucha, Justice S.R. Pandian, Justice B.P. Jeevan Reddy and Justice S. Mohan

Petitioner: Unni Krishnan, J.P. and Ors

Respondent: State of Andhra Pradesh and Ors.

Citation: 1993 AIR 2178, 1993 SCR (1) 594

Issue:

- Whether a citizen has a Fundamental Right to education for a medical, engineering or other professional degree?
- Whether the Constitution of India guarantees a fundamental right to education to its citizens?
- Whether a citizen has the fundamental right to establish and run an educational institution under Article 19(1)(g)?
- Whether the grant of permission to establish and the grant of affiliation by a University imposes an obligation upon an educational institution to act fairly in the matter of admission of the students?

*Facts:*

- The case comes through petitions filed by private educational institutions to challenge the state laws in the states of Tamil Nadu, Karnataka, Andhra Pradesh and Maharashtra.



These states enacted a law to regulate the capitation fee charges by private educational institutions.

- The suit also questions the judgment given by the apex court in ***Mohini Jain V. State of Karnataka, 1992 AIR 1858, 1992 SCR (3) 658***. Mohini Jain was a non-Karnataka student who applied for admission in M.B.B.S. in a private medical college in Karnataka. She was asked to pay Rs 60,000 for the first year's fees and submit bank guarantee for the rest of the period. She was not admitted to the college because she was not in a position to pay the fees. She was asked to pay a capitation fee of Rs.4,50,000 as a condition of admission by the management. She came up to this court under Article 32 challenging the notification of the Karnataka Government and asking for a direction to be admitted on payment of the same fee as was payable by the Karnataka students admitted against the "Government Seats".
- The court was of the view that Parts III and IV of the Constitution are supplementary and ***unless the right to education mentioned in Article 41 is made a reality, the fundamental rights in Part III will remain beyond the reach of the illiterate majority.***
- ***Article 21 was interpreted to include the right to live with human dignity. "The 'right to education' flows directly from right to life."*** In simple language, right to education is associated to the fundamental right in Part III of the Constitution. The state has the duty to provide free education at all the levels.
- The court held that the notification of Karnataka Government was outside the ambit of the act. The appeal of Miss Mohini was allowed.
- Then, the private institutions came before the court pleading that if the Mohini Jain Judgment is implemented they will be forced to close down their institutions.

*Argument raised by Petitioners:*

- That how the private institutions are running colleges and universities is similar to an industry.
- The petitioner raised the argument that by Mohini Jain Case Judgment it is clear that it is the duty of the state to impart education to all.
- The State does not have a monopoly in imparting education as, every citizen has the fundamental right to establish an educational institution as a part of the right guaranteed to him by Article 19(1)(g) of the Constitution.





- Even if a person does not have a right to open up an educational institution as an industry, he has the right to establish a self-financing educational institution.
- The Government or University that the private educational institutions should admit students only on merit as it has been recognised by this court that one who pays for the education can stipulate the procedure in which he will admit students. The recognitions won't make a college or university a state organ.

*Argument raised by Respondent:*

- The respondent focused most of its contention on the fact that under Article 45 it is the duty of state to give free education till the age of 14 years and stated that how the states are working for imparting primary education.
- Imparting education has always been recognised as a religious duty, it has been never recognised as a trade or business. It is a mission, not a trade.
- Providing education to children has been considered the most important function of the State.
- The concept of collecting the cost of the education is wrong and is opposed to public policy.
- It is upon the Government or the University to make it compulsory in order to get recognition/affiliation that the admission shall be on the basis of merit and merit alone.
- Providing education is the duty of the state and the state has the authority to make rules and regulations. Any action on part of the educational institution shall be deemed to be a 'state action' because they take actions as per the rules made by state.
- It was contended that the Central Government does not have resources to take any additional financial responsibility for medical or technical education. As the total budget the health sector gets is 3.2% and medical education gets a pro-rata share. So, the Government cannot help any private educational institution financially.

*Judgment:*

The court held that conferring upon the state a constitutional obligation to impart free education at every level for every citizen directly or indirectly via State agencies is not stated in the Constitution and it is unrealistic. A private educational institution does not become an agency when the Government grants it recognition and it is not possible to do so. The principles laid down in Mohini Jain's case do require reconsideration. It will not be wise to discourage private initiative in providing educational facilities, as the private sector will help us in growing and



moving forward; and will also strengthen our education standards. Regulations on the private should be made more stringent to ensure that private educational institutions maintain minimum standards and facilities. Admissions should be based on merit in all categories, subject to reservation to some categories like economically weaker sections and; the procedures and norms should be dealt with in advance.

The court stated that cannot be contended that education must be available free and it must be run on a charitable basis.

The citizens have a fundamental right to education and it is enshrined in Article 21, though not an absolute right. It has to be read with Article 41 and 45 which implies that every citizen of this country has a right to free education till he attains 14 years. Then it is subject to economic capacity of state. Obligations under Articles 41, 45 and 46 on the state can be discharged by starting institutions of its own or by aiding, recognising or granting affiliation to private educational institutions. The private institutions right to charge higher fee, not exceeding the ceiling fixed.

A citizen can establish an educational institution but does not has a right to affiliation or recognition or to grant-in-aid from the State. Any Government/University or authority is not competent to grant recognition or affiliation except in accordance with the scheme defined by this court. Those receiving aid will be subject terms and conditions.

Section 3-A of the Andhra Pradesh Educational Institutions Act, 1983 violate the right to equality under Article 14 and was declared void. The declaration of the Andhra Pradesh High Court in this behalf is affirmed. Appeal and Petitions were disposed off.

**69. VELLORE CITIZENS WELFARE FORUM v. UNION OF INDIA**  
**and OTHERS**

**DATE OF JUDGEMENT:** 28/08/1996

**COURT:** Supreme Court of India

**JUDGES:** KULDIP SINGH, FAIZAN UDDIN, K. VENKATASWAMIT, JJJ

**PARTIES:**

**Petitioner:** Vellore Citizens Welfare Forum

**Respondents:** Union Of India & Others



### **SUBJECT:**

In this case a petition was filed against contamination which was caused by the release of untreated effluent by tanneries and other businesses into agricultural areas, street sides, waterways and open lands, and into the river Palar which is the source of water supply to the inhabitants of the region. This is a leading case in which the Apex Court basically analyzed the relationship between environment and development.

### **FACTS:**

The petitioner filed a Public Interest Case under Article 32 of Indian Constitution. Petition was filed against the huge scale contamination caused to Stream Palar due to the release of untreated effluents by the tanneries and other businesses within the State of Tamil Nadu. The water of Stream Palar is the main source of drinking and washing water for the individuals living around. The Tamil Nadu Agricultural College Research Centre, Vellore found that about 35,000 hectares of rural land has ended up either completely or somewhat unfit for cultivation.

### **IMPORTANT PROVISIONS:**

#### **The Constitution Of India:**

- Article 32(1): The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed
- Public Interest Litigation

#### **The Environment (Protection) Act,, 1986:**

- Section 3(3)

#### **THE WATER (PREVENTION & CONTROL OF POLLUTION) ACT, 1974:**

- Section 45A: Penalty for Contravention of Certain Provisions of the Act.

#### **Principles:**

- Sustainable Development
- Polluter pays principle
- Precautionary principle

### **ISSUES:**



- 1) The question which emerged for consideration was whether the tanneries ought to be permitted to proceed to function at the cost of lives of lakhs of people.

### **ANALYSIS OF THE JUDGEMENT:**

#### **Contentions raised by the petitioners:**

- 1) It was presented by the petitioner that the total surface and sub-soil water of stream Palar has been intoxicated and has brought about non-accessibility of consumable water to the tenants of the region.
- 2) The tanneries within the State of Tamil Nadu have caused environmental degradation within the area.
- 3) A study reveals that 350 well out of an total of 467 utilized for drinking and water framework purposes have been contaminated.

#### **Contentions raised by the respondent:**

- 1) The primary contention was that the standard with regard to Total Dissolved Solids (TDS) settled by the Board was not legitimized.
- 2) The Ministry of Environment and Forests (MEF) has not totally set down models for inland surface water discharge for TDS, sulfates, and chlorides.

#### **Decision and Reasoning:**

The court directed all the Tanneries to deposit a sum of Rs. 10,000 as fine within the office of Collector. The Court further directed the State of Tamil Nadu to grant Mr. M. C. Mehta with a sum of Rs. 50,000 as appreciation towards his endeavors for assurance of Environment. The Court in this case emphasized on the constitution of Green tribunal in India dealing particularly with things relating to environment security additionally for rapid and quick transfer of natural cases.

### **CONCLUSION:**

The Apex Court delivered its judgment making all endeavors to preserve harmony between environment and development. The Court conceded that these Tanneries in India are the major foreign trade earner and additionally give business to many individuals. But at the same time, it devastates the environment and postures a health risk to everyone.

## **70. Vishaka v. State of Rajasthan**



**DATE OF JUDGMENT:** 13/08/1997

**COURT:** Supreme Court of India

**JUDGES:** Sujata V. Manohar, B. N. Kirpal

**REFERENCE:** AIR 1997 SC 3011

**PARTIES**

**Petitioner:** Vishaka

**Respondent:** State of Rajasthan

**SUBJECT:** The judgment revolves around the need for guidelines to prevent sexual harassment at workplace.

**FACTS:** The present writ petition was filed due to the brutal gang rape of a social worker in Rajasthan. The petitioner has prayed for guidelines for the prevention of sexual harassment at workplace. The petitioners also prayed for the establishment of gender justice at workplace.

**IMPORTANT PROVISIONS:**

**Article 21:** No person shall be deprived of his life or personal liberty except according to the procedure established by law.

**Article 14:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

**ISSUES:**

1. Whether there was a need to consider settled law and guidelines with regard to prevention of sexual harassment at workplace?

**ANALYSIS OF THE JUDGEMENT:**

The petitioner contended that,

- Gender justice is the base for the principle of equality under Article 14, 15 and 16 of the Constitution.
- There is a grave need for laws governing sexual harassment at workplace



The respondents in the present understanding the level of public importance involved in the present case accepted the notice from the Court to take required measures to prevent such inhumane activities in Rajasthan.

Further the Court invoking its power under Article 142 issued guidelines in this matter which will be prevalent unless and until a legislation is passed in that regard. Some of the key points include:

- (a) Express prohibition of sexual harassment at the workplace should be notified, published and circulated in appropriate ways.
- (b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- (c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

### **71. Voluntary Health Association of Punjab v. State of Punjab**

**DATE OF JUDGMENT:** 08/11/2016

**COURT:** Supreme Court of India

**JUDGES:** Dipak Misra, Shiva Kirti Singh

**REFERENCE:** WRIT PETITION (CIVIL) NO. 349 OF 2006

#### **PARTIES**

**Petitioner:** Voluntary Health Association of Punjab

**Respondent:** State of Punjab



**SUBJECT:** The judgment revolves around the social evil of sex selective abortion and the grave need to undertake measures to resolve the same.

**FACTS:** The petitioners filed a writ petition under Article 32 of the Constitution seeking direction to the Union of India for effective implementation of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996

**IMPORTANT PROVISIONS:**

**The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- **Article 21:** No person shall be deprived of his life or personal liberty except according to the procedure established by law.

**ISSUES:**

1. Whether there is a need to formulate guidelines for the effective implementation of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996?

**ANALYSIS OF THE JUDGEMENT:**

**The petitioner contended that,**

- The rise of pre-natal diagnostic centres in urban areas of the country using pre-natal diagnostic techniques for determination of sex of the foetus and that the said centres had become very popular and had tremendous growth, as the female child is not welcomed many Indian families and the consequence that such centres became centres for female foeticide which affected the dignity and status of women.
- Female foeticide has its roots in the social thinking, which is fundamentally based on certain erroneous notions, egocentric traditions, perverted perception of societal



norms and obsession with ideas which are totally individualistic sans the collective good. All involved in female foeticide deliberately forget to realise that when the foetus of a girl child is destroyed, a woman of the future is crucified.

Taking account of the petitioner's contention the respondent was asked to submit reports to furnish the measures taken by them to prevent sex selective abortions.

The Court finally held that, when a female foetus is destroyed through artificial means which is legally impermissible, the dignity of life of a woman to be born is extinguished. It corrodes the human values. The Legislature has brought a complete code and it subserves the constitutional purpose, but the object is not achieved by improper implementation.

Therefore, the Court gave direction to the respondents for the effective implementation of the said Acts. Some of the notable directions include:

- Conducting campaigns and awareness programmes to educate people
- Maintain a record of number of pregnancies and birth
- Immediate legal action against anyone who violates the Act and Rules.

## **72. Acharya Jagdishwaranand v. Commissioner of Police, Calcutta**

**DATE OF JUDGMENT:** 20/10/1983

**COURT:** Supreme Court of India

**JUDGES:** Misra Ranganath, P.N. Bagawathi, Amendra Nath Sen.

**REFERENCE:** 1984 AIR 512

### **PARTIES**

**Petitioner:** Acharya Jagdishwaranand

**Respondent:** Commissioner of Police, Calcutta





**SUBJECT:** The case revolves around the question of whether **Tandava dance** performed by the Ananda Marga group **in streets** forms an essential religious practice under Article 25 of the Constitution of India?

**FACTS:** The petitioner belongs to the Anada Marga religious group. They perform Tandava dance on streets **with skulls and knives in hand**. Calling it to be against public morality the Police department issued **orders under section 144 of CrPC**. The petitioners initially approached the HC under Article 226 to direct the respondents to not obstruct their Tandava dance performance. However, the petition was dismissed therefore the members of the Ananda Marga group filled a case in the Supreme Court under Article 32 of the Constitution stating that the Police department violated their rights under **Articles 25 and 26**.

### **IMPORTANT PROVISIONS**

The Indian Constitution

- Article 25(1): Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to **profess, practise and propagate** religion.
- Article 32: Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 26: Freedom to **manage religious affairs Subject to public order, morality and health**, 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;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law

### **ISSUES:**

1. Whether Ananda Marga form a **religious denomination under Article 26** of the Constitution?



2. Whether performance of Tandava dance in streets an **essential religious** practice under Article 25 of the Constitution?

**ANALYSIS OF THE JUDGEMENT:**

The petitioner in the instant case contended that,

- They **form a separate religious denomination** under Article 26 of the Constitution and therefore the State cannot interfere in their administrative matters.
- Tandava dance is an essential religious practice under Article 25 of the Constitution for Ananda Margi's therefore they have complete rights to **perform the dance in private and public.**

Rebutting the arguments, the respondents contended that,

- Performance of the dance in streets creates a lot of **hindrances to the general public.**
- Also, carrying sharp objects and those which are scary in nature like skull will lead to **public disorder.**

Upon hearing the parties to the case the Court held that, the Ananda Marga group is a **part of the Hindu religion and does not form a separate religious denomination** under Article 26 as the writings of the founder of the Ananda Marga group has the essence of Hindu religion. Further they belong to the **Shaivaite group** of Hindu religion which gives us a clear conclusion that, it is a definite part of that religion.

The Court further went on to clarify that, performance of Tandava dance **in public i.e. in streets is not mandatory.** However, they may perform the dance in private. Also, the orders issued by the Police department under section 144 of CrPC was only **against carrying of weapons** during the dance and not the dance per se.

**CONCLUSION:** The rights guaranteed under Articles 25 and 26 are always subject to **public order, morality and health.** Since Tandava dance performed by the petitioner's group in the present case was against public order and morality the Court obstructed their performance in public. However, they were permitted to perform the dance in private.

**73. Atheist Society of India v. Govt. Of Andhra Pradesh**

**DATE OF JUDGMENT:** 04/08/1992



**COURT:** High Court of Andhra Pradesh

**JUDGES:** J E Prasad

**REFERENCE:** AIR 1992 AP 310

**PARTIES**

**Petitioner:** Atheist Society of India

**Respondent:** Govt. Of Andhra Pradesh

**SUBJECT:** The judgment revolves around the right to profess practice propagate religious believes guaranteed under Article 25 of the Indian Constitution. Further, it brings about the principles of Secularism which forms a part of the basic structure doctrine.

**FACTS:** The petitioners filed a **writ of mandamus** before the HC under Article 226 of the Indian Constitution to direct the State to prohibit the performance of religious ceremonies in State owned organisations.

**IMPORTANT PROVISIONS:**

The Indian Constitution

- Article 25(1): Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to **profess, practise and propagate** religion.
- Article 226: Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, **mandamus**, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

**ISSUES:**

1. Whether the performance of religious ceremonies at State owned organisations violative of Article 25 and the Secular principles of the Indian Constitution?

**ANALYSIS OF THE JUDGEMENT:**



The petitioner society contends that,

- The State is **disregarding secular principles** by encouraging religious sentiments by permitting performance of rituals, such as, breaking of coconuts, performing poojas and chanting of Mantras or Sutras of different religions at State owned organisations.
- Also, such encouragement of the State may lead to **communal tensions** creating communal riots involving massacres of people in various parts of the State.
- Exhibiting religious symbols in the bus-stations and in the buses belonging to the State and its undertakings, such as APSRTC and the Electricity Board, should be prohibited, as offending the secular features as enshrined in the Constitution, as they **encourage religious sentiments**.

However, the respondents addressing the issues raised by the petitioners submitted that,

- It is stated that no rules are framed, or circulars issued directing the performance of any such rituals. The State is **neither preaching nor encouraging** to practice religion in any manner.
- The petitioner-society has no faith in any religion and God, which itself may be called a '**particular faith**', and the petitioner cannot compel the State to interfere with the religious freedom of the citizens by making them to follow the 'faith' of the petitioner-society.
- The State is secular in the sense that the Government will not associate itself directly with any religion, but at the same time, every religion and faith are equally honoured and every citizen is free to practice his own religious belief. India is not anti-religious to oppose any religious faith.
- Their right to perform such religious functions in pursuance of their religious faith draws its roots from the words of the preamble "**SOCIALIST SECULAR**"

The respondents also relied on the judgment of Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shipur Mutt<sup>9</sup>, where it was held that it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and **observation ceremonies** and modes of worship which are regarded as **integral parts** of religion, and these forms and observances might extend even to food and dress. They further

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<sup>9</sup> 1954 AIR 282.



move on to say that such activities are carried on as a sign to achieve success in every new beginning.

The Court on hearing the merits of the petition held that neither does such practices violate religious feelings of any groups nor does it affect the secular principles, therefore Thereby the **petition was dismissed.**

**CONCLUSION:**

Secularism in western countries means non acceptance of any religion however in India secularism means **acceptance of all** religions. Therefore, the practices performed by people according to their religious believes **without any harm** to the society should be considered as an act done in furtherance of their faith and belief and must be permitted as in the present case.

**74.The Commissioner, Hindu Religious Endowments, Madras Vs. Shri Lakshmindar Tirtha Swamiyar of Shri Shirur Mutt.**

**DATE OF JUDGEMENT:** 16/04/1954

**COURT:** Supreme Court of India

**JUDGES:** Mahajan, Mehar Chand (Cj), Mukherjea, B.K., Das, Sudhi Ranjan, Bose, Vivian, Hasan, Ghulam & Bhagwati, N.H. & Aiyar, T.L. Venkatarama

**REFERENCE:** 1954 AIR 282

**PARTIES:**

**Petitioner:** The Commissioner, Hindu Religious Endowments, Madras



**Respondents:** Shri Lakshminder Tirtha Swamiyar of Shri Shirur Mutt

**SUBJECT:**

The trial of Essential Religious Practices was first laid forward by the Supreme Court in 1954 in the Shirur Mutt case. A seven Judge Bench of the Supreme Court held that what establishes the essential practice of a religion is essentially to be found out using the reference of the teachings of that religion itself.

The Court went to the degree of expressing that a religious group or association enjoys total self-governance in choosing what rituals and functions are fundamental as per the principles of the religion they hold and no outside power has any purview to meddle with their choice in such issues.

**FACTS:**

- The Shirur Mutt is one of the eight mutts in Udipi which manage the temple, in rotation basis. It's called the Paryaya system, where the swamy of each mutts manage the temple and offer the primary worship of the temple in a rotating system. One of these eight mutt is the Shirur Mutt.
- The swamy who came in to the Madathipathy's seat, was a minor. There were people managing the affairs for him. After he became a major, he started managing affairs by himself. The mutt ran into financial difficulty, and they were forced to borrow money. At that time the Udipi region was under Madras Presidency.
- Under the Hindu Charitable Endowments rules Act, they appointed somebody to come and manage the affairs of the mutt. They essentially wanted to take over the mutt's affair and just keep the swamy as a figure head and manage the entire affairs. So, eventually this transformed into a power struggle.

**IMPORTANT PROVISIONS:**

- **The constitution of India:**
  - 1) Article 25: Freedom of conscience and free profession, practice and propagation of religion
  - 2) Article 26: Freedom to manage religious affairs Subject to public order, morality and health.
- **Madras Hindu Religious and Charitable Endowments Act, 1951:**

**ISSUES:**



- 1) Whether the Paryaya system, the practices carried by the temple is an essential practice and whether this practice falls under the ambit of freedom of religion?

**ANALYSIS OF THE JUDGEMENT:**

- What comprises the essential practice of a religion is basically to be found out with the reference of that religion itself.
- On the off chance that the fundamentals of any religious faction of the Hindus prescribe that contributions of food ought to be given to the deity at specific hours of the day, that periodical services ought to be performed in a particular way in, at specific times of the year or that there ought to be daily recital of sacred writings or ablation to the holy fire, all these would be viewed as parts of religion and the minor truth that they include expenditure of cash or work of priests and hirelings or the utilization of marketable commodities would not make them secular exercises partaking in a business or possessing financial character;
- every one of them are religious practices and ought to be viewed as matters of religion within the meaning of article 26(b) and 25(2)(a).

**Conclusion:**

An essential practice should be essentially religious in practice. It should be essentially religious in nature. If it is essentially religious in nature the state does not have any authority to comment on it or to regulate it, except, where there are religious rituals where there are aspects of self harm. But as long as it does not exceed certain limits and actually involve human sacrifice the state cannot interfere.

**75.Indian Young Lawyers Association v. The State of Kerala**

**DATE OF JUDGMENT:** 28/09/2018

**COURT:** Supreme Court of India

**JUDGES:** Dipak Misra, AM. Khanwilkar, R. Nariman, DY. Chandrachud, Indu Malhotra

**REFERENCE:** (2018) 13 SCALE 75

**PARTIES**

**Petitioner:** Indian Young Lawyers Association



Respondent: The State of Kerala

**SUBJECT:** The judgment questions the validity of an **age-old practice** of not allowing women who range between **10 to 50 years** into the temple of lord Ayyappa in Sabarimala, Kerala.

**FACTS:** The petitioner Association filed a writ petition under Article 32 of the Constitution questioning the validity of **Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965** which prohibited the entry of women who range between 10-50 years.

**IMPORTANT PROVISIONS:**

The Indian Constitution:

- Article 32: Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India
- Article 15: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
- Article 17: Untouchability is abolished and its practice in any form is forbidden The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law
- Article 25(1): Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion
- Article 25(2)(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.
- Article 26(b): Every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion

**ISSUES:**





1. Whether Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 is constitutionally valid?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioners contended that,

- The exclusionary practice of women between 10 to 50 years of age is due to certain **biological features** which is exclusively present only in women however men of all age groups are permitted to enter without any restrictions.
- This practice is violative of Articles 14 and 15 as there is an **unreasonable sex-based discrimination**. Prime requirement of any legislation to pass the test of reasonability under Article 14 is the presence of **intelligible differentia**, i.e. a valid and reasonable ground on which a classification is made, which has been miserably failed in the present case.
- Due to this unreasonable classification the **religious freedom** of women between 10-50 years of age under Article 25 of the Constitution is grossly violated. Further the exclusionary practice which is not the core essential principle of the religion cannot seek protection under Article 25 as it is **not an essential religious practice**.
- Enlarging the scope of Article 17 which prohibits untouchability, the present temple entry rule is to be viewed as a rule which **promotes the evil of untouchability**.

The respondents contended that,

- Women as a whole were not prohibited entry, only those between 10-50 years were excluded due to the **celibacy form** of lord Ayyappa.
- The Ayyappa devotees form a **separate denomination under Article 26** as all the conditions to constitute a denomination such as common faith, common name, and common organisation stands fulfilled. All the devotees who wish to come to the temple has to undergo a 41 days vratham (fasting) during which they wear similar dress either in orange or blue, a chain, and abstain from non-religious practices. Once the 41 days fasting commences the devotees are called as Ayyappas and not by their individual name. Therefore, the temple is at liberty to decide its own administrative matters.

Upon hearing the parties to the case, the Court held that, the **exclusionary practice is violative** of fundamental rights under Articles 14,15, 17 and 25. Further, the Court went on



to say that, Exclusionary practices are contrary to **constitutional morality**. Any practice which is **derogatory to the dignity of women** lacks constitutionality. The social exclusion of women, based on **menstrual status, is a form of untouchability** which is an anathema to constitutional values. Notions of “**purity and pollution**”, which stigmatize individuals, have no place in a constitutional order.

### **76.M. Ismail Frauqui and Ors. Vs. Union of India (UOI) and Ors.**

**DATE OF JUDGMENT:** 24.10.1994

**COURT:** Supreme Court of India

**JUDGES:** M.N. Venkatachaliah, C.J., A.M. Ahmadi, J.S. Verma, G.N. Ray and S.P. Bharucha, JJ.

**REFERENCE:** AIR 1995 SC 605 A

**PARTIES:**

**Appellants:** M. Ismail Frauqui and Ors.

**Respondent:** Union of India (UOI) and Ors.

**SUBJECT:** While offer of prayer or worship could be a religious practice, its offering at each area where such prayers can be offered would not be a fundamental or necessarily part of such religious practice unless the place includes a specific importance for that religion so as to create an essential or indispensable part thereof. In this landmark judgment, the Apex Court considered the question of securing of religious place by the State. A temple, church or a mosque, etc, are fundamentally considered as immovable properties and are subject to protection under Article 25 and 26.

**FACTS:** Ayodhya, in the north of India is a township in District Faizabad of Uttar Pradesh. It has for some time been a place of blessed pilgrimage as a result of its mention in the epic Ramayana as the place of birth of Shri Ram. The structure normally known as Ram Janma Bhoomi-Babri Masjid was raised as a mosque by one Mir Baqi in Ayodhya in 1528 AD. It is asserted by certain sections that it was built at the site accepted to be the birth-spot of Shri Ram where a temple had stood before. This resulted in a long-standing debate. The discussion entered a new stage with the putting of statues within the debated premise in



December, 1949. The premises were attached under section 145 of the CrPC. Civil suits were recorded without further ado from there on. Interim orders in these civil suits limited the parties from evacuating the idols or interfering with their worship. In impact, hence, from December, 1949 till December 6, 1992 the structure had not been utilized as a mosque. In any case, a dispute broke out in December 1992. It was within the consequence of the Babri Masjid demolition in 1992 that the Government of India ordered the Acquisition of Certain Area at Ayodhya Act, 1993. Wherein certain arrangements were challenged before the Apex Court.

### **IMPORTANT PROVISIONS:**

The Indian Constitution:

Article 25: Freedom of conscience and free profession, practice and propagation of religion.

Article 26: Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right.

### **ISSUES:**

- 1) Whether the state can acquire land in a disputed religious place?

### **ANALYSIS OF THE JUDGEMENT:**

The rule of secularism illumines the provisions of Articles 15 and 16. Article 15 obliges the State not to discriminate against any citizen on the ground of religion. The commitment isn't subject to any restriction. Article 16(2) puts: no citizen shall on the ground of religion be ineligible for or be discriminated against in regard of any work of office under the State. Ayodhya may be a storm that will pass. The nobility and respect of the Supreme Court cannot be compromised because of it. Having respect to the construction put upon the act it is neither vital nor suitable to discuss the other challenges to their validity and maintainability, respectively. It may, however, be said that the act was public order legislation and, therefore, beyond the competency of Parliament very plausible. Hinduism is tolerant faith. It is that tolerance leeway that has enabled Islam, Christianity, Muhammadanism, Judaism Buddhism Jainism and Sikhism to find shelter protection and support upon this nation. There is no doubt that the moderate Hindu has little taste for the tearing down of the place of worship of another to replace it with a temple. Moderate opinion shall find general expression and that communal brotherhood shall bring to the dispute at Ayodhya an amicable solution long before the courts



could resolve it. To quote Gandhiji again , "India cannot cease to be one nation because people belonging to different religious live in it.... In no part of the world are one nationality and one religion synonymous terms, nor has it ever been so in India". The Acquisition of Certain Area at Ayodhya Act, 1993, is struck down as being unconstitutional. The writ petitions impugning the validity of the Act are allowed. The issues in the suits in the Allahabad High Court withdrawn for trial to this Court are answered accordingly.

**CONCLUSION:** The Preamble to the Constitution of India proclaims that India is a secular democratic republic. Article 15 in Part III of the Constitution, which gives for fundamental rights, suspends the State from discriminating against any citizens on the ground of religion. Secularism is given pride of place within the Constitution. The question is to protect and secure all religions, to put all devout communities on a standard. When, subsequently, disciples of the religion of the larger part of Indian citizens make a claim upon and ambush the place of worship of another religion and by dint of numbers make conditions that are conducive to open disorder, it is the sacred commitment of the State to ensure that place of worship and to protect public order utilizing for the purpose such means and forces of law and order as are required. It is impermissible under the provisions of the Constitution for the State to procure that place of worship to protect public order.

### **77.Javed & Ors v. State of Haryana & Ors**

**DATE OF JUDGMENT:** 30/07/2003

**COURT:** Supreme Court of India

**JUDGES:** R.C. Lahoti, Ashok Bhan, Arun Kumar.

**REFERENCE:** Writ Petition (civil) 302 of 2001

#### **PARTIES**

**Petitioner:** Javed

**Respondent:** State of Haryana

**SUBJECT:** The judgment revolves around the question of whether sections **175(1)(q) and 177(1) of the Haryana Panchayati Raj Act, 1994** stands constitutionally valid?



**FACTS:** Section 175(1)(q) Haryana Panchayati Raj Act, 1994 **disqualifies** a person from holding certain offices in Panchayats if he has **more than two children**. And 177(1) of the provides an exception to it, which states that, the enforcement of disqualification shall **commence after one year from the commencement of the Act**. A person having more than two children upto the expiry of one year of the commencement of the Act is not disqualified. If a woman has conceived at the commencement of the Act, then any one of such couple would not be disqualified. Though not disqualified on the date of election if any person holding any of the said offices incurs a disqualification by giving birth to a child one year after the commencement of the Act he becomes subject to disqualification and is disabled from continuing to hold the office. Contending these sections validity, the petitioner filed a Special Leave Petition before the SC.

### **IMPORTANT PROVISIONS:**

#### The Indian Constitution:

- Article 136: Special leave to appeal by the Supreme Court:  
(1)Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.
- Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India
- Article 25(1): Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

### **ISSUES:**

1. Whether sections 175(1)(q) and 177(1) of the Haryana Panchayati Raj Act, 1994 stands constitutionally valid?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioner contended that,

- The provision is manifestly **arbitrary** and hence violative of Article 14.
- The **purpose** of the legislation is not served by the impugned provisions
- The provision is **discriminatory** in nature.



- The provision **intrudes into the personal liberty** of an individual which forms a part of Article 21
- In the **Muslim community** a person is permitted to marry upto 4 women therefore the provision intrudes upon the religious freedom of Islamic people.

Rebutting the contentions of the petitioners the respondents contended that,

- The impugned provisions satisfy the test of reasonability under Article 14 as there is a well-defined classification. **Those with two ore less number of children form a class and those with more than two children form a different class.** Therefore, equality among equals is satisfied.
- The provision is a **policy decision** taken by the executive for the effective implementation of **family planning programme**. Moreover, this being a policy decision is beyond the powers of judiciary due to the doctrine of separation of powers.
- **Article 243G(b)** provides that Gram Panchayats may be entrusted the powers to implement schemes for economic development and social justice including those in relation to matters listed in the Eleventh Schedule. Entries 24 and 25 of the Eleventh specifies family welfare and women and child development respectively.

Upon hearing the parties to the case, the Court held that, sections 175(1)(q) and 177(1) of the Haryana Panchayati Raj Act, 1994 are **constitutionally valid**, therefore the **petitions** which challenged the validity of the said provisions are liable to be **dismissed**.

### **78. John Vallamattom & Another vs Union Of India**

**DATE OF JUDGMENT:** 21 July, 2003

**COURT:** Supreme Court of India

**JUDGES:** A R. Lakshmanan

**REFERENCE:** Writ Petition (civil) of 242

#### **PARTIES**

**Petitioner:** John Vallamattom & Another



Respondent: Union of India.

**SUBJECT:** The case of Roman Catholic Priest, John Vallamattom v. Union of India, AIR 2003 relates to enactment of Uniform Civil Code.

**FACTS:**

**Kerala pastor John Valamatton** requested a writ petition in 1997 stating that **section 118 of the Indian Succession Act** discriminated against Christians due to **unreasonable restrictions on donating property for religious or charitable purposes by will.**

**IMPORTANT PROVISIONS:**

- **Constitution of India**
  - 1) Article 14: equality before the Law
  - 2) Article 15: prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
  - 3) Article 32: remedies for enforcement of rights conferred
- **The Indian Succession Act, 1925**
  - 1) Section 118: Bequest to religious or charitable uses.

**ISSUES:**

- 1) Whether section 118 of The Indian Succession Act, 1925 violates Article 14 and Article 15 of the constitution of India?

**ANALYSIS OF THE JUDGEMENT:**

- In his ruling, Judge of the Supreme Court of India V.N. Hare first looked at **the history of the law**, indicating that it was connected with **18th-century British law**, which had been repealed for a long time. He said the **constitution had clearly repealed all previous laws that was inconsistent with it's Provisions**. Thus, the question is whether the law is unconstitutional, but it only prevents continuity or further application after amendments.
- He pointed out that **s. 118 of the Act imposes a restriction only on Indian Christians**.
- **“It is difficult to appreciate as to why a testator would, although, be entitled to bequeath his property by way of charitable and religious disposition if he has a**



**wife but he would be precluded from doing so in the event that he has a nephew or a niece.”**

- In addition, he considers that the rights granted by Article 15 are personal and do not extend to the group, therefore they are not relevant to the present case. Finally, **the judge unanimously approved that the Indian Succession Act's section 118 is unconstitutional and in violation of article 14 of the Constitution.**

### **79.Lily Thomas V Union of India**

**Citation:** 6 SCC 224

**Bench:** S Ahmed, R Sethi

#### **Facts :**

- Sushmita Ghosh married Shri G. C. Ghosh in accordance with the Hindu rites on 10<sup>th</sup> May in 1984. However, on 1<sup>st</sup> April 1992, G.C Ghosh asked Sushmita Ghosh to agree to a divorce by mutual consent.
- He informed her that he had converted to Islam in order to marry Ms. Vanita Gupta and that if she did not agree to the divorce she would have to put up with being the second wife.
- Petitioner then asserted her rights guaranteed under Article 15(1) of the Indian Constitution and claimed that she had been discriminated against by Muslim Personal Law.
- Jamiat Ulema Hind filed for a review petition claiming that the law violated Articles 21, 22 & 25 of the Indian Constitution.

#### **Issues**

1. Whether there is a violation of Article 25 of the Indian Constitution due to the law laid down in the Sarla Mugdal judgement?
2. Whether the prosecution of a person for charges of bigamy under section 494 of the Indian Penal Code violates Article 21 of the Indian constitution?

#### **Application**





- There is no violation of Article 25 as apart from guaranteeing a right to freedom of religion, it also does not allow such freedom to encroach upon the religious right and personal freedom of other persons.
- Article 21 guarantees that no person shall be deprived of personal law and liberty except according to the procedure established by law. It has been factually conceded that none of the petitioners have been deprived of this right. The court held it would be too premature at this stage to foresee that the petitioners would be deprived of this right without following procedure. This procedure mentioned in Article 21 implies the law laid down by the Legislature. The Sarla Mugdal judgement has neither changed the procedure nor created any law for the people being prosecuted under section of 494 IPC. The judgement merely interpreted an already existing law.

### **80. Mohd. Hanif Quareshi & Ors v. The State of Bihar**

**DATE OF JUDGMENT:** 23/04/1958

**COURT:** Supreme Court of India

**JUDGES:** Das, Sudhi Ranjan (Cj), Aiyar, T.L. Venkatarama, Das, S.K., Gajendragadkar, P.B., Bose, Vivian

**REFERENCE:** 1958 AIR 731

#### **PARTIES**

**Petitioner:** Mohd. Hanif Quareshi & Ors.



Respondent: The State of Bihar

**SUBJECT:** The judgment revolves around the right to profess practice propagate religious believes guaranteed under Article 25 of the Indian Constitution. Further, the Court laid down the foundation for essential religious practice doctrine.

**FACTS:** The petitioners in the instant case challenged the validity of Bihar Preservation and Improvement of Animals Act, 1955, U.P. Prevention of Cow Slaughter Act, 1955 and the C.P. and Berar Animal Preservation Act, 1949.

**IMPORTANT PROVISIONS:**

The Indian Constitution

- Article 25(1): Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to **profess, practise and propagate** religion.
- Article 32: Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 19(1)(g): to practise any profession, or to carry on any occupation, trade or business.
- Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

**ISSUES:**

1. Whether the impugned legislations are in violation of Articles 19(1)(g), 25, and 14 of the Indian Constitution?

**ANALYSIS OF THE JUDGEMENT:**

The Bihar Preservation and Improvement of Animals Act, 1955, put a total ban on the slaughter of all categories of animal, of the species of bovine cattle. The U. P. Prevention of Cow Slaughter Act, 1955, put a total ban on the slaughter of cows and her progeny which included bulls, bullocks, heifers, and calves. The C. P. and Berar Animal Preservation Act,



1949, placed a total ban on the slaughter of cows, male or female calves of cow, bulls, bullocks, and heifers however the slaughter of buffaloes (male or female, adults or calves) was permitted only under a certificate granted by the proper authorities. No exception was made in any of these Acts permitting slaughter of cattle even for bona fide religious purposes. Due to the restrictions placed in the above legislations the petitioner contended that, the impugned legislations violate Articles 14, 19(1)(g) and 25 of the Constitution on the following grounds:

- The fundamental right to carry on trade under 19(1)(g) of butchers is violated
- Sacrifice of cows during Bakrid day is an Islamic religious practice which is prohibited by these legislations
- The classification of animals made by these legislations is arbitrary and unreasonable.

However, the respondents contended that, the impugned legislation is enacted in compliance with the Directive Principles of State Policy under Article 48 of the Constitution hence it has an overriding effect over the fundamental rights and stands valid.

Upon hearing the parties, the Court held that, a total ban on the slaughter of cows of all ages and calves of cows was quite reasonable and valid. Also, a total ban on the slaughter of female buffaloes or breeding bulls or working bullocks (cattle as well as buffaloes), as long as they were capable of being used as milch or draught cattle, was also reasonable and valid. However, a total ban on the slaughter of female buffaloes, bulls and bullocks (cattle or buffalo) after they ceased to be capable of yielding milk or of breeding or working as draught animals was not in the interests of the general public and was invalid. Further the Court clarified that, Article 25 of the Constitution is not violated in the present case as sacrifice of cows during Bakrid is not an obligatory practice. Also, the Court emphasised that Part III and Part IV of the Constitution must go hand in hand and not overriding each other.

**CONCLUSION:** Not all religious practices are obligatory only those which form the core principle of the religion becomes obligatory in nature. And only such practices are given protection under Article 25 of the Constitution.

### **81.State of Bombay v. Narasu Appa Mali**

**DATE OF JUDGEMENT** – 24<sup>th</sup> July, 1951



**COURT** – High Court of Bombay

**JUDGES** – Justice M.C. Chagla and Justice Gajedragadkar Chagla

**CITATION** – AIR 1952 Bom 84

**SUBJECT:** The scope of the application of personal laws under the term “laws in force” under Article 13 of the Constitution.

**PARTIES** – State of Bombay (Appellant)

Narasu Appa Mali (Respondent)

**FACTS** – The accused, Narasu Appa was convicted under Section 5 of the Hindu Bigamous Marriage Act and was sentenced to six months rigorous punishment by the Mebsana Magistrate with a fine of Rs. 100. The Sessions Judge of Mebsana dismissed the appeal on the same matter. The Act prevents bigamous marriages among Hindus who include Sikhs, Jains, Buddhists by definition and Section 5 under the same provides that if a non-minor contracts bigamous marriage then he shall be liable to a punishment of upto 7 years. This Act was hence challenged as being ultra-vires to the Constitution vide Articles 14, 25 and 15.

Whether personal laws are subject to Fundamental Rights guaranteed under the Constitution (Article 13) and what is the constitutional validity of the Bombay Prevention of Hindu Bigamous Marriage Act, 1957 in view of article 14, 15 and 25?

### **CONTENTIONS –**

**Appellant** – It was contended that with reference to Article 25 of the Constitution, Muslims and Hindu laws where women are allowed to marry once and the men are allowed to practice polygamy are both discriminating women on the basis of sex which is in violation of their right under Article 14 of the Constitution. The contention with reference to Article 13 was that personal laws cannot be included within the purview of the said article as the source of each custom and religion is different and therefore cannot be guided by the same law, i.e. Article 13 which provides that certain laws shall be void if they are inconsistent with the fundamental rights under Part III. The said law cannot be held void as it is in light of social reform and hence cannot be within the purview of Article 13 of the Constitution.



**Defendant** – It was contended that a Hindu Marriage is a sacramental union of two people for the procreation of a male heir – which is the basic religious practice and belief of the community. Therefore, restricting a person's right of second marriage, the Act is against Article 25 of the Indian Constitution. Further, since Muslims can marry upto 4 times (polygamy), the state is discriminating against Hindus on the basis of religion with the Act and is hence violative of Article 14 and 15 as the latter directs the State to not discriminate.

As per Article 13, it was argued that personal laws be added within its purview as laws in force as a term include "all laws" including personal laws. It was contended that the efficacy of fundamental rights does not vary in its application for personal laws and statutory laws and must come within its framework.

**JUDGEMENT** – The court held that if a religious practice is against the public morality, such a religious practice should subordinate the welfare of the society at large upon which it operates. With reference to equality, the Court held that there can be reasonable discrimination in this case the Hindus, which is social reform and hence the Act is not violative of Articles 14 and 15. Justice Gajendragadkar Chagla with reference to Article 13 held that if personal laws are brought within the purview of Article 13, then the abolition of untouchability would also be void. Therefore, personal laws are not laws under the ambit of Article 13(3) and do not come within the purview of 'laws in force' as under Article 372. The validity of the Act was therefore, upheld.

## **82. Mohd. Ahmed Khan v. Shah Bano Begum and Ors.**

**DATE OF JUDGEMENT:** 23.04.1985

**COURT:** Supreme Court of India

**JUDGES:** Y.V. Chandrachud, C.J., D.A. Desai, E.S. Venkataramiah, O. Chinnappa Reddy and Ranganath Misra, JJ.

**REFERENCE:** Criminal Appeal No. 103 of 1981

**PARTIES:**



**Appellants:** Mohd. Ahmed Khan

**Respondents:** Union of India & Others

**SUBJECT:**

This is a landmark judgement which has dealt with the issue of "Triple Talaq Verdict". This case is typically referenced as "Shah Bano Case". It is viewed as a truly disputable and problematic law challenge in India. This case has been validated to be an achievement in the battle of rights, opportunity for the Muslim ladies.

**FACTS:**

An application was made under Section 125 CrPC with respect to maintenance to a spouse who can't look after herself. The Appellant, a lawyer was wedded to Respondent in 1932. In 1975 the husband drove the respondent out of the home. In 1978 respondent filed an appeal under section 125 of Crpc, in JMFC Indore for maintenance. In 1978 the appealing party separated the respondent by irreversible Talak and claimed that since she is no more a spouse he has no commitment to supply support to her as he has as of now paid Rs.200 per month for 2 years in a way of Dower amid the period of Iddat. In 1979 the Judge ordered to pay a whole of Rs.25 per month to the respondent by way of maintenance.

The High Court of Madhya Pradesh upgraded the sum to Rs.179.20 per month. The Spouse made a special writ petition to Apex Court.

**IMPORTANT PROVISIONS:**

**Criminal Procedure Code, 1973:**

Section 125: Order for maintenance of wives, children and parents.

Section 125(3)(b): the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce.

**The Muslim Personal Law (Shariat) Application Act, 1937:**



According to the Act, the courts were to give decisions on matters of divorce, maintenance and other family issues based on Shariat.

### **The Muslim Women (Protection of Rights on Divorce) Act 1986:**

#### **ISSUES:**

- 1) Whether section 125 of crpc is concerned with Muslims or not?
- 2) Whether the whole of Mahr given by her spouse on divorce is sufficient to urge the husband freed and whether he is obligated for her maintenance?
- 3) Whether the Uniform Respectful code applies to all religion or not?

#### **ANALYSIS OF THE JUDGEMENT:**

Earlier to this case coming to the court, there were two Apex Court judgments expressing that the court might allow maintenance. In any case, it was felt that these were not strong enough. Hence, a five seat Constitution bench was formed to decide on the matter.

#### **Decision and Reasoning:**

The Apex Court in this matter conveyed a unanimous decision. The court centered on religious lack of bias of section 125 of CrPc, expressing that the religion of the companion was insignificant in choosing whether maintenance can be permitted under section 125 or not. The reason of this section was to secure dependents from homelessness and dejection, therefore, there was no reason to eliminate Muslim ladies. The court pronounced that Muslim law did not deal with the matter managed u/s 125. The court held that Mahr was not a sum paid to a Muslim lady 'on divorce'. The court said that Mahr implied a consideration of marriage. The court hence held that supporting maintenance would not go against the religion of Islam. The court affirmed the maintenance granted by Madhya Pradesh High Court (Rs. 179.20 each month ) and additionally granted to Shah Bano the legal costs of the appeal, which is settled at 10,000 rupees.

#### **CONCLUSION:**

This case was a notable decision because it keeps up the trust and faith of the individuals in the judiciary, as in this case, "Equity and justice has overcome religion". This claim was breakthrough point in legal history because it was bold, strong, unbiased and one of a kind decision. This judgment has stamped the significance of maintenance which should be given to the separated Muslim ladies who are not within the condition to gain employment and keep



up themselves. Indeed in spite of the fact that the decision of Shah Bano case given by the Supreme Court was nullified by the enactment of Muslim Women Act, the court held in further verdict's that separated Muslim ladies, under Section 125 of CrPc can confirm maintenance or divorce settlement from their previous spouse.

### **83. Shayara Bano v. Union of India**

**Bench:** Jagdish Singh Khehar, CJI

**Facts:**

Rizwan Ahmad (Husband) pronounced “Talaq, Talaq, Talaq” in the presence of two witnesses and delivered “Talaq nama” to Shayara Bano (wife). She filed a petition before the Supreme Court seeking a declaration that the practices of Instant Triple Talaq (ITT), polygamy, and nikah halala in Muslim personal law were illegal, unconstitutional, and in violation of Articles 14 (equality before law), 15 (non-discrimination), 21 (right to life with dignity) and 25 (right to freedom of conscience and religion) of the Indian Constitution.

The Court however chose to examine the issue of ITT alone. The Union of India supported the petition. Among the others who intervened in this case, the All India Muslim Personal Law Board and the Jamiat Ulema-e-Hind argued that the Court did not have jurisdiction to entertain a constitutional challenge to Muslim personal law and that the matter was in the domain of the legislature.

The Bebaak Collective and the Centre for Study of Society and Secularism – two organisations working with Muslim women – supported the petition and urged the Court to declare that personal law was subject to the Fundamental Rights. Bharatiya Muslim Mahila Andolan and Majlis – also women’s rights organisations – argued that in view of previous decisions of the Court, the bench need not consider the question whether constitutional validity of ITT, but should rather emphasise the existing legal remedies.

**Issue:**

- 7) Whether talaq-e-biddat is islamic in nature?
- 8) Whether the Muslim personal law (shariat) act, 1937 confers statutory status to the subjects regulated by it or is it still covered under “personal law” which is not “law” under article 13 of the constitution as per previous the supreme court judgments?





9) Is it protected by article 25 of the constitution?

**Judgement:**

**Issue 1** – The bench was satisfied, that the practice of ‘talaq-e-biddat’ has to be considered integral to the religious denomination in question – Sunnis belonging to the Hanafi school. There is not the slightest reason for us to record otherwise. They were of the view, that the practice of ‘talaq-e-biddat’, has had the sanction and approval of the religious denomination which practiced it, and as such, there can be no doubt that the practice, is a part of their ‘personal law’.

**Issue 2** – In the considered view of the bench, the practice of talaq-e-biddat cannot be struck down on the three non-225 permissible/prohibited areas which Article 25 forbids even in respect of personal law. It is therefore not possible to uphold the contention raised on behalf of the petitioners on this account. As Personal law is a matter of religious faith, and not State action, it can’t be said to be in violation of Articles 14, 15 and 21 of the Constitution of India.

**Issue 3** - The Court held that Hence, talaq-e-biddat could not be said to be an integral part of the Muslim faith and hence could not be immunized by resorting to Article 25.

**84.S.P. Mittal Etc. Etc vs Union Of India And Others**

**DATE OF JUDGMENT:** 8 November, 1982

**COURT:** Supreme Court of India

**JUDGES:** Chandrachud, Y.V. ((Cj), Bhagwati, P.N., Reddy, O. Chinnappa (J), Eradi, V. Balakrishna (J), Misra, R.B. (J)

**REFERENCE:** 1983 AIR, 1 1983 SCR (1) 729



## **PARTIES**

Petitioner: S.P. Mittal Etc. Etc

Respondent: Union of India & Others.

**SUBJECT:** India being a secular country has tolerance for all religions and this is reflected in our judicial decisions from time to time. **Religious freedom in India is a fundamental right guaranteed by Article 15 and Article 25 of the Constitution of India.** But guaranteeing rights is not enough. There have been many disputes between various interest groups and law enforcement agencies, and one of such conflict was dealt by this 1983 decision.

## **FACTS:**

- **Sri Aurobindo** was one of the greatest sages and philosophers of India. After a career in politics and administration, he decided to turn his life in Tamil Nadu Pondicherry to yoga and meditation. A Frenchwoman named **Madame M. Alfasa** became her student and later came to be known as mother.
- Soon, many people from India and other countries joined Sri Aurobindo and **in 1960 founded the Sri Aurobindo Association** in accordance with the **West Bengal Registration of societies Act of 1961.**
- A few years later, a new township was founded called **AUROVILLE**, where people studied the teachings of Sri Aurobindo. Given the unique working conditions, **the central government decided to finance the township.** As a result, **UNESCO** decided to support this township in the development process, as it is useful for international relations.
- In 1970, after the death of Mother Alfassa, there were many cases of abuse of funds in the township. To resolve such conflicts, **the central government decided to control the administration itself**, and the **President's ordinance** was issued by the legislation. After a while, this ordinance was changed to the **1980 Auroville Emergency Provision Act.** It was challenged before the Supreme Court of India.

## **IMPORTANT PROVISIONS:**

- **The constitution of India**
  - 1) Article 14: Equality before law



- 2) Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
  - 3) Article 25: Freedom of conscience and free profession, practice and propagation of religion
  - 4) Article 26: Freedom to manage religious affairs Subject to public order, morality and health
  - 5) Article 29: Protection of interests of minorities
  - 6) Article 30: Right of minorities to establish and administer educational institutions
- **Auroville Emergency Provision Act 1980**

### **ISSUES:**

- 1) Whether the Auroville Emergency Provision Act 1980 violates the provisions of constitution of India?

### **ANALYSIS OF THE JUDGEMENT:**

- 1) **The Parliament has the legislative power to enact the 1980 Auroville (Emergency Provisions) Act.**
- 2) The legal subject of the disputed Act is not included in Entry 32 of List II of the seventh schedule. In any case, **the subject of the impugned act is still covered by residuary entry 97 of list I**, even if it is not included in a specific entry of list I or III of schedule 7 of the constitution.
- 3) The function of the list in the schedule seven of the constitution is not to delegate powers. They only demarcate legislative areas. **Legislative powers are available to legislature subject to articles 245 to 248 of the Constitution.**
- 4) **The Auroville Act did not incidentally trench upon the areas covered by the West Bengal Societies Registration Act of 1961**, as it is not related to the Constitution, regulation and winding up of the Society.
- 5) Thus, **this law does not violate the provisions of the Constitution of India.**

### **CONCLUSION:**

**Religion, which is not defined in the Constitution, cannot be determined by the judiciary either.** In the light of the foundations of constitutional norms and the light



presented by judicial precedent, we can say that **religion is a matter of faith**. This is a question of belief and doctrine.

### **85.Sri Venkataramana Devaru v. The State of Mysore**

**DATE OF JUDGMENT:** 1958 AIR 255

**COURT:** Supreme Court of India

**JUDGES:** Das, Sudhi Ranjan (Cj), Aiyar, T.L. Venkatarama, Imam, Syed Jaffer, Sarkar, A.K., Bose, Vivian

**REFERENCE:** 1958 AIR 255

#### **PARTIES**

**Petitioner:** Sri Venkataramana Devaru

**Respondent:** The State of Mysore

**SUBJECT:** The judgment revolves around the application of **equality in places of worship**.

**FACTS:** This was an appeal by the trustees of the ancient and renowned temple of Sri Venkataramana of Moolky Petta, who were managing the temple on behalf of the **Gowda Saraswath Brahmins** in accordance with a Scheme framed in a suit under Section 92 of the Code of Civil Procedure. After the passing of the **Madras Temple Entry Authorisation Act, 1947** which had for its object the **removal of the disability of Harijans** from entering into Hindu public temples, the trustees made a representation to the Government that the temple was a **private one**, and, therefore, **outside the operation of the Act**. But the Government did not accept that position and held that the **Act applied to the temple**. Challenging the decision of the government the appellants approached the trial Court stating that they have **administrative independence under Article 26** as they form a separate denomination. However, the Court rejected their contention and held that, the Act covered all temples. Later this view was affirmed by the High Court but it also held that, the appellants has the right to **exclude the general public during certain ceremonies** in which the members of the denomination alone were entitled to participate. However, the appellants approached the SC for **complete exclusion**.

#### **IMPORTANT PROVISIONS:**



### The Indian Constitution:

- Article 32: Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 26(b): Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion.
- Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- Article 15(1): The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- Article 25(2)(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.

### ISSUES:

1. Whether the right to manage religious affairs of a religious denomination can be **overridden** by right to freedom of religion under Article 25 of the Constitution?

### ANALYSIS OF THE JUDGEMENT:

The petitioners contended that, it was an age-old practice of **Gowda Saraswath Brahmins** to conduct all the rituals and ceremonies in relation to the temple. Therefore, the temple and its devotees constitute a religious denomination and hence has independence in religious administration which confers upon them the **right to decide who can enter** the temple. Therefore the 1947 Act which takes away this right is unconstitutional to that extent.

The respondents contended that, the right to **freedom of religion** under Article 25 of the Constitution confers the right on every individual to profess, practice and propagate their religious believes. Further the right under **Article 25(2)(b)** which specifies “throwing open of all Hindu religious institutions to all classes and sections of Hindus” protects the validity of the impugned Act. The Act completely protects the rights of every individual under Article 15 which prohibits **discrimination on the basis of caste**.



Upon hearing the parties to the case the Court affirmed the view of the HC and held that, a complete exclusion of general public will amount to violation of Article 25 therefore the temple authorities may be permitted to exclude general public only in those ceremonies which are integral in nature which are performed by the members of **Gowda Saraswath Brahmins alone**. Further the Court applied the principle of **harmonious construction** to resolve the dispute between Article 25 and 26.

### **86. Indra Sawhney v. Union of India**

**Bench:** M.H. Kania, C.J., M.N. Venkatachaliah, S. Ranavel Pandian, Dr. T.K Thommen, A.M. Ahmadi, Kuldeep Singh, P.B. Sawant, R.M. Sahai and B.P. Jeevan Reddy, JJ.

**Citation:** AIR 1993 SC 477

#### **Facts:**

In this case the court was asked to pronounce on the Constitutional validity of two offices of memoranda of the central government. One of them, which were initially brought before the court, were issued on 13th August, 1990. Implementing partially the Mandal Commission Report, it reserved 27 percent vacancies in Civil Posts and Services under the Government of India to be filled by direct recruitment from the socially and educationally backward classes (SEBCs). Before the court could decide the validity of the memorandum, the other memorandum was issued in September, 1991. It provided for the preference to the poorer sections of SEBCs in respect of 27 percent reservation made by the first memorandum and also made additional 10 percent reservation for other economic backward sections of the people who were not covered by the existing scheme. The first memorandum stated the SEBCs would comprise in the first phase the caste and communities which are common to both the lists in the report of the Mandal commission and the state government's lists.

#### **Issue:**

- 1) Whether Article 16(4) is exhaustive of the concept of reservations in favour of backward classes?



- 2) Whether Clause (4) of Article 16 provides reservation only in the matter of initial appointments/direct recruitment or does it contemplate and provide for reservations being made in the matter of promotion as well?

**Judgement:**

The court recognised article 14 as one of the basic features of the constitution which provides both ‘equality before the law’ and ‘equal protection of the laws’.

Clause 4 enables the state to meet special provisions for the advancement of socially and educationally backward classes of citizens or for the schedule caste and schedule tribes. Such provisions include reservations or quotas and can be made in the exercise of executive powers without any legislative support.

Schedule caste and Schedule tribes are defined in definitional Article 366(24) (25) respectively. The constitution gives no definition of backward classes, however Article 340 contemplates appointment of a commission to investigate the conditions of ‘socially and educationally’ backward classes and such other matters may be referred to the commission by the president.

The court upheld the first memorandum but invalidated the addition of 10 percent by the second. The court held that a class or classes in Article 15(4) and 16(4) are not to be construed in the Marxist sense. The Constitution does not define these classes nor does it lay down in methodology for their determination. To maintain the cohesiveness and character of a class the ‘creamy layer’ can and must be excluded from SEBCs. The court also held that the economic criteria alone cannot be the basis of backwardness although it may be a consideration along with or in addition to social backwardness.

The court in this case held that barring any extra ordinary situation, reservation should not exceed 50 percent. This limit applies to all reservations including those under Article 16(1) and altogether the reservation should not exceed the 50. The 50 percent limit does not include those members of SEBCs who got selected on their own merits percent limit; exemptions, concessions and relaxation do not have this limit application. For the application of this rule a year should be taken as the unit and not the entire strength of the cadre, service or the unit. So long as the limit is observed carry forward rule is permissible. The court by this decision overruled Devdasan Case, rejecting the carry forward rule’s inapplication. The court has clearly held that clauses 15(4) and 16(4) are not exceptions to 15(1) and 16(1), they are the means of



achieving the Right to Equality enshrined in those articles. However, they are exhaustive of all reservations concessions, relaxations and exemptions for SEBCs.

### **The validity of Art. 15(5)**

Parliament enacted the Central educational institutions (reservation and admissions) Act, 2006 providing for 15, 7 ½ and 27 percent reservation in Central institutions of Higher education and research for members of SC and ST and SEBCs respectively.

Approves the classification of backward classes into backward and more backward but disapproves that the backward classes must be so situated as SC and ST. it also held that clause 4 exhausts all special provisions for backward classes and no favor can be granted to them under clause 1.

This case validated the carry forward rule so long as the actual reservation in a particular year does not exceed 50 % of the vacancies. The 50 % limit has to be worked out on the basis of total vacancies in a particular year and not on the basis of total strength in cadre service. Extraordinary situations were an exception.

### **Can reservations apply to selection posts as well as promotional posts?**

The advancement of backward classes requires not only that they should have adequate representation in the lowest rung services but that they should aspire to secure adequate representation in selection post in the services as well.

The court held that the reservation could be made only in respect of direct recruitment at any level but not in respect of promotions. However, short of reservations any special provisions could be made to facilitate promotion of members of backward classes in the services. This case is overruling the Rangachari case.

To overcome the decision in this case that no reservation in promotions could be made under clause 4, clause 4-A was added in effect justifying reservations for SC and ST in promotions.

The court also remarked that clauses 4 and 4-A do not grant a fundamental right, they are but enabling provisions which must be balanced against the right to equality guaranteed in clauses 4 and 16.

## **87. Shri D.K. Basu vs State of West Bengal**





**Bench:** Kuldeep Singh, A.S. Anand

**Citation:** (1997) 1 SCC 416

**Facts:**

There was an observable increase in number of 'Use of 3rd Degree', Custodial Crimes and Lock-up Deaths in spite of the constitutional provisions (Article 21 and Article 22) and statutory provisions (CrPC: Sections 41, 46, 49, 50, 53, 54, 57, 167 and 176) which safeguard the personal liberty and life of a citizen. DK Basu (chairman of Legal Aid Services West Bengal), sent a letter to the Chief Justice of India addressing: The need to develop 'Custody Jurisprudence'. The lack of and hence required, procedures to provide compensation to victims of such breach of Fundamental Rights. He requested that the letter should be treated as a writ petition, and a PIL be filed in that regard. Alongside, the custodial death of Mahesh Bihari in Aligarh: addressed in a letter by Shri A.K. Johri, was treated as a Writ Petition in the same category.

These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the Constitution of India.

**Issue:**

What are the Fundamental rights of an arrested person to reduce custodial violence.

**Judgement:**

The Supreme Court laid down the process/ certain basic requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as a measure to prevent custodial violence.

The Guidelines for rights of accused person –

- a) The police officer carrying out the arrest should be wearing an accurate and clear identification and name tag with his designation.
- b) A memo of arrest containing the time and date of arrest should be prepared which is to be attested by at least one witness countersigned by the arrestee.
- c) Person known to him or having interest in his welfare to be informed as early as possible.
- d) The Inspection Memo must be signed both by the arrestee and the police officer



- e) The person who is being arrested should be made aware of this right to have someone informed.
- f) A medical examination needs to do every 48 hours during his detention
- g) Copies of documents should be sent to the Illaqa Magistrate.
- h) He should be permitted to meet his lawyer during interrogation.
- i) A police control room should be provided at all district and state headquarters to whom the time, place of arrest and venue of custody of an arrestee must be notified within a period of 8 to 12 hours after the arrest.

### **88. Sri Shankari Prasad Singh Deo v. Union of India and State of Bihar**

**DATE OF JUDGMENT:** 05/10/1951

**COURT:** Supreme Court of India

**JUDGES:** Kania, Hiralal J. (Cj), Sastri, M. Patanjali, Mukherjea, B.K., Das, Sudhi Ranjan, Aiyar, N. Chandrasekhara.

**REFERENCE:** 1951 AIR 458

#### **PARTIES**

**Petitioner:** Sri Shankari Prasad Singh Deo

**Respondent:** Union of India and State of Bihar

**SUBJECT:** The judgment revolves around the amending power of Parliament under Article 368 of the Constitution of India

**FACTS:** The Constitution (First Amendment) Act, 1951 was challenged before the Hon'ble SC under Article 32 of the Constitution.

#### **IMPORTANT PROVISIONS:**

**The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed



(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 368(1): Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.
- Article 13(2): The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

### **ISSUES:**

1. Whether the term “**law**” under Article 13 **includes amendments** made to the Constitution?
2. Whether the Parliament has **exclusive rights** to amend any part of the Constitution?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioners in the instant case challenged the validity of the **Constitution (First Amendment) Act 1951 which inserted Articles 31A and 31B**. As per these Articles any law enacted by the Parliament and inserted into the 9<sup>th</sup> schedule of the Constitution **cannot be challenged on the basis of violation of Part III rights**. The petitioners submitted that any law made by the Parliament must be in **consonance** with the part III rights as per Article 13. However, the respondents contended that, law under Article 13 includes **only legislative enactments** enacted under Article 245, 246, 248 of the Constitution and **does not include amendments** made to the Constitution. Therefore, the amendment stands valid. The Court **affirmed the view** of the respondents and held that, Parliament has complete authority to amend any part of the Constitution including Fundamental rights under Part III.

**CONCLUSION:** The Court in the instant case recognised the independency of legislature in enacting laws. However, the judgment was **overruled** in the subsequent case of **Kesavananda Barathi v. State of Kerala**.

### **89. Sajjan Singh v. State of Rajasthan**



**DATE OF JUDGMENT:** 30/10/1964

**COURT:** Supreme Court of India

**JUDGES:** Gajendragadkar, P.B. (Cj), Wanchoo, K.N., Hidayatullah, M., Dayal, Raghubar, Mudholkar, J.R.

**REFERENCE:** 1965 AIR 845

**PARTIES**

**Petitioner:** Sajjan Singh

**Respondent:** State of Rajasthan

**SUBJECT:** The judgment revolves around the question of whether the term **law** under Article 13 **includes amendments** made to the Constitution?

**FACTS:**

In order to give effect to various policies enacted by the State legislatures for agrarian reforms the Parliament brought in the Constitution (First Amendment) Act, 1951 which added Article 31A and 31B to the Constitution which lead to the introduction of **9<sup>th</sup> schedule**. The object of the schedule is that any law placed under the schedule **cannot be challenged on the basis of fundamental right violation**. Further in the Constitution (Seventeenth Amendment) Act, 1964 Article 31A was **further amended and 44 more such enactments** were added to the schedule. Aggrieved by these enactments **the petitioner challenged the validity** of the said amendment and all those legislations which were added to the schedule under Article 32 of the Constitution.

**IMPORTANT PROVISIONS**

**The Indian Constitution**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed



(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 31B: Validation of certain Acts and Regulations

Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of Part III, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

- Article 368(1): Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.
- Article 13(2): The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

### **ISSUES:**

1. Whether the term law under **Article 13 includes amendments** made to the Constitution?
2. Whether there is a **need to reconsider** the decision in Shankari Prasad v. Union of India?

### **ANALYSIS OF THE JUDGEMENT:**

The petitioners contended that,

- The term “law” under Article 13 includes amendments made to the Constitution.
- Legal immunity to the legislations from being challenged is **beyond** the amending powers of the Parliament.
- The decision in the case of Shankari Prasad v. Union of India wherein the Court held that, amendments are not law under Article 13 is to be reconsidered.
- The powers prescribed under Article 226 is **likely to be affected** by the amendment.



- Parliament has **no authority** to make laws with respect to land as it falls under Entry 18 of List II.

However, the respondents contended that, law under Article 13 includes **only legislative** enactments enacted under Article 245,246,248 of the Constitution and **does not include amendments** made to the Constitution.

Upon hearing the parties to the case, the Court held that, the impugned amendment is brought in only for the fulfilment of **socioeconomic** policy. Also, the effect of the amendment on Article 226 is **incidental and insignificant**. The parliament is not enacting any land legislation but is **merely validating** the already enacted ones by the State legislature therefore the Parliament reserves the authority for the same. Finally, the Court concluded that, the ruling in Shankari Prasad v. Union of India is valid and there is **no necessity to reconsider** the same.

**CONCLUSION:** The Court by upholding the validity of the Constitution (Seventeenth Amendment) Act,1964 held that the Parliament has **complete authority to amend all parts** of the Constitution including the Fundamental rights. However, this decision of the SC was overruled in the case of **I.C. Golaknath v. State of Punjab** which was further overruled in the case of **Kesavanada Barathi v. State of Kerala** giving rise to the **doctrine of basic structure**.

### **90.I. C. Golaknath & Ors v. State of Punjab & Anr**

**DATE OF JUDGMENT:** 26/02/1967

**COURT:** Supreme Court of India



**JUDGES:** Rao, K. Subba Wanchoo, K.N., Hidayatullah, M. & Shah, J.C., Sikri, S.M. & Bachawat, R.S., Ramaswami, V. & Shelat, J.M., Bhargava, Vishishtha & Mitter, G.K. & Vaidyalingam, C.A.

**REFERENCE:** 1967 AIR 1643

### **PARTIES**

**Petitioner:** I. C. Golaknath & Ors

**Respondent:** State of Punjab & Anr

**SUBJECT:** The judgment revolves around the **amending power** of Parliament under Article 368 of the Constitution of India.

**FACTS:** A petition was filed in the SC questioning the validity of Punjab Security of Land Tenures Act, 1953 (Act 10 of 1953) and of the Mysore Land Reforms Act (Act 10 of 1962) as amended by Act 14 of 1965. Since the legislations were added to the **9<sup>th</sup> schedule of the Constitution** by the **Seventeenth Amendment Act, 1964**, the said amendment was also challenged.

### **IMPORTANT PROVISIONS:**

**The Indian Constitution:**

- **Article 32:** Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- **Article 368(1):** Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent
- power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.
- **Article 13(2):** The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

### **ISSUES:**



3. Whether the term “**law**” under Article 13 **includes amendments** made to the Constitution?
4. Whether the Parliament has **exclusive rights** to amend any part of the Constitution?

#### **ANALYSIS OF THE JUDGEMENT:**

Though the question “whether the term law under Article 13 includes amendments or not was already addressed in the case of **Sankari Prasad v. Union of India and Sajjan Singh v. State of Rajasthan** it still came up for consideration before a 11 judges constitutional bench of the SC in the instant case. The petitioners contended that, part III rights are supreme to any other law enacted by the Parliament including amendments, therefore the above stated legislations inserted in the 9<sup>th</sup> schedule along with the amendment stand unconstitutional. The respondents contended that, **law refers to legislative enactments** under Articles 245, 246, 248 and not those made under Article 368, therefore the amendment stands valid.

Upon hearing the parties to the case, the Court held that, **Article 368** merely laid down the **procedure** in which the legislative power of Parliament under Article 245 has to be exercised. Article 368 alone does not confer any authority over the Parliament therefore **all enactments of Parliament falls well within the ambit of the term law under Article 13 and must be in consonance with the fundamental rights of the citizens.**

**CONCLUSION:** In the instant case though the Court recognised that fundamental rights stand over any other law in India, the judgment was still overruled by the SC in the case of **Kesavananda Bharati v. State of Kerala** giving rise to the doctrine of basic structure.

### **91.I.R. Coelho v. State of Tamil Nadu**

**Bench:** Sabharwal, Pasayat, B.P. Singh, Kapadia, Thakker, Balasubramanyan, Altamas Kabir, D.K. Jain





**Citation:** AIR 2007 SC 861

**Facts:**

This case challenged the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari Act), which was struck down by the Court. As a result, the legislature re-enacted the law, and placed it within the 9th Schedule. This act of the legislature was challenged. Given that the Waman Rao decision had held that all amendments to the 9th Schedule could be questioned on the grounds that they violated the basic structure of the Constitution, the question was as to whether it was permissible for Parliament to immunize legislations under Article 31-B by inserting them into the 9th Schedule. If so, what would be the impact on the power of Judicial Review of the Court

**Issue:**

Whether the basic structure principle applied only to constitutional amendments, or whether it would also apply to the laws that are added to the ninth schedule on the touchstone of fundamental rights?

**Judgement:**

The Supreme Court unanimously held that amendments adding new laws in 9th Schedule after Keshavnanda judgment in 1973 were subject to basic structure requirement but fundamental rights especially Articles 14, 15, 19 and 21 are parts of basic structure and the effect of inclusion of a law in 9th Schedule results in abrogation of Article 32 as such laws cannot be challenged on the ground of violation of Part III rights. Therefore, addition of any law in 9th can be tested on the touchstone of basic structure doctrine.

On the extent of judicial review, the court observed that Judicial Review is an essential feature of the Constitution as it gives practical content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. It may be noted that the mere fact that equality which is a part of the basic structure can be excluded for a limited purpose, to protect certain kinds of laws, does not prevent it from being part of the basic structure.”

**92.Indira Gandhi v. Raj Narain**

**Bench:** A.N. Ray (Cj), H.R. Khanna, K.K. Mathew, M.H. Beg, Y.V. Chandrachud.



**Citation:** 1975 AIR 1590

**Subject:** 39<sup>th</sup> Amendment was held unconstitutional as it did away with judicial review.

**Facts:**

Appeal was filed by Indira Gandhi from the decision of The High Court of Allahabad which held her guilty of having committed corrupt practice (in the 1970 elections) by having obtained the assistance of Gazetted Officers in furtherance of her election prospects. The High Court held the appellant to be disqualified for a period of six years. While her appeal was pending before the Supreme Court, the Constitution (39th Amendment) Act, 1975 was passed by Parliament, making a few changes to electoral laws under the Constitution. Article 329-A was inserted into the Constitution. Clause (1) of Article 329-A provided that the elections of the PM and Speaker shall not be questioned before any court except before the authority specifically constituted for those matters by Parliament. Most controversial was Clause (4) of Article 329-A, which stated that “no law made by Parliament before the commencement of the 39<sup>th</sup> Amendment, in so far as it relates to election petitions and matters connected therewith, shall apply or shall be deemed ever to have applied to or in relation to the election of any such person as is referred to in Clause (1) to either House of Parliament and such election shall not be deemed to be void or ever to have become void on any ground on which such election could be declared to be void under any such law and notwithstanding any order made by any court, before such commencement, declaring such election to be void, such election shall continue to be valid in all respects and any such order and any finding on which such order is based shall be and shall be deemed always to have been void and of no effect.”

**Issue:**

Was the 39<sup>th</sup> Amendment Act which Indira Gandhi's election to the Lok Sabha beyond challenge valid?

**Judgement:**

The clause (4) of Article 329A was struck down on the ground that it violates the principle of free and fair elections which is an essential postulate of democracy and which in its turn is a part of the basic structure of the Constitution



The Supreme Court for the first time applied Keshavnanda and struck down the 39th amendment as violating democracy implicit in free and fair election, equality and rule of law which are the basic feature of the constitution. The exclusion of judicial review damaged the basic structure of the Constitution.

The Court upheld the amendments in Representation of People's Act 1951 and clarified that the doctrine of basic structure does not apply to ordinary legislation.

To overcome Keshavnanda Indira Gandhi appointed Swaran Singh Committee during emergency to review the entire Constitution. On the recommendation of this report Parliament passed 42nd amendment in 1976.

### **93. Kesavananda Barathi v. State of Kerala**

**Bench:** Sikri, CJ, Shelat, Hegde, A.N. Grover, Jaganmohan Reddy, Palekar, H.R. Khanna, A.K. Mukherjee, YV Chandrachud, A.N. Ray, Mathew, M.H. Beg, Dwivedi) - Largest Bench ever constituted by the Supreme Court of India.

**Citation:** AIR (1973) 4 SCC 225

**Facts:**

After the Golak Nath case, several amendments were brought about to bypass the ratio laid down in that case. The amendments were:

- 25th Amendment- Article 13 was amended. Clause (4) was inserted and it was laid down that amendments were not laws for the purposes of Article 13. It also added Article 31C to the Constitution which gave power to the Parliament to make law to implement certain DPSP even in abrogation of Article 14, 19 and 31. It amended Article 31(2) by replacing the word 'compensation' with the word 'amount'.
- 26th Amendment- deleted Article 362 abolishing Princely states and privileges of princes.
- 29th Amendment- expanded the 9th Schedule



All these amendments were questioned in Keshavananda Bharati's case. The Supreme Court had either to accept or reject the Golak Nath ratio. A 13-judge bench sat for the first time and gave the bulkiest judgment in the world. (7:6 ratio)

**Issue:**

To what extent could the Constitution be amended after the passage of the 24th Amendment? Whether the 'power' (no longer merely the procedure) to amend the Constitution was subject to any restrictions, implied or express, after the 24th amendment.

**Judgement:**

The decision was split 7:6, with Justice Khanna's opinion being the decisive one. However, Khanna, J. seemed to side with both sides, to some extent.

**Majority I**

Amending power extends to amending all provisions of the Constitution including Part III. Fundamental Rights are not beyond amending power.

**Majority II**

Even though amending power extends to all provisions, it is limited. The Parliament has no power to amend in such a way as to destroy the basic structure/framework of the Constitution. However, the basic structure was not defined.

**Justice Khanna**

He said that Fundamental Rights may be amended. His idea of 'basic structure' was one of institutional design. He did not join either majority in full force. He joined Majority I to the extent that the amending power of the Parliament covered all provisions. He joined Majority II to the extent that the amending power was limited by basic structure. Therefore, the Golak Nath ratio was overruled in all respects.

The majority judges in their separate opinion mentioned the following features as constituting the basic features of the constitution:

- 1) Supremacy of the Constitution
- 2) Republican and democratic form of government
- 3) Separation of powers



- 4) Secular character
- 5) Dignity of the individual
- 6) Mandate of welfare state
- 7) Unity and integrity of nation
- 8) Preamble, fundamental rights and directive principles

### **94.L. Chandra Kumar v. Union of India And Others**

**DATE OF JUDGMENT:** 18/03/1997

**COURT:** Supreme Court of India

**JUDGES:** A.M. Ahmadi Cji, M.M. Punchhi, K. Ramaswamy, S.P. Bharucha, S. Saghir

**REFERENCE:** 1997 (2) SCR 1186

#### **PARTIES**

**Petitioner:** L. Chandra Kumar

**Respondent:** Union of India And Others

**SUBJECT:** The judgment revolves around the question of whether **exclusion of judicial review under Article 226** of the Constitution amounts to violation of basic structure doctrine?

**FACTS:** The petitioners in the instant case challenged the validity of insertion of Article 323A by the Constitution (42<sup>nd</sup> Amendment) Act, 1976 which excluded the jurisdiction of High Courts under Articles 226 and 227 in **service matters**. They further challenged sections 4,5,6 and 28 of the Administrative Tribunals Act, 1985 which prescribed the **mode of appointment and qualification** for Chairman and Vice-Chairman.

#### **IMPORTANT PROVISIONS**

The Indian Constitution

- Article 32: Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed



(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III.

- Article 323A (2)(d): exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints.

### **ISSUES:**

1. **Whether exclusion of jurisdiction under Article 226 and 227 amounts to violation of basic structure doctrine?**

### **ANALYSIS OF THE JUDGEMENT:**

When Article 323A was initially brought in, the provision excluded all jurisdictions except the one of Supreme Court under **Article 136**. But after the **amendment in 1986** the jurisdiction of the Apex Court under **Article 32** was also included. Therefore any dispute regarding the recruitment and appointment of persons in public services has to be first addressed before the administrative tribunal, if either party is aggrieved by the decision of the tribunal he has to only approach the Supreme Court under **Article 32 or 136** but cannot seek assistance under Article 226 or 227. In simple words it was a **two-tier** system. However, the petitioners challenged its validity as judicial review forms a part of the basic structure doctrine. Rebutting the argument, the respondents submitted that, there was **no complete exclusion** as judicial review under Article 32 is still available. Also, the Chairman of the Tribunal constitute a **valid alternate** to the High Courts. As the required qualification stands as follows:

- Should be or been the judge of HC
- Or should have held the office of Vice-Chairman at least for a period of 2 years.
- Or held the post of Secretary to government of India
- Or held the post of Additional Secretary to the government of India
- Or held the office of Judicial member for a period not less than 3 years.
- Or Should have been qualified to be a member of High Court
- Or Should have been the member of India Legal Service Grade 1 for a period of 3 years.

However, the question was already addressed in **Sampath Kumar v. Union of India** wherein the Court held that, Tribunals constitute a valid alternate to the High Courts. But the Hon'ble



SC in present case **overruling** the decision in Sampath kumar's case held that, the power of judicial review under Articles 32 and 226 form a part of the basic structure of the Constitution and cannot be taken away by amendments. Therefore, **Article 323 (2)(d) stands invalid to the extent it omits the jurisdiction of HC.** In other words the Court held that, when either party to a case before the Tribunal is not satisfied with the decision she should first approach the High Court and then if he further wants to appeal then he can approach the SC under Articles 136 or 32 depending upon the facts of the case.

**CONCLUSION:** The Court in the present case reiterated the principle that **basic structure of the Constitution is beyond the amending powers of the Parliament.**

### **95.Minerva mills v. Union of India**

**Bench:** Chandrachud, Y.V. ((Cj), Bhagwati, P.N., Gupta, A.C., Untwalia, N.L., Kailasam, P.S.

**Citation:** AIR 1980 SC 1789

#### **Facts:**

Petitioner No 1 which is a limited company owned a textile undertaking called Minerva Mills situated in the State of Karnataka. This sick textile mill was nationalised and taken over by the Central Government under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974, which was inserted into the 9th Schedule by the 39th Amendment. This Act was questioned along with the 42<sup>nd</sup> Amendment and the 25<sup>th</sup> Amendment both of which protected this Act.

#### **Issue:**

Whether the 42nd Amendment violated the basic structure of the Constitution?

#### **Judgement:**

It said that Amending power is limited and cannot be transformed into unlimited power because limited amending power is part of the basic structure. Thus Clause (5) was ultra vires. Also judicial review is part of basic structure. So Clause (4) is unconstitutional. However, opinion was split as regards the expansion of Article 31C.



**Majority Opinion (Chandrachud) (4:1):**

Both Part III and IV are the core values, conscience of the Constitution and they bring about the social revolution contemplated in the Constitution. There is a relation between the two of balance and harmony and this balance cannot be changed or destroyed by amendment. The Constitution embodied goals in Part IV and means in Part III. The State can achieve these goals only by not abrogating the Constitutional means. That the end justifies the means is not part of the Indian Constitutional jurisprudence. Thus DPSP have to be achieved within the framework of the Fundamental Rights.

Thus, the 42nd Amendment brings out a change that is more fundamental than the 25th Amendment. The difference between the two, of course, is quantitative rather than qualitative. One or thousand laws, if any is given immunity on grounds of implementing even one DPSP, it won't matter. No DPSP can be given primacy over the Fundamental Rights because this destroys the constitutional harmony and balance between Part III and Part IV.

**Minority (Bhagwati):**

Implementation of DPSP by laws will not affect Fundamental Rights. It will only promote substantive equality because right now Fundamental Rights are meaningless to most of the population. To make them more meaningful, Fundamental Rights must be interpreted in the framework of the DPSP and not the other way round. The spirit of implementation of DPSP will not be in violation of Fundamental Rights because it will promote substantive equality. (social and economic equality)

**96.S.R. BOMMAI VS. UNION OF INDIA**

**CITATION:** 1994 (3) SCC 1





**COURT:** SUPREME COURT OF INDIA

**BENCH:** S.R. Pandian, A.M. Ahmadi, Kuldip Singh, J.S. Verma, P.B. Sawant, K. Ramaswamy, S.C. Agrawal, Yogeshwar Dayal, B.P. Jeevan Reddy

**Subject:** Power of the President to dismiss a state government is not absolute

**FACTS:**

- The Petitioner, S.R. Bommai was the Chief Minister of the Janata Dal government in Karnataka from August 13, 1988 and April 21, 1989.
- Several members of the party left which arose a question as to majority party in the government
- Petitioner put forward a few propositions to the Governor to call and test the strength of the government through the floor test however the suggestions were ignored by the Governor
- Petitioner's government was dismissed on April 21, 1989 under Article 356 of the Constitution and the President's Rule was imposed
- The Karnataka High Court ruled in favour of the Governor holding that the facts as per the Governor's report could not be irrelevant and were duly examined.

**ISSUE:**

- Whether the President's Rule imposed in the 6 states was constitutionally valid
- Whether the President has unfettered powers to issue proclamation under Article 356(1)

**PETITIONER's CONTENTIONS:**

- That the Petitioner was not given an opportunity to prove the majority of the government
- That the imposition of President's rule under Article 356(1) was malafide

**RESPONDENT's CONTENTIONS:**

- That the proclamation can be issued under Article 74(1) based on advice of the council



- That Judicial review of the reasons leading to issuing a proclamation under Article 356 is barred

### **JUDGEMENT:**

The verdict of the Supreme Court concluded that the power of the President to dismiss a State government is not absolute. Further, the President should exercise the power only after his proclamation is approved by both Houses of Parliament. Until then, the President can only suspend the Legislative Assembly by suspending the provisions of Constitution which relate to the Legislative Assembly. The proclamation lapses if it is not accepted by both the houses of the Parliament within 2 months. The Apex court also stated that the proclamation under Article 356 can be subjected to judicial review.

### **97.S.P. Sampath Kumar Etc v. Union of India & Ors**

**DATE OF JUDGMENT:** 09/12/1986

**COURT:** Supreme Court of India

**JUDGES:** Bhagwati, P.N. (Cj), Misra Rangnath, Khalid, V. (J), Oza, G.L. (J), Dutt, M.M. (J)

**REFERENCE:** 1987 AIR 386

### **PARTIES**

**Petitioner:** S.P. Sampath Kumar

**Respondent:** Union of India & Ors

**SUBJECT:** The judgment revolves around the question of whether **exclusion of judicial review under Article 226** of the Constitution amounts to violation of basic structure doctrine?

**FACTS:** The petitioners in the instant case challenged the validity of insertion of Article 323A by the Constitution (42<sup>nd</sup> Amendment) Act, 1976 which excluded the jurisdiction of High Courts under Articles 226 and 227 in **service matters**. They further challenged sections 4,5,6 and 28 of the Administrative Tribunals Act, 1985 which prescribed the **mode of appointment and qualification** for Chairman and Vice-Chairman.

### **IMPORTANT PROVISIONS:**



### The Indian Constitution:

- Article 32: Remedies for enforcement of rights conferred by Part III

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III

- Article 323A (2)(d): exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints.

### ISSUES:

1. **Whether exclusion of jurisdiction under Article 226 and 227 amounts to violation of basic structure doctrine?**

### ANALYSIS OF THE JUDGEMENT:

When Article 323A was initially brought in, the provision excluded all jurisdictions except the one of Supreme Court under **Article 136**. But after the **amendment in 1986** the jurisdiction of the Apex Court under **Article 32** was also included. Therefore any dispute regarding the recruitment and appointment of persons in public services has to be first addressed before the administrative tribunal, if either party is aggrieved by the decision of the tribunal he has to only approach the Supreme Court under **Article 32 or 136** but cannot seek assistance under Article 226 or 227. In simple words it was a **two-tier** system. However, the petitioners challenged its validity as judicial review forms a part of the basic structure doctrine. Rebutting the argument, the respondents submitted that, there was **no complete exclusion** as judicial review under Article 32 is still available. Also, the Chairman of the Tribunal constitute a **valid alternate** to the High Courts. As the required qualification stands as follows:

- Should be or been the judge of HC
- Or should have held the office of Vice-Chairman at least for a period of 2 years.
- Or held the post of Secretary to government of India
- Or held the post of Additional Secretary to the government of India
- Or held the office of Judicial member for a period not less than 3 years.
- Or Should have been qualified to be a member of High Court



- Or Should have been the member of India Legal Service Grade 1 for a period of 3 years.

Upon hearing the parties, the Court held that, the provisions were valid as the Chairman of the Tribunal was equivalent to the Chief Justice of High Court. The Tribunal is set up as an **alternate** to the jurisdiction of the High Court. However, with regard to the appointment of Chairman, Vice-Chairman and other members the Court held that, only those who possess sufficient judicial knowledge must be elevated to such posts so as to instil **confidence and trust** in the minds of people to approach the forum. Therefore, the government must make appointment of Chairman and Vice-Chairman **only after consulting the CJI**. The Court also gave an alternate possibility to set up a **high-powered selection committee** which should be headed by the CJI or any sitting judge of the SC or the concerned HC. Further the court **removed the provision which permitted a Secretary of Government of India to be elevated to the position of Chairman**.

**CONCLUSION:** Though the Court upheld the validity of Article 323A and various provisions of the Administrative tribunals Act in Sampath Kumar v. Union of India, the decision was overruled by the SC in the case of **L. Chandra Kumar v. Union of India** holding that, judicial review under **Article 226 and 32 form the basic structure** of the Constitution<sup>10</sup> and cannot be taken away by amendments.

### **98.Waman Rao v. Union of India**

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<sup>10</sup> Minerva Mills v. Union of India, [1981]1 SCR 206.



**Bench:** Y Chandrachud, A Sen, P Bhagwati, V Tulzapurkar, V K Iyer

**Citation:** (1981) 2 SCC 362

**Subject:** All laws added after the Keshavnanda Bharati decision could be examined on grounds of violation of Articles 14, 19 and 31.

**Facts:**

The Maharashtra Agricultural (Ceiling on Holdings) Act, 1961 (as amended in 1976) was challenged on grounds of a violation of the right to property—a law which had been repealed by the subsequent 44th amendment. In addition, all amendments to Article 31-B and the 9th Schedule were challenged on the basis of the “very recent decision” in the Minerva Mills case.

The Constitution (Seventy-Seventh Amendment) Act, 1995, the Constitution (Eighty-First Amendment) Act, 2000, the Constitution (Eighty-Second Amendment) Act, 2000, and the Constitution (Eighty-Fifth Amendment) Act, 2001 were enacted to insert Clauses (4-A) and (4-B) in Article 16, largely for enacting reservations in promotions, with consequential seniority, for SC/STs (4-A), and for the treatment of such reservation as a separate class to be filled each year irrespective of the 50% rule in Indra Sawhney’s case.

**Issue:**

Whether amendments could be made to the Constitution that had the effect of taking away certain fundamental rights. In particular: whether the First Amendment to the Constitution does violence to the basic postulates of Indian Constitutional law, and whether it is harmonious with the spirit of the Constitution.

**Judgement:**

Chandrachud, J held that in a sense, the relationship between fundamental rights and directive principles can be understood as the inherent tension between a dynamic objective (the just society contemplated by the Fundamental Rights) and a static and preservatory set of rights (located in the Constitution.) The first amendment to the Constitution, therefore, makes the Constitutional idea of equal justice a living truth.

With regard to Article 31-B, a distinction was drawn between the day the Keshavnanda decision was adopted and before, because the Keshavnanda decision marked the basis of the idea of the basic structure to the Indian Constitution. Therefore, all amendment that were made



to the 9th Schedule before the Keshavnanda Bharati decision came up would be valid and Constitutional.

All laws, however, after that judgement could be examined on grounds of violation of Article 19, 21 and 14. The basis for this was:

- 1) The fact that there was no concept of basic structure in the Indian Constitution before this time.
- 2) That there was no purpose to be served by upsetting settled claims and titles, and in introducing chaos and confusion into the lawful affairs of a fairly orderly society.

### **99. Sarla Mudgal v. Union of India**

**Bench:** Kuldeep Singh (J)

**Citation:** 1995 AIR 1531

**Subject:** Need of a Uniform Civil Code

**Facts:**

The Case has 5 petitioners under a writ petition in the Supreme Court of India :

- 1) Sarla Mudgal - President of "KALYANI" a society for welfare of families and women in distress.
- 2) Meena Mathur - Wife of Jitender Mathur and had three kids with her husband. Jitender Mathur changed his religion and solemnised marriage with one Sunita @ Fatima after converting into Islam specifically to marry Sunita @ Fatima.
- 3) Sunita @ Fatima - The new wife of Jitender Mathur is also an aggrieved party as Jitender Mathur after having a son with Sunita, left her saying that he has to maintain his previous wife and three kids and he again changed his religion to Hindu. Sunita is claiming that she has no remedy under her personal laws and Jitender Mathur is to paying her any maintenance.
- 4) Geeta Rani - Wife of Pradeep Kumar under Hindu Laws. Pradeep Kumar allegedly used to beat her and at one such instance broke her jaw as well and later ran away with one Deepa and married her after changing her religion.



- 5) Sushmita Ghosh - Wife of GC Ghosh, who asked her if she would give her a divorce on mutual grounds to which Sushmita Ghosh did not agree as she wanted to live with her husband. GC Ghosh told her that he had changed his religion to Islam and will marry one Vinita.

**Issue:**

- 1) Whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnise second marriage under section 25 of the Indian Constitution?
- 2) Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)?

**Judgement:**

The Doctrine of Indissolubility under Hindu Law which means that changing of religion does not automatically dissolve the marriage done under the said act. Marriage done under one personal law cannot be dissolved by another personal law just because the parties changed their religion. If it is allowed to dissolve a marriage merely by changing of religion, it will be ridiculous to the rights of the spouse who did not convert into other religion. Conversion can only be a ground for divorce under Section 13(1)(ii) of the Hindu Marriage Act, 1955. Till the former Marriage is not dissolved as per the act under which the marriage was done, another Marriage will be void if Personal laws don't specify otherwise. The second marriage of a Hindu husband after embracing Islam will be violative of justice, equity and good conscience and would be void on such grounds while also attracting the provisions of Section 494, IPC. Natural Justice is also violated by such practices.

**Uniform Civil Code:**

The court in this case highlighted the importance of a Uniform Civil Code throughout the territory of India under Article 44 of the Indian Constitution. Article 44 is needed as it based on the concept that there is no connection between religion and personal law in a civilized society and seeks to introduce a uniform personal law which is a decisive step towards national consolidation..

For the criticism against the Uniform Civil Code the court said that if the non-implementation of the Uniform Civil Code amounts to grave failure of Indian democracy, the positive side of the code cannot be ignored which will promote homogeneity and national solidarity.



**100.      Ujjam Bai v. State of Uttar Pradesh**

**DATE OF JUDGEMENT** – 10<sup>th</sup> April 1962

**COURT** – Supreme Court of India

**JUDGES** – Justice S.K. Das

**CITATION** – 1963 SCR (1) 778

**PARTIES** – Smt. Ujjam Bai (Petitioner)

State of Uttar Pradesh (Respondent)

**Subject:** The concept of certiorari as a writ under Articles 32 and 226 of the Constitution.

**FACTS –**

Two Notifications were passed by the Government of UP in 1957 and 58 with respect to exemption of Sales Tax for certain goods excluding Bidis which were added in the Second Notification. Such exemption was not absolute and was on the basis of Central Excise Duty payment. The petitioner filed the quarterly returns of the firm to which the Sales Tax Officer replied with the notice for assessment of Bidi between Apr 1 and June 30 1958. The Petitioner based on the same contended that he has a clear exemption based on Notification 1. The STO contended that the First notification applies to dealers in respect of Bidis provided the additional Excise leviable on them has been paid by Dec 13 1957, which was not paid and hence is liable to pay tax. Aggrieved by the Court of Appeal and the High Court, the petition was filed under A. 32 in the SC.

**CONTENTIONS –**

What is the scope of the Courts in India with respect to their power of writ under Certiorari?

**Petitioner** – The petitioners contended that the whole assessment order is unconstitutional and interferes with the right to carry out business without interference under A. 19 (1) (g) of the Constitution. Further it was contended that the STO misconstrued Notification 1 with respect to the exemption of tax on bidis on which additional excise duty is levied. As a result of which misconstruction tax was imposed on the Petitioner which was unauthorized and is in violation of his right under Article 19(1) (g)

**Respondent** – It was contended that Notification 1 exempts the petitioner from sales tax only if the additional excise duty has been paid by the same party and that Taxation is protected





under A. 265 therefore falling out of the scope of A 19(1) (g) of the Constitution. Further it was contended that though restriction is imposed, an order of assessment as made by a tribunal acting under a statute such as the order of Dec 1958 does not infringe Article 19(1) (g) of the Constitution.

### **JUDGEMENT –**

It was held that under Article 32(certiorari power) the SC would quash an order of a quasi-judicial body affecting fundamental rights if –

- it acts without jurisdiction or
- wrongly assumes jurisdiction or
- fails to follow the principle of natural justice or
- to observe the procedural provisions that are mandatory.

Therefore, in the current case, an order of assessment made by the authority under a taxing statute which is intra-vires wouldn't be open to challenge as violative of Article 19 (1) (g) on the only ground that it is based on a misconstruction of provision of the Act or of a notification issued thereunder. The petition was therefore dismissed as the tribunal took a decision which is intra-vires to the jurisdiction it possess.